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FISCAL IMPACT REPORT

ORIGINAL DATE 2-24-07
 LAST UPDATED 3-2-07 HB 766/aHCPAC

SPONSOR Barreras

SHORT TITLE Clarify Unfair Practices Act Applicability SB _____

ANALYST Aubel/Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Public Regulatory Commission (PRC)
 Attorney General's Office (AGO)

SUMMARY

Synopsis of HCPAC Amendment

House Consumer and Public Affairs Committee amendment to House Bill 766 struck language that included the use deceptive representations or designations of geographic origin of goods or services as a deceptive trade practice.

Synopsis of Original Bill

House Bill 766 expands the definitions under the Unfair Practices Act to include unfair purchases, as follows:

- “trade” is expanded beyond the current definition of advertising, offering for sale or distribution to include the purchasing of any services;
- “unfair or deceptive trade practice” is expanded beyond the current definition a false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale, lease, rental or loan of goods or services to include the purchase of goods or services; and

- the concept of “practice” is expanded beyond the current definition of a trade or commerce to include the person’s occupation, vocation.

SIGNIFICANT ISSUES

According to the AGO, each of the 50 states, plus the District of Columbia, Puerto Rico and Guam, have enacted an unfair trade practices act aimed at preventing consumer deception and abuse in the marketplace. Most state statutes, including New Mexico, are patterned after the Federal Trade Commission (FTC) Act which prohibits unfair or deceptive acts or practices. And like the FTC Act, New Mexico’s Unfair Practices Act also extends its protections to businesses which, like consumers, may be targets of unfair and deceptive business practices, scams and schemes.

The AGO also notes that the modern concept of “deception,” largely based on court interpretations of the FTC Act, does not require proof of actual deception. As a result, most state unfair trade practices statutes, including New Mexico’s, provide more flexible remedies for consumer abuse than was previously available under the common law, thereby enabling the law to apply to new forms of abusive schemes in almost all types of consumer transactions. Most, if not all, of these same remedies are extended to businesses as well.

The concept of being a business under the Act is expanded under the bill from “trade or commerce” to include the person’s occupation or vocation, which would appear to expand the concept beyond an established business to any activity that could be construed as a consistent effort relating to providing goods or services.

By providing a series of options such as mediation, the Act encourages and provides remedies for consumers and businesses to resolve their own disputes without proceeding to litigation or charges. If these efforts fail, the Act provides for a series of remedies, depending on the severity of the breach. For example, it provides for:

- the Director to take action on behalf of disadvantaged or vulnerable consumers, including an action where the unfair practice occurred outside Saskatchewan;
- voluntary agreements for compliance between a supplier and the Director;
- the court to order restitution; and
- an application by the Director to the court for an injunction.

OTHER SUBSTANTIVE ISSUES

The AGO explains that consumers are often at a disadvantage in many a negotiated transaction, lacking the knowledge or expertise that a commercial seller of a particular good may have. Hence, as written, the UPA largely extends its protections to (consumer) purchasers against sellers, to include the right to bring suit against sellers who engage in unfair, deceptive or unconscionable trade practices. Plaintiffs who prevail against a seller found to have violated the UPA are awarded attorney fees and costs, in addition to their damages.

TECHNICAL ISSUES

The terms “occupation” and “vocation” as added by HB 766 are not terms previously utilized in connection with the UPA and there is no case law on point that interprets and applies the meaning of these terms.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The AGO reports that consumers and businesses alike will continue to receive the protections afforded them under the current federal and state law.

POSSIBLE QUESTIONS

How would this enhance the current federal and state law?

EO/nt