

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 157

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO UNFAIR PRACTICES; EXPANDING THE PRIVATE RIGHT OF  
ACTION UNDER THE UNFAIR PRACTICES ACT FOR ANY UNFAIR OR  
DECEPTIVE TRADE PRACTICE.

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

Section 1. Section 57-12-2 NMSA 1978 (being Laws 1967,  
Chapter 268, Section 2, as amended) is amended to read:

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

A. "person" means, where applicable, natural  
persons, corporations, trusts, partnerships, associations,  
cooperative associations, clubs, companies, firms, joint  
ventures or syndicates;

B. "seller-initiated telephone sale" means a sale,  
lease or rental of goods or services in which the seller or

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underscoring material = new  
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1 [his] the seller's representative solicits the sale by  
2 telephoning the prospective purchaser and in which the sale is  
3 consummated entirely by telephone or mail, but does not include  
4 a transaction:

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

8 (2) in which the purchaser is accorded the  
9 right of rescission by the provisions of the federal Consumer  
10 Credit Protection Act, 15 U.S.C. 1635 or regulations issued  
11 pursuant thereto;

12 C. "trade" or "commerce" includes the advertising,  
13 offering for sale or distribution of any services and any  
14 property and any other article, commodity or thing of value,  
15 including any trade or commerce directly or indirectly  
16 affecting the people of this state;

17 D. "unfair or deceptive trade practice" means an  
18 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 [his] the person's trade or commerce, which may, tends to or  
25 does deceive or mislead any person and includes but is not

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1 limited to:

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

5 (2) causing confusion or misunderstanding as  
6 to the source, sponsorship, approval or certification of goods  
7 or services;

8 (3) causing confusion or misunderstanding as  
9 to affiliation, connection or association with or certification  
10 by another;

11 (4) using deceptive representations or  
12 designations of geographic origin in connection with goods or  
13 services;

14 (5) representing that goods or services have  
15 sponsorship, approval, characteristics, ingredients, uses,  
16 benefits or quantities that they do not have or that a person  
17 has a sponsorship, approval, status, affiliation or connection  
18 that [~~he~~] the person does not have;

19 (6) representing that goods are original or  
20 new if they are deteriorated, altered, reconditioned,  
21 reclaimed, used or secondhand;

22 (7) representing that goods or services are of  
23 a particular standard, quality or grade or that goods are of a  
24 particular style or model if they are of another;

25 (8) disparaging the goods, services or

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1 business of another by false or misleading representations;

2 (9) offering goods or services with intent not  
3 to supply them in the quantity requested by the prospective  
4 buyer to the extent of the stock available, unless the  
5 purchaser is purchasing for resale;

6 (10) offering goods or services with intent  
7 not to supply reasonable expectable public demand;

8 (11) making false or misleading statements of  
9 fact concerning the price of goods or services, the prices of  
10 competitors or one's own price at a past or future time or the  
11 reasons for, existence of or amounts of price reduction;

12 (12) making false or misleading statements of  
13 fact for the purpose of obtaining appointments for the  
14 demonstration, exhibition or other sales presentation of goods  
15 or services;

16 (13) packaging goods for sale in a container  
17 that bears a trademark or trade name identified with goods  
18 formerly packaged in the container, without authorization,  
19 unless the container is labeled or marked to disclaim a  
20 connection between the contents and the trademark or trade  
21 name;

22 (14) using exaggeration, innuendo or ambiguity  
23 as to a material fact or failing to state a material fact if  
24 doing so deceives or tends to deceive;

25 (15) stating that a transaction involves

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1 rights, remedies or obligations that it does not involve;

2 (16) stating that services, replacements or  
3 repairs are needed if they are not needed; or

4 (17) [~~failure~~] failing to deliver the quality  
5 or quantity of goods or services contracted for; and

6 E. "unconscionable trade practice" means an act or  
7 practice in connection with the sale, lease, rental or loan, or  
8 in connection with the offering for sale, lease, rental or  
9 loan, of any goods or services, including services provided by  
10 licensed professionals, or in the extension of credit or in the  
11 collection of debts [~~which~~] that to a person's 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."

17 Section 2. Section 57-12-10 NMSA 1978 (being Laws 1967,  
18 Chapter 268, Section 8, as amended) is amended to read:

19 "57-12-10. PRIVATE REMEDIES.--

20 A. A person likely to be damaged by an unfair or  
21 deceptive trade practice or by an unconscionable trade practice  
22 of another may be granted an injunction against it under the  
23 principles of equity and on terms that the court considers  
24 reasonable. Proof of monetary damage, loss of profits or  
25 intent to deceive or take unfair advantage of [~~any~~] a person is

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1 not required. Relief granted for the copying of an article  
2 shall be limited as to the prevention of confusion or  
3 misunderstanding as to source.

4 B. Any person who suffers [~~any~~] loss of money or  
5 property, real or personal, as a result of [~~any~~] employment by  
6 another person of a method, act or practice [~~declared unlawful~~  
7 ~~by the Unfair Practices Act~~] that is an unfair or deceptive  
8 trade practice may bring an action to recover actual damages or  
9 the sum of one hundred dollars (\$100), whichever is greater.  
10 Where the trier of fact finds that the party charged with an  
11 unfair or deceptive trade practice or an unconscionable trade  
12 practice has willfully engaged in the trade practice, the court  
13 may award up to three times actual damages or three hundred  
14 dollars (\$300), whichever is greater, to the party complaining  
15 of the practice.

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

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

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

7           F. A party to a court action for a private remedy  
8 pursuant to this section may request in writing during the  
9 thirty-day period following service of the summons and  
10 complaint on all parties named in the action that the parties  
11 attempt to settle the claim in early mediation. If a request  
12 for mediation is made, the parties shall choose a mutually  
13 acceptable mediator and enter into mediation within sixty days  
14 of the appointment of an acceptable mediator unless otherwise  
15 agreed by the parties. A request for mediation may be  
16 rescinded at any time if agreed to by all parties.

17           G. If the parties do not agree on a mutually  
18 acceptable mediator, the court shall appoint the mediator. If  
19 the early mediation pursuant to this section is entered into  
20 within sixty days following the appointment of the mediator,  
21 the parties suing on the basis of unfair, deceptive or  
22 unconscionable trade practices or acts under the Unfair  
23 Practices Act shall be required to pay no more than fifty  
24 dollars (\$50.00) toward the cost of the mediation and the other  
25 party shall pay the remainder of such cost, unless otherwise

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1 agreed by the parties. If a person is seeking injunctive  
2 relief in accordance with Subsection A of this section, the  
3 person may pursue the claim for injunctive relief without  
4 following the mediation requirements of this subsection and  
5 Subsection F of this section."

6 Section 3. EFFECTIVE DATE.--The effective date of the  
7 provisions of this act is July 1, 2009.