

AN ACT

RELATING TO UNFAIR TRADE PRACTICES; REQUIRING OPPORTUNITY FOR  
MEDIATION WITHIN SIXTY DAYS AFTER FILING AN ACTION FOR A  
PRIVATE REMEDY.

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

Section 1. Section 57-12-10 NMSA 1978 (being Laws 1967,  
Chapter 268, Section 8, as amended) is amended to read:

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

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

B. Any person who suffers any loss of money or  
property, real or personal, as a result of any employment by  
another person of a method, act or practice declared unlawful  
by the Unfair Practices Act may bring an action to recover  
actual damages or the sum of one hundred dollars (\$100),  
whichever is greater. Where the trier of fact finds that the  
party charged with an unfair or deceptive trade practice or an

unconscionable trade practice has willfully engaged in the trade practice, the court may award up to three times actual damages or three hundred dollars (\$300), whichever is greater, to the party complaining of the practice.

C. The court shall award attorney fees and costs to the party complaining of an unfair or deceptive trade practice or unconscionable trade practice if the party prevails. The court shall award attorney fees and costs to the party charged with an unfair or deceptive trade practice or an unconscionable trade practice if it finds that the party complaining of such trade practice brought an action that was groundless.

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

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

F. A party to a court action for a private remedy pursuant to this section may request in writing during the thirty-day period following service of the summons and complaint on all parties named in the action that the parties

attempt to settle the claim in early mediation. If a request for mediation is made, the parties shall choose a mutually acceptable mediator and enter into mediation within sixty days of the appointment of an acceptable mediator unless otherwise agreed by the parties. A request for mediation may be rescinded at any time if agreed to by all parties.

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