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SENATE BILL

**56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024**

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO FIREARMS; INCLUDING FIREARMS AND DESTRUCTIVE  
DEVICES IN THE UNFAIR PRACTICES ACT; EXPANDING PRIVATE REMEDIES  
FOR UNFAIR, DECEPTIVE AND UNCONSCIONABLE TRADE PRACTICES;  
MAKING TECHNICAL CHANGES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 53-17-2 NMSA 1978 (being Laws 1967,  
Chapter 81, Section 104) is amended to read:

"53-17-2. POWERS OF FOREIGN CORPORATION.--A foreign  
corporation [~~which~~] that has received a certificate of  
authority under the Business Corporation Act consents to  
general personal jurisdiction in this state and shall, until a  
certificate of revocation or of withdrawal has been issued as  
provided in the Business Corporation Act, enjoy the same, but  
no greater, rights and privileges as a domestic corporation

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1 organized for the purposes set forth in the application  
2 pursuant to which the certificate of authority is issued; and,  
3 except as otherwise provided in the Business Corporation Act,  
4 is subject to the same duties, restrictions, penalties and  
5 liabilities now or hereafter imposed upon a domestic  
6 corporation of like character."

7 SECTION 2. Section 57-12-2 NMSA 1978 (being Laws 1967,  
8 Chapter 268, Section 2, as amended) is amended to read:

9 "57-12-2. DEFINITIONS.--As used in the Unfair Practices  
10 Act:

11 A. "destructive device" means any:

12 (1) explosive, incendiary or poison gas:

13 (a) bomb;

14 (b) grenade;

15 (c) rocket having a propellant charge of  
16 more than four ounces;

17 (d) missile having an explosive or  
18 incendiary charge of more than one-fourth ounce;

19 (e) mine; or

20 (f) similar device;

21 (2) type of weapon by whatever name known that  
22 will, or that may be readily converted to, expel a projectile  
23 by the action of an explosive or other propellant, the barrel  
24 or barrels of which have a bore of more than one-half inch in  
25 diameter, except a shotgun shell that is generally recognized

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1 as particularly suitable for sporting purposes;

2 (3) combination of parts either designed or  
3 intended for use in converting a device into a destructive  
4 device as defined in Paragraphs (1) and (2) of this subsection  
5 and from which a destructive device may be readily assembled;  
6 and

7 (4) device that is designed to convert a  
8 semiautomatic firearm to fire more than one round through the  
9 single activation of a trigger;

10 B. "destructive device" does not include any device  
11 that is neither designed nor redesigned for use as a weapon or  
12 any device, although originally designed for use as a weapon,  
13 that is redesigned for use as a signaling, pyrotechnic, line-  
14 throwing, safety or similar device;

15 C. "firearm" means any weapon that will or is  
16 designed to or may readily be converted to expel a projectile  
17 by the action of an explosion; the frame or receiver of any  
18 such weapon; or any firearm muffler or firearm silencer.  
19 "Firearm" includes any handgun, rifle or shotgun; but does not  
20 include an antique firearm as defined in 18 U.S.C. Section  
21 921(16), a powder-actuated tool or other device designed to be  
22 used for construction purposes, an emergency flare or a firearm  
23 in permanently inoperable condition;

24 D. "firearm accessory" means:

25 (1) any device specifically adapted to enable:

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1                   (a) the wearing or carrying about one's  
2 person of a firearm; or

3                   (b) the storage or mounting in or on any  
4 conveyance of a firearm; and

5                   (2) any attachment or device specifically  
6 adapted to be inserted into or affixed onto any firearm to  
7 enable, alter or improve the functioning or capabilities of the  
8 firearm;

9                   E. "firearm part" means any component part of a  
10 firearm, including ammunition;

11                   F. "online marketplace" means any person, business  
12 or other entity that hosts, publishes or operates an  
13 electronically accessed platform that facilitates or enables  
14 third-party sellers to transact or engage in the sale,  
15 purchase, payment, storage, shipping or delivery of goods or  
16 services in New Mexico;

17                   ~~[A-]~~ G. "person" means, where applicable, natural  
18 persons, corporations, trusts, partnerships, associations,  
19 cooperative associations, clubs, companies, firms, joint  
20 ventures or syndicates;

21                   H. "seller" means any person, business or other  
22 entity that sells or offers to sell any products or services in  
23 New Mexico or for delivery to New Mexico;

24                   ~~[B-]~~ I. "seller-initiated telephone or internet  
25 sale" means a sale, lease or rental of goods or services in

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1 which the seller or the seller's representative solicits the  
2 sale by telephoning, ~~[the]~~ electronic mail, internet marketing,  
3 soliciting through a website or computer program or application  
4 a prospective purchaser and in which the sale is consummated  
5 entirely by telephone, ~~[or]~~ mail, ~~[but does not include a~~  
6 transaction:

7 ~~(1) in which a person solicits a sale from a~~  
8 ~~prospective purchaser who has previously made an authorized~~  
9 ~~purchase from the seller's business; or~~

10 ~~(2) in which the purchaser is accorded the~~  
11 ~~right of rescission by the provisions of the federal Consumer~~  
12 ~~Credit Protection Act, 15 U.S.C. 1635, or regulations issued~~  
13 ~~pursuant thereto] electronic mail or other online~~  
14 communication;

15 J. "third-party seller" means any seller,  
16 independent of an online marketplace, who sells, offers to sell  
17 or contracts to sell a consumer product in New Mexico through  
18 an online marketplace;

19 ~~[G.]~~ K. "trade" or "commerce" includes the  
20 manufacturing, advertising, offering for sale or distribution,  
21 ~~[of any]~~ distribution or delivery of any goods, products,  
22 services ~~[and any]~~, property and any other article, commodity  
23 or thing of value, including:

24 (1) any trade or commerce ~~[directly or~~  
25 indirectly affecting the people of this state] with a person in

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1 New Mexico or to a location within this state; or

2 (2) any trade or commerce by a person,  
3 business or other entity that systematically serves a market in  
4 New Mexico for the same or similar goods or services at issue  
5 in any action brought in this state whether or not the specific  
6 goods and services were purchased in New Mexico, which shall be  
7 deemed, to the maximum extent permitted under the doctrine of  
8 interstate federalism, to create specific jurisdiction against  
9 a person, business or other entity that has:

10 (a) enjoyed the benefits and protection  
11 of the laws of New Mexico;

12 (b) benefited from the ability to  
13 enforce contracts, defend property or form effective markets in  
14 New Mexico; or

15 (c) sold or otherwise placed a product  
16 of goods into the national market or the stream of commerce;

17 ~~[D-]~~ L. "unfair or deceptive trade practice" means  
18 an act specifically declared unlawful pursuant to the Unfair  
19 Practices Act, a false or misleading oral or written statement,  
20 visual description or other representation of any kind  
21 knowingly made in connection with the sale, lease, rental or  
22 loan of goods or services or in the extension of credit or in  
23 the collection of debts by a person in the regular course of  
24 the person's trade or commerce, that may, tends to or does  
25 deceive or mislead any person and includes:

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1 (1) representing goods or services as those of  
2 another when the goods or services are not the goods or  
3 services of another;

4 (2) representing goods or services as legal to  
5 purchase under the laws of New Mexico or the United States when  
6 the goods or services are not legal to purchase under the laws  
7 of New Mexico or the United States. No action shall be  
8 maintained pursuant to this section based upon representations  
9 or activities authorized under the Lynn and Erin Compassionate  
10 Use Act or the Cannabis Regulation Act;

11 [~~2~~] (3) causing confusion or  
12 misunderstanding as to the source, sponsorship, approval or  
13 certification of goods or services;

14 [~~3~~] (4) causing confusion or  
15 misunderstanding as to affiliation, connection or association  
16 with or certification by another;

17 [~~4~~] (5) using deceptive representations or  
18 designations of geographic origin in connection with goods or  
19 services;

20 [~~5~~] (6) representing that goods or services  
21 have sponsorship, approval, characteristics, ingredients, uses,  
22 benefits or quantities that they do not have or that a person  
23 has a sponsorship, approval, status, affiliation or connection  
24 that the person does not have;

25 [~~6~~] (7) representing that goods are original

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1 or new if they are deteriorated, altered, reconditioned,  
2 reclaimed, used or secondhand;

3 [~~(7)~~] (8) representing that goods or services  
4 are of a particular standard, quality or grade, [~~or~~] that the  
5 goods meet the warranty of merchantability or are fit for a  
6 particular purpose or are of a particular style or model if  
7 they are of another;

8 [~~(8)~~] (9) disparaging the goods, services or  
9 business of another by false or misleading representations;

10 [~~(9)~~] (10) offering goods or services with  
11 intent not to supply them in the quantity requested by the  
12 prospective buyer to the extent of the stock available, unless  
13 the purchaser is purchasing for resale;

14 [~~(10)~~] (11) offering goods or services with  
15 intent not to supply reasonable expectable public demand;

16 [~~(11)~~] (12) making false or misleading  
17 statements of fact concerning the price of goods or services,  
18 the prices of competitors or one's own price at a past or  
19 future time or the reasons for, existence of or amounts of  
20 price reduction;

21 [~~(12)~~] (13) making false or misleading  
22 statements of fact for the purpose of obtaining appointments  
23 for the demonstration, exhibition or other sales presentation  
24 of goods or services;

25 [~~(13)~~] (14) packaging goods for sale in a

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1 container that bears a trademark or trade name identified with  
2 goods formerly packaged in the container, without  
3 authorization, unless the container is labeled or marked to  
4 disclaim a connection between the contents and the trademark or  
5 trade name;

6 [~~(14)~~] (15) using exaggeration, innuendo or  
7 ambiguity as to a material fact or failing to state a material  
8 fact if doing so deceives or tends to deceive;

9 [~~(15)~~] (16) stating that a transaction  
10 involves rights, remedies or obligations that it does not  
11 involve;

12 [~~(16)~~] (17) stating that services,  
13 replacements or repairs are needed if they are not needed;

14 [~~(17)~~] (18) failing to deliver the quality or  
15 quantity of goods or services contracted for;

16 [~~(18)~~] (19) violating the Tobacco Escrow Fund  
17 Act; [~~or~~]

18 [~~(19)~~] (20) offering or providing unposted or  
19 unadvertised pricing or service based on the buyer's gender or  
20 perceived gender identity; provided, however, that this  
21 provision does not apply to persons regulated by the office of  
22 superintendent of insurance pursuant to the New Mexico  
23 Insurance Code; [~~and~~] or

24 (21) knowingly manufacturing, advertising,  
25 distributing or offering for sale a firearm, destructive

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1 device, firearm part or firearm accessory contrary to the laws  
2 of New Mexico or the United States; and

3 ~~[E-]~~ M. "unconscionable trade practice" means an  
4 act or practice in connection with the sale, lease, rental or  
5 loan, or in connection with the offering for sale, lease,  
6 rental or loan, of any goods or services, including goods or  
7 services offered for sale by an online marketplace whether  
8 directly or by a third-party seller, and including services  
9 provided by licensed professionals, or in the extension of  
10 credit or in the collection of debts that to a person's  
11 detriment:

12 (1) takes advantage of the lack of knowledge,  
13 ability, experience or capacity of a person to a grossly unfair  
14 degree; ~~[or]~~

15 (2) results in a gross disparity between the  
16 value received by a person and the price paid; or

17 (3) violates state or federal law."

18 SECTION 3. Section 57-12-3.1 NMSA 1978 (being Laws 1991,  
19 Chapter 28, Section 1) is amended to read:

20 "57-12-3.1. UNAUTHORIZED USE OF DELIVERY CONTAINER  
21 PROHIBITED.--

22 A. It ~~[shall be]~~ is an unlawful practice within the  
23 meaning of the Unfair Practices Act for any person to:

24 (1) remove ~~[the]~~ an owner's container from the  
25 owner's or a recipient's premises or parking area without the

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1 permission of the owner or recipient;

2 (2) possess or use [~~the~~] an owner's container  
3 if it has been removed from the owner's or recipient's premises  
4 or parking area without the permission of the owner or  
5 recipient;

6 (3) alter, convert, destroy or tamper with  
7 [~~the~~] an owner's container without permission of the owner or  
8 recipient; or

9 (4) sell [~~the~~] an owner's container to or  
10 purchase [~~the~~] an owner's container from someone other than the  
11 owner without the permission of the owner.

12 B. As used in this section:

13 (1) "bakery rack" means a metal frame that  
14 holds bakery trays or other bakery products and that is used by  
15 a bakery, distributor or retailer or its agent as a means to  
16 transport, store or carry bakery products;

17 (2) "bakery tray" means a wire or plastic  
18 receptacle that holds bread, buns or other baked goods and that  
19 is used by a bakery, distributor or retailer or its agent as a  
20 means to transport, store or carry bakery products;

21 (3) "owner's container" means a bakery rack,  
22 bakery tray, dairy case, egg basket, poultry box, shopping cart  
23 or pallet;

24 (4) "dairy case" means a plastic receptacle  
25 that holds sixteen quarts or more of beverage and that is used

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1 by a dairy, distributor or retailer or its agent as a means to  
2 transport, store or carry dairy products;

3 (5) "pallet" means a wooden or plastic base  
4 that allows stacks of merchandise to be placed upon it and that  
5 provides a space and support beneath the stack for forklift  
6 handling;

7 (6) "parking area" means a lot or other  
8 property provided by a recipient for the use of its customers  
9 to park vehicles while at the recipient's establishment;

10 (7) "poultry box" means a permanent type of  
11 container that is used by a processor, distributor, retailer or  
12 food service establishment or an agent of one of those persons  
13 to transport, store or carry poultry;

14 (8) "recipient" means a person, firm,  
15 corporation or association that is authorized by the owner to  
16 use an owner's container; and

17 (9) "shopping cart" means a basket that is  
18 mounted on wheels, or a similar device, that is generally used  
19 in a retail establishment by a customer to transport goods of  
20 any kind.

21 C. No civil action shall be maintained pursuant to  
22 this section against any person who returns to its owner within  
23 sixty days after the effective date of this section a container  
24 that was unlawfully obtained."

25 SECTION 4. A new section of the Unfair Practices Act,

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1 Section 57-12-3.2 NMSA 1978, is enacted to read:

2 "57-12-3.2. [NEW MATERIAL] UNLAWFUL MANUFACTURE,  
3 ADVERTISING, DISTRIBUTION OR SALE OF FIREARMS PROHIBITED.--It  
4 is an unlawful practice within the meaning of the Unfair  
5 Practices Act for any person to violate:

- 6 A. the provisions of Section 30-7-7 NMSA 1978; or
- 7 B. the laws of New Mexico or the United States  
8 controlling the manufacture, advertising, distribution or sale  
9 of firearms."

10 SECTION 5. Section 57-12-7 NMSA 1978 (being Laws 1967,  
11 Chapter 268, Section 6, as amended) is amended to read:

12 "57-12-7. EXEMPTIONS.--Nothing in the Unfair Practices  
13 Act shall apply to actions or transactions:

14 A. expressly permitted ~~[under laws administered]~~ by  
15 the laws of the United States or New Mexico or by a regulatory  
16 body of New Mexico or the United States; [but all actions or  
17 transactions forbidden by the regulatory body, and about which  
18 the regulatory body remains silent, are subject to the Unfair  
19 Practices Act]

20 B. for which a person, business or other entity is  
21 immune from suit under the laws of the United States or New  
22 Mexico or by a regulatory body of New Mexico or the United  
23 States; or

24 C. without including any allegation or proof  
25 specifically required by the laws of the United States or New

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1 Mexico, including where explicitly required:  
2 (1) proximate cause resulting in harm; or  
3 (2) establishing that the actions or  
4 transactions giving rise to claims made pursuant to the Unfair  
5 Practices Act occurred, in whole or in part, inside New  
6 Mexico."

7 SECTION 6. Section 57-12-8 NMSA 1978 (being Laws 1967,  
8 Chapter 268, Section 7, as amended) is amended to read:

9 "57-12-8. RESTRAINT OF PROHIBITED ACTS--REMEDIES FOR  
10 VIOLATIONS.--

11 A. Whenever the attorney general has reasonable  
12 belief that [~~any~~] a person is using, has used or is about to  
13 use any method, act or practice [~~which~~] that is declared by the  
14 Unfair Practices Act to be unlawful and that proceedings would  
15 be in the public interest, [~~he~~] the attorney general may bring  
16 an action in the name of the state alleging violations of the  
17 Unfair Practices Act. The action may be brought in the  
18 district court of the county in which the person resides or has  
19 [~~his~~] the person's principal place of business or in the  
20 district court in [~~any~~] a county in which the person is using,  
21 has used or is about to use the practice [~~which~~] that has been  
22 alleged to be unlawful under the Unfair Practices Act. The  
23 attorney general acting on behalf of the state [~~of New Mexico~~]  
24 shall not be required to post bond when seeking a temporary or  
25 permanent injunction in such action.

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1           B. In [~~any~~] an action filed pursuant to the Unfair  
2 Practices Act, including an action with respect to unimproved  
3 real property, the attorney general may petition the district  
4 court for temporary or permanent injunctive relief and  
5 restitution."

6           SECTION 7. Section 57-12-9 NMSA 1978 (being Laws 1971,  
7 Chapter 240, Section 3, as amended) is amended to read:

8           "57-12-9. SETTLEMENTS.--

9           A. In lieu of beginning or continuing an action  
10 pursuant to the Unfair Practices Act, the attorney general may  
11 accept a written assurance of discontinuance of any practice in  
12 violation of the Unfair Practices Act from the person who has  
13 engaged in the unlawful practice. The attorney general may  
14 require an agreement by the person engaged in the unlawful  
15 practice that, by the date set by the attorney general and  
16 stated in the assurance, [~~he~~] the person will make restitution  
17 to all persons of money, property or other things received from  
18 them in any transaction related to the unlawful practice. All  
19 settlements are a matter of public record but are not  
20 admissible against [~~any~~] a defendant in [~~any~~] an action brought  
21 by any other person or public body against [~~such~~] the defendant  
22 under the Unfair Practices Act [~~and do not constitute a basis~~  
23 ~~for the introduction of the assurance of discontinuance as~~  
24 ~~prima facie evidence against such defendant in any action or~~  
25 ~~proceeding~~].

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1           B. A person need not accept restitution pursuant to  
2 an assurance. [~~His~~] Acceptance of restitution bars recovery of  
3 [~~any~~] damages in [~~any~~] an action by [~~him~~] the person or on  
4 [~~his~~] the person's behalf against the same defendant on account  
5 of the same unlawful practice unless the defendant fails to  
6 make restitution as agreed.

7           C. A violation of an assurance entered into  
8 pursuant to this section is a violation of the Unfair Practices  
9 Act."

10           SECTION 8. Section 57-12-10 NMSA 1978 (being Laws 1967,  
11 Chapter 268, Section 8, as amended) is amended to read:

12           "57-12-10. PRIVATE REMEDIES.--

13           A. A person likely to be damaged by an unfair or  
14 deceptive trade practice or by an unconscionable trade practice  
15 of another may be granted an injunction against it under the  
16 principles of equity and on terms that the court considers  
17 reasonable. Proof of monetary damage, loss of profits or  
18 intent to deceive or take unfair advantage of [~~any~~] a person is  
19 not required. Relief granted for the copying of an article  
20 shall be limited as to the prevention of confusion or  
21 misunderstanding as to source.

22           B. Any person who suffers any loss of money or  
23 property, real or personal, as a result of any employment by  
24 another person of a method, act or practice declared unlawful  
25 by the Unfair Practices Act may bring an action to recover

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1 actual damages or the sum of [~~one hundred dollars (\$100)~~] ten  
2 thousand dollars (\$10,000), whichever is greater. Where the  
3 trier of fact finds that the party charged with an unfair or  
4 deceptive trade practice or an unconscionable trade practice  
5 has willfully engaged in the trade practice, the court may  
6 award up to three times actual damages or [~~three hundred~~  
7 ~~dollars (\$300)~~] ten thousand dollars (\$10,000), whichever is  
8 greater, to the party complaining of the practice.

9 C. A person aware of an unfair or deceptive trade  
10 practice or an unconscionable trade practice of another  
11 involving the manufacture, marketing, distributing, sale or  
12 offering for sale a firearm, destructive device, firearm part  
13 or firearm accessory that violates New Mexico or federal law  
14 may be granted an injunction against the practice under the  
15 principles of equity and on terms that the court considers  
16 reasonable and shall be awarded two hundred fifty thousand  
17 dollars (\$250,000) per violation.

18 D. Proof of a claim involving the manufacture,  
19 marketing, distributing, sale or offering for sale of a  
20 firearm, destructive device, firearm part or firearm accessory  
21 or other unfair trade practice or an unconscionable trade  
22 practice shall comply with the specific requirements placed on  
23 such a claim by the Unfair Practices Act. Beyond those  
24 specific requirements, proof of monetary damage, loss of  
25 profits or intent to deceive or take unfair advantage of any

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1 person is not required.

2 [G.] E. The court shall award attorney fees and  
3 costs to the party complaining of an unfair or deceptive trade  
4 practice or unconscionable trade practice if the party  
5 prevails. The court shall award attorney fees and costs to the  
6 party charged with an unfair or deceptive trade practice or an  
7 unconscionable trade practice if it finds that the party  
8 complaining of such trade practice brought an action that the  
9 party knew was groundless at the time it was initiated.

10 [D.] F. The relief provided in this section is in  
11 addition to remedies otherwise available against the same  
12 conduct under the common law or other statutes of this state.

13 [E.] G. In [~~any~~] a class action filed under this  
14 section, the court may award damages to the named plaintiffs as  
15 provided in Subsection B of this section and may award members  
16 of the class such actual damages as were suffered by each  
17 member of the class as a result of the unlawful method, act or  
18 practice.

19 [~~F.~~ ~~A party to a court action for a private remedy~~  
20 ~~pursuant to this section may request in writing during the~~  
21 ~~thirty-day period following service of the summons and~~  
22 ~~complaint on all parties named in the action that the parties~~  
23 ~~attempt to settle the claim in early mediation. If a request~~  
24 ~~for mediation is made, the parties shall choose a mutually~~  
25 ~~acceptable mediator and enter into mediation within sixty days~~

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1 of the appointment of an acceptable mediator unless otherwise  
2 agreed by the parties. A request for mediation may be  
3 rescinded at any time if agreed to by all parties.

4 G. ~~If the parties do not agree on a mutually~~  
5 ~~acceptable mediator, the court shall appoint the mediator. If~~  
6 ~~the early mediation pursuant to this section is entered into~~  
7 ~~within sixty days following the appointment of the mediator,~~  
8 ~~the parties suing on the basis of unfair, deceptive or~~  
9 ~~unconscionable trade practices or acts under the Unfair~~  
10 ~~Practices Act shall be required to pay no more than fifty~~  
11 ~~dollars (\$50.00) toward the cost of the mediation and the other~~  
12 ~~party shall pay the remainder of such cost, unless otherwise~~  
13 ~~agreed by the parties. If a person is seeking injunctive~~  
14 ~~relief in accordance with Subsection A of this section, the~~  
15 ~~person may pursue the claim for injunctive relief without~~  
16 ~~following the mediation requirements of this subsection and~~  
17 ~~Subsection F of this section.]~~

18 H. Multiple parties acting in concert to  
19 manufacture, advertise, distribute or offer for sale a firearm,  
20 destructive device, firearm part or firearm accessory, which  
21 would violate the laws of New Mexico or the United States,  
22 shall be jointly and severally liable for any violations of the  
23 Unfair Practices Act.

24 I. An online marketplace that offers for sale or  
25 allows third-party sellers to offer for sale a firearm,

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1 destructive device, firearm part or firearm accessory, the  
2 manufacture, advertising, distribution or sale of which would  
3 violate the laws of New Mexico or the United States, shall be  
4 jointly and severally liable for any violations of the Unfair  
5 Practices Act that occurred on the online marketplace.

6 J. In any action brought pursuant to the Unfair  
7 Practices Act against a third-party seller on an online  
8 marketplace, the online marketplace shall comply with validly  
9 issued subpoenas that seek information about a third-party  
10 seller.

11 K. A willful failure or refusal to respond to a  
12 subpoena described in Subsection J of this section shall be a  
13 violation of the Unfair Practices Act, for which the court  
14 shall award the requesting party statutory damages of:

15 (1) two hundred fifty thousand dollars  
16 (\$250,000) and attorney fees and costs if the subpoena was  
17 issued in an action involving an allegation that a third-party  
18 seller violated the Unfair Practices Act while manufacturing,  
19 advertising, distributing or selling a firearm, destructive  
20 device, firearm part or firearm accessory in violation of the  
21 laws of New Mexico or the United States; or

22 (2) ten thousand dollars (\$10,000) and  
23 attorney fees and costs if the subpoena was issued in an action  
24 involving any other allegations actionable under the Unfair  
25 Practices Act.

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1           L. An online marketplace, seller or third-party  
2 seller that does not maintain a place of business in the United  
3 States or that conceals its place of business and offers goods  
4 or services for sale inside New Mexico shall be deemed, such  
5 that a suit may be maintained against the online marketplace,  
6 seller or third-party seller without violating the standards of  
7 fair play and substantial justice, to have:

- 8                   (1) minimum contacts with New Mexico;  
9                   (2) invoked the benefits and protections of  
10 the laws of New Mexico;  
11                   (3) purposely availed itself of the privileges  
12 of conducting activities within New Mexico; and  
13                   (4) reasonably anticipated being haled into a  
14 court within New Mexico."

15           SECTION 9. Section 57-12-11 NMSA 1978 (being Laws 1970,  
16 Chapter 38, Section 2) is amended to read:

17           "57-12-11. CIVIL PENALTY.--In any action brought under  
18 Section [~~49-15-7 NMSA 1953~~] 57-12-8 NMSA 1978, if the court  
19 finds that a person is willfully using or has willfully used a  
20 method, act or practice declared unlawful by the Unfair  
21 Practices Act, the attorney general, upon petition to the  
22 court, may recover on behalf of the state [~~of New Mexico~~] a  
23 civil penalty [~~of~~] not exceeding [~~five thousand dollars~~  
24 ~~(\$5,000)~~] twenty-five thousand dollars (\$25,000) per violation,  
25 unless the violation involved the manufacturing, advertising,

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1 distribution or sale of a firearm, in which case the attorney  
2 general may petition the court for a civil penalty not  
3 exceeding two hundred fifty thousand dollars (\$250,000) per  
4 violation."

5 SECTION 10. Section 57-12-12 NMSA 1978 (being Laws 1967,  
6 Chapter 268, Section 10) is amended to read:

7 "57-12-12. CIVIL INVESTIGATIVE DEMAND.--

8 A. Whenever the attorney general has reason to  
9 believe that [~~any~~] a person may be in possession, custody or  
10 control of an original or copy of [~~any~~] a book, record, report,  
11 memorandum, paper, communication, tabulation, map, chart,  
12 photograph, mechanical transcription or other tangible document  
13 or recording [~~which he~~] that the attorney general believes to  
14 be relevant to the subject matter of an investigation of a  
15 probable violation of the Unfair Practices Act, [~~he~~] the  
16 attorney general may, prior to the institution of a civil  
17 proceeding, execute in writing and cause to be served upon the  
18 person a civil investigative demand requiring [~~such~~] the person  
19 to produce documentary material and permit the inspection and  
20 copying of the material. The demand of the attorney general  
21 shall not be a matter of public record and shall not be  
22 published by [~~him~~] the attorney general except by order of the  
23 court.

24 B. Each demand shall:

25 (1) state the general subject matter of the

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1 investigation;

2 (2) describe the classes of documentary  
3 material to be produced with reasonable certainty; and

4 (3) prescribe the return date within which the  
5 documentary material is to be produced, which in no case shall  
6 be less than ten days after the date of service. [~~and~~

7 ~~(4) identify the members of the attorney~~  
8 ~~general's staff to whom such documentary material is to be made~~  
9 ~~available for inspection and copying.]~~

10 C. No demand shall:

11 (1) contain [~~any~~] a requirement [~~which~~] that  
12 would be unreasonable or improper if contained in a subpoena  
13 duces tecum issued by a court of this state; [~~or~~]

14 (2) require the disclosure of any documentary  
15 material [~~which~~] that would be privileged or [~~which~~] that for  
16 any other reason would not be required by a subpoena duces  
17 tecum issued by a court of this state; or

18 (3) require the removal of any documentary  
19 material from the custody of the person upon whom the demand is  
20 served except in accordance with the provisions of Subsection E  
21 of this section.

22 D. Service of the demand may be made by:

23 (1) delivering a duly executed copy [~~thereof~~]  
24 to the person to be served or, if the person is not a natural  
25 person, to the statutory agent for the person or to [~~any~~] an

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1 officer of the person to be served; ~~[or]~~

2 (2) delivering a duly executed copy ~~[thereof]~~  
3 to the principal place of business in this state of the person  
4 to be served; or

5 (3) mailing by registered or certified mail a  
6 duly executed copy of the demand addressed to the person to be  
7 served at ~~[his]~~ the person's principal place of business in  
8 this state or, if the person has no place of business in this  
9 state, to ~~[his]~~ the person's principal office or place of  
10 business.

11 E. Documentary material demanded pursuant to the  
12 provisions of this section shall be produced for inspection and  
13 copying during normal business hours at the principal office or  
14 place of business of the person served or may be inspected and  
15 copied at such other times and places as may be agreed upon by  
16 the person served and the attorney general.

17 F. ~~[No]~~ Documentary material produced pursuant to a  
18 demand, or copies thereof, shall, unless otherwise ordered by  
19 the district court in the county in which the person resides or  
20 has ~~[his]~~ the person's principal place of business or is about  
21 to perform or is performing the practice ~~[which]~~ that is  
22 alleged to be unlawful under the Unfair Practices Act, ~~[for~~  
23 ~~good cause shown]~~ be ~~[produced for inspection or copying by~~  
24 ~~anyone other than an authorized employee of the attorney~~  
25 ~~general nor shall the contents thereof be disclosed to anyone~~

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1 ~~other than an authorized employee of the attorney general or in~~  
2 ~~court in an action relating to a violation of the]~~ subject to  
3 the Inspection of Public Records Act and discoverable by any  
4 party to an action brought pursuant to the Unfair Practices  
5 Act.

6 G. At any time before the return date of the  
7 demand, a petition to set aside the demand, modify the demand  
8 or extend the return date [~~thereon~~] on the demand may be filed  
9 in the district court in the county in which the person resides  
10 or has [~~his~~] the person's principal place of business or is  
11 about to perform or is performing the practice [~~which~~] that is  
12 alleged to be unlawful under the Unfair Practices Act, and the  
13 court upon a showing of good cause may set aside the demand,  
14 modify it or extend the return date of the demand.

15 H. After service of the investigative demand upon  
16 [~~him~~] the person, if [~~any~~] the person neglects or refuses to  
17 comply with the demand, the attorney general may invoke the aid  
18 of the court in the enforcement of the demand. In appropriate  
19 cases, the court shall issue its order requiring the person to  
20 appear and produce the documentary material required in the  
21 demand and may, upon failure of the person to comply with the  
22 order, punish the person for contempt.

23 I. This section shall not be applicable to criminal  
24 prosecutions."

25 SECTION 11. Section 57-12-15 NMSA 1978 (being Laws 1967,

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1 Chapter 268, Section 12) is amended to read:

2 "57-12-15. ENFORCEMENT.--In order to promote the uniform  
3 administration of the Unfair Practices Act in New Mexico, the  
4 attorney general is to be responsible for its enforcement, but  
5 [he] the attorney general may in appropriate cases delegate  
6 this authority to the district attorneys of the state, and when  
7 this is done, the district attorneys shall have every power  
8 conferred upon the attorney general by the Unfair Practices  
9 Act."

10 SECTION 12. Section 57-12-16 NMSA 1978 (being Laws 1967,  
11 Chapter 268, Section 13, as amended) is amended to read:

12 "57-12-16. ADVERTISING MEDIA EXCLUDED.--The Unfair  
13 Practices Act does not apply to publishers, broadcasters,  
14 printers or other persons engaged in the dissemination of  
15 information or reproduction of printed or pictorial matters who  
16 publish, broadcast or reproduce material without knowledge of  
17 its deceptive or unconscionable character, unless the  
18 publication, broadcast or reproduction violates the laws of New  
19 Mexico or the United States."