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FISCAL IMPACT REPORT

ORIGINAL DATE 01/24/09
 SPONSOR HJCS LAST UPDATED 02/19/09 HB 157/HJCS
 SHORT TITLE Unfair Trade Practice Private Right of Action SB _____
 ANALYST C. Sanchez

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Bernalillo County Metropolitan Court (BCMC)
 Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

This House Judiciary Committee Substitute to the original HB 157 amends two sections of the New Mexico Unfair Practices Act, NMSA 1978, § 57-12-1, *et seq.* The original version proposed changes only to the UPA's private remedies provision, § 57-12-10. The substitute now proposes also minor, non-substantive changes to the definitions found in § 57-12-2(D) (updating or modernizing certain terms).

The House Judiciary Committee Substitute for HB 157 clarifies areas of ambiguity that were present in the previous version of HB 157. The HJC substitute specifically defines "person", "seller initiated telephone sale", "trade", "commerce", and "unfair or deceptive trade practices", and unconscionable trade practice".

The substitute retains the original bill's proposed non-substantive changes to NMSA 1978, § 57-12-10. It changes existing references to "any person" in subsection A to "a person," eliminating arguably unnecessary "any" before the phrase "loss of money" and before "employment" in subsection B, and changing the existing "any" to "a" before "class action" in subsection E. These proposed amendments are not substantive.

The original version of HB 157 proposed to add the phrase “that is an unfair or deceptive trade practice or is” to § 57-12-10(B), so that the revised sentence would have read, in pertinent part, as follows: “Any person who suffers loss of money or property, real or personal, as a result of employment by another person of a method, act or practice that is an unfair or deceptive practice or is that is an unfair or deceptive trade practice or is declared unlawful by the Unfair Practices Act may bring an action to recover [damages].” The proposed phrasing deletes declared unlawful by the Unfair Practices Act” while retaining the phrase “that is an unfair or deceptive trade practice.” Thus, the sentence as proposed states: “Any person who suffers loss of money or property, real or personal, as a result of employment by another person of a method, act or practice that is an unfair or deceptive practice may bring an action to recover [damages].”

The UPA identifies certain acts as unfair or deceptive or as otherwise unlawful. Seventeen such acts are set forth in § 57-12-2(D) (1 through 17). Other acts are identified elsewhere in the statute as unlawful as well, including § 57-12-3.1 (unlawful use of delivery container), § 57-12-6 (misrepresentation of motor vehicles), and § 57-12-21 (door-to-door sales requirements).

The courts have ruled that what constitutes “unfair or deceptive” business practices are not limited to the specifically identified acts, especially under § 57-12-2(D). There may be other types of business practices that are not specifically identified that may also be unfair or deceptive also, even though they do not fall within the § 57-12-2(D)(1 through 17) list. Indeed, new scams emerge every week. The new language proposed for § 57-12-10(B) appears to be intended to clarify that there is a private right of action for losses resulting from *any* unfair or deceptive business practice, regardless of whether that act is specifically identified and made unlawful in the UPA. In other words, it appears to ensure that business practices determined by the courts to be unfair or deceptive also entitle a private party to damages, even if those practices are not specifically identified in the Act.

FISCAL IMPLICATIONS

New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Sections of the New Mexico Unfair Practices Act would not be clarified so that there is a private right of action for citizens for losses resulting from *an* unfair or deceptive business practice.

CS/mt:svb