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FISCAL IMPACT REPORT

SPONSOR	House Commerce and Economic Development Committee	LAST UPDATED	3/4/25
		ORIGINAL DATE	2/27/25
SHORT TITLE	Unfair Practices Act Changes	BILL NUMBER	CS/House Bill 61/HCEDCS
		ANALYST	Chavez

REVENUE* (dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
Fines and forfeitures	No fiscal impact	Indeterminate but minimal gain	Recurring	General Fund			

Parentheses () indicate revenue decreases.
*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
AOC	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
Courts	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
NMAG	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
Total	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Relates to House Bills 60, 224, 245, and 574 and Senate Bill 318

Sources of Information

LFC Files

Agency Analysis Received From

New Mexico Attorney General (NMAG)
Workers' Compensation Administration (WCA)

Agency Analysis was Solicited but Not Received From

Administrative Office of the District Attorneys (AODA)
Tax and Revenue Department (TRD)

Agency Declined to Respond

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of House Bill 61

House Bill 61 (HB61) amends Section 57-12-2 NMSA 1978, within the Unfair Practices Act, to expand the definition of “trade” or “commerce.” HB61 removes financial instruments from the definition of “unconscionable trade practice” and adds the removed financial instruments to the definitions of “trade” or “commerce.” Also included in the definition of “trade” or “commerce” are the distribution of goods and every type of property, including tangible or intangible, real, or personal, or a mix. HB61 also removes financial instruments from the definition of “unfair or deceptive trade practice” and adds language regarding any unfair methods of competition or practices and acts that are unfair or deceptive in ordinary trade or commerce proceedings. The definition of “unfair or deceptive trade practice” is also expanded to include a person in connection with the regular course of trade or commerce, not just those involved directly. HB61 replaces the financial instruments defined in the definition of “unconscionable trade practice” with “trade or commerce” and it includes services provided by licensed professionals. Also amended in the definition of “unconscionable trade practice” is adding gross disparity between value exchanged in a proceeding and not just value received, or price paid.

HB161 also amends the civil penalties section of the Unfair Practices Act, Section 57-12-11 NMSA 1978. HB161 raises the financial penalties for violations of the Unfair Practices Act, increasing the maximum civil penalty from \$5,000 to \$10 thousand per violation. Moreover, if a violation occurs during a declared state of emergency or disaster by federal, state or local officials, the penalty increases to a maximum of \$25 thousand per violation. The New Mexico Attorney General (NMAG) is authorized to petition the court for these penalties and can also recover investigation and enforcement costs and reasonable attorney fees whenever a court imposes civil liability.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

HB61 would expand the definitions in the Unfair Practices Act and the civil penalties that can be imposed, this could result in NMAG expanding current operations to adhere to the changes. NMAG, however, can reasonably absorb any administrative change in its operating budget, thus the impact being indeterminate but minimal.

The administrative cost for updating, distributing, and documenting statutory changes would be minimal in the Administrative Office of the Courts (AOC) and courts. However, the judiciary's fiscal impact will depend on the rise in injunction requests under Section 57-12-10 NMSA 1978, civil penalty petitions by NMAG under Section 57-12-11 NMSA, and appeals related to injunctions, damages, and fines.

SIGNIFICANT ISSUES

The AOC provided the following analysis on the original version of HB61, but because the substitution mostly clarifies trade practice definitions in the UPA and ensures the NMAG can

seek attorney fees in enforcement actions, the analysis still stands:

- 1) The expanded HB61 definition of “trade” or “commerce” and the linking of the definitions of “unfair or deceptive trade practice” and “unconscionable trade practice” to “trade or commerce” will allow for an increased number of requests for an injunction and actions seeking a private remedy under Section 57-12-10 NMSA 1978 and potentially more petitions from the AG for recovery of a civil penalty, under Section 57-12-11 NMSA 1978, on behalf of the state.
- 2) Increased penalties are a likely result in additional appeals from the imposition of civil penalties.
- 3) New Mexico does not have a specific statute that addresses price gouging, unlike Colorado, which prohibits charging excessive prices for food, building materials, fuel and other necessities during a declared disaster (with a look-back period of immediately before the declaration), and imposes civil penalties of up to \$20 thousand per violation (or up to \$50 thousand if the violation affected an elderly consumer) and restitution for consumers. See Colorado Revised Statutes, Sections 6-1-730 and 6-1-112. See also [Price Gouging Laws by State - FindLaw](#) for a 2024 listing of state price gouging laws and penalties.

Under the UPA, however, it’s illegal to take advantage of consumers to a grossly unfair degree, which may include price gouging. See Section 57-12-2(E)(2) defining “unconscionable trade practice” to mean an act or practice in connection with trade or commerce that results in a gross disparity between the value received by a person and the price paid or value exchanged. The HB61 amendment to this statutory section adds the words “or value exchanged” to now include nonmonetary exchanges.

Following the South Fork and Salt fires in southern New Mexico, the [New Mexico Attorney General] received complaints of price gouging and sent cease and desist notices to several Roswell hotels, requesting immediate cessation from engaging in business practices that violate the NM UPA. Under the HB61 amendments to the UPA, the potential for the imposition of increased civil penalties being imposed for practices undertaken during and arising out of a disaster or state of emergency may help to deter price gouging and other unfair and unconscionable practices during these times.

PERFORMANCE IMPLICATIONS

The courts participate in performance-based budgeting and the bill may have an impact on the following performance measures: cases disposed of as a percentage of cases filed (clearance rate), and percent change in case filings by case type.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

NMAG provides the following:

Related:

House Bill 60, proposing to create the Artificial Intelligence Act, states that any violation of the Artificial Intelligence Act constitutes an unfair practice pursuant to the UPA and may be enforced under that law.

House Bill 224, proposing to add a violation of the Student Loan Bill of Rights Act as a per se unfair or deceptive trade practice.

Senate Bill 318, proposing to add definitions to the UPA, amend the UPA’s definition of “trade or commerce,” add examples of practices that qualify as unfair or deceptive trade practices, amend the definition of “unconscionable trade practice,” amend the NMAG’s authority to enter into assurances of discontinuance, amending the NMAG’s authority to pursue civil penalties, and amend the NMAG’s authority to issue civil investigative demands.

House Bill 574, proposing to add the provision of immigration consultation or services without a law license or supervision by a licensed attorney as a per se unfair or deceptive trade practice.

House Bill 245 (HB245), proposing to add a violation of Section 1 of HB245—which relates to compensation for services related to veterans’ benefits matters—as a per se unfair or deceptive trade practice.

FC/hj/hg/sgs