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## FISCAL IMPACT REPORT

SPONSOR Zanetti DATE TYPED 2/2/04 HB HJM 46  
 SHORT TITLE Class Action Lawsuit Process Reform SB \_\_\_\_\_  
 ANALYST Maloy

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY04	FY05			
		See Narrative	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

Responses Received From  
Office of the Attorney General

No Responses Received From  
Administrative Offices of the Courts  
Administrative Offices of the District Attorneys

### SUMMARY

#### Synopsis of Bill

House Joint Memorial 46 outlines the following:

- Over the past 3 decades, class action lawsuit abuses have harmed those with legitimate claims, defendant's who seek to act responsibly, interstate commerce, and the public's respect for the judicial system;
- Class action suits often result in little or no benefit to the class participants;
- Plaintiffs' lawyers receive large fees, while the class participants are left with awards of little value;
- Abusive interstate class actions have harmed all of society by forcing innocent parties to settle cases, costing consumers billions in increase prices; and

- Artful pleading results in avoiding trying interstate claims in federal courts, and permits class action lawsuits to be tried in county and state courts where the lawyers, rather than the claimants, are likely to receive the maximum benefit.

Thereafter, the joint memorial resolves the following:

- Congress is requested by the New Mexico State Legislature to approve class action reform legislation that ensures:
  - fair and prompt recoveries for class members with legitimate claims,
  - protects responsible companies and other institutions against interstate class actions in state courts, and
  - restores the intent of the framers of the United State Constitution by providing federal court consideration of interstate claims.

### Significant Issues

- Meritful class action law suits do provide a “consumer protection” service.
- The power to correct abuses of class action opportunities lies most directly with the courts. Judges who fairly and objectively scrutinize the purposes and motives of class action plaintiffs will make the greatest impact. Changing the Federal law will not make a difference if judges are not willing to do that which is necessary to give them meaning.
- New Mexico routinely participates in class action – like, multi-state suits and settlements through the Office of the Attorney General. Some have tremendous merit, such as the Tobacco Settlement or the Bridgestone / Firestone settlement. Others, however, may fall into the category of those deemed abusive under this memorial. The State of New Mexico receives considerable revenue (to the general fund) through joining other states and achieving settlements against companies throughout the nation. In most instances, the settlement dollars come to the state—they do not go to the alleged victims on behalf of whom the case was brought.

### **FISCAL IMPLICATIONS**

This memorial has no fiscal implications or administrative costs for the state. Reform in this area, however, could have a fiscal impact on the national economy in the long run.

### **OTHER SUBSTANTIVE ISSUES**

The Office of the Attorney General states:

1. This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion letter. This is a staff analysis in response to the agency’s, committee’s, or legislator’s request.

2. It should be noted that pursuant to NMSA 1978, Section 12-2A-10(A) any later-enacted statute amending the same statutory sections in this bill would govern over the provisions contained herein. See State v. Smith, Ct. App. Nos. 24,253, 24,254, and 24,258 (filed 1/12/04), pet. for cert. pending.
3. Plaintiffs, including States' pension funds, sue fraudulent companies in state court because they can use state laws and have state citizens as jury members. In 2003, the New Mexico pension and permanent fund agencies, PERA, SIC, and ERB, sued the fraudulent WorldCom company in New Mexico court in order to have New Mexicans as jury members. This memorial would ask Congress to take away this tactical advantage, a potentially adverse position for State Pension Fund representatives when they appear as party plaintiffs in such proceedings.

**SJM/yr**