

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 428

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

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:

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

SECTION 2. 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. "destructive device" means any:

(1) explosive, incendiary or poison gas:

(a) bomb;

(b) grenade;

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

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

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(e) mine; or

(f) similar device;

(2) type of weapon by whatever name known that will, or that may be readily converted to, expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter, except a shotgun shell that is generally recognized as particularly suitable for sporting purposes;

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

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

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

C. "firearm" means any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosion; the frame or receiver of any such weapon; or any firearm muffler or firearm silencer.

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"Firearm" includes any handgun, rifle or shotgun; but does not include an antique firearm as defined in 18 U.S.C. Section 921(16), a powder-actuated tool or other device designed to be used for construction purposes, an emergency flare or a firearm in permanently inoperable condition;

D. "firearm accessory" means:

(1) any device specifically adapted to enable:

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

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

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

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

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

[A.] G. "person" means, where applicable, natural persons, corporations, trusts, partnerships, associations,

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cooperative associations, clubs, companies, firms, joint ventures or syndicates;

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

~~[B.]~~ I. "seller-initiated telephone or internet sale" means a sale, lease or rental of goods or services in which the seller or the seller's representative solicits the sale by telephoning, ~~[the]~~ electronic mail, internet marketing, soliciting through a website or computer program or application a prospective purchaser and in which the sale is consummated entirely by telephone, ~~[or]~~ mail, ~~[but does not include a transaction:~~

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

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

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

.226046.6AIC March 20, 2023 (12:23pm)

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

(1) any trade or commerce [directly or indirectly affecting the people of this state] with a person in New Mexico or to a location within this state; or

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

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

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

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

[D.] L. "unfair or deceptive trade practice" means an act specifically declared unlawful pursuant to the Unfair

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Practices Act, 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 or in the extension of credit or in the collection of debts by a person in the regular course of the person's trade or commerce, that may, tends to or does deceive or mislead any person and includes:

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

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

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

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

~~(4)~~ (5) using deceptive representations or designations of geographic origin in connection with goods or

services;

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

~~[(6)]~~ (7) representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand;

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

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

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

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

~~[(11)]~~ (12) making false or misleading statements of fact concerning the price of goods or services, the prices of competitors or one's own price at a past or

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future time or the reasons for, existence of or amounts of price reduction;

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

~~[(13)]~~ (14) packaging goods for sale in a container that bears a trademark or trade name identified with goods formerly packaged in the container, without authorization, unless the container is labeled or marked to disclaim a connection between the contents and the trademark or trade name;

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

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

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

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

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

~~[(19)]~~ (20) offering or providing unposted or

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unadvertised pricing or service based on the buyer's gender or perceived gender identity; provided, however, that this provision does not apply to persons regulated by the office of superintendent of insurance pursuant to the New Mexico Insurance Code; ~~and~~ or

(21) knowingly manufacturing, advertising, distributing or offering for sale a firearm, destructive device, firearm part or firearm accessory contrary to the laws of New Mexico or the United States; and

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

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

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

(3) violates state or federal law."

SECTION 3. Section 57-12-3.1 NMSA 1978 (being Laws 1991,

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Chapter 28, Section 1) is amended to read:

"57-12-3.1. UNAUTHORIZED USE OF DELIVERY CONTAINER

PROHIBITED.--

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

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

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

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

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

B. As used in this section:

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

(2) "bakery tray" means a wire or plastic receptacle that holds bread, buns or other baked goods and that

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is used by a bakery, distributor or retailer or its agent as a means to transport, store or carry bakery products;

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

(4) "dairy case" means a plastic receptacle that holds sixteen quarts or more of beverage and that is used by a dairy, distributor or retailer or its agent as a means to transport, store or carry dairy products;

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

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

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

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

(9) "shopping cart" means a basket that is mounted on wheels, or a similar device, that is generally used

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in a retail establishment by a customer to transport goods of any kind.

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

SECTION 4. Section 57-12-7 NMSA 1978 (being Laws 1967, Chapter 268, Section 6, as amended) is amended to read:

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

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

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

C. without including any allegation or proof specifically required by the laws of the United States or New Mexico, including where explicitly required:

(1) proximate cause resulting in harm; or

(2) establishing that the actions or

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transactions giving rise to claims made pursuant to the Unfair Practices Act occurred, in whole or in part, inside New Mexico."

SECTION 5. Section 57-12-8 NMSA 1978 (being Laws 1967, Chapter 268, Section 7, as amended) is amended to read:

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

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

B. In ~~[any]~~ an action filed pursuant to the Unfair Practices Act, including an action with respect to unimproved real property, the attorney general may petition the district

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court for temporary or permanent injunctive relief and restitution."

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

"57-12-9. SETTLEMENTS.--

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

B. A person need not accept restitution pursuant to an assurance. ~~[His]~~ Acceptance of restitution bars recovery of ~~[any]~~ damages in ~~[any]~~ an action by ~~[him]~~ the person or on

.226046.6AIC March 20, 2023 (12:23pm)

[his] the person's behalf against the same defendant on account of the same unlawful practice unless the defendant fails to make restitution as agreed.

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

SECTION 7. 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 HJC→~~aware of or~~←HJC 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] a 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 HJC→~~[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]~~←HJC
HJC→suffers any loss of money or property, real or personal, as a result of any employment by another person of a method, act

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or practice declared unlawful by the Unfair Practices Act may bring an action ~~←HJC HJC→ is aware of or likely to be damaged by an unfair or deceptive trade practice or by an unconscionable trade practice of another and who prevails in an action pursuant to the Unfair Practices Act shall be entitled~~ ←HJC to recover actual damages or the sum of [one hundred dollars ~~(\$100)~~] ten thousand dollars (\$10,000), 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)~~] ten thousand dollars (\$10,000), whichever is greater, to the party complaining of the practice. HJC→ ~~where the trier of fact finds that the party charged with an unfair or deceptive trade practice or an unconscionable trade practice manufactured, marketed, distributed or offered for sale a firearm, destructive device, firearm part or firearm accessory and knowingly engaged in the trade practice or unconscionable trade practice that violated New Mexico or federal law, the court shall award three times actual damages or two hundred fifty thousand dollars (\$250,000) per violation, whichever is greater, to the party complaining of the practice.~~ ←HJC

HJC→ C. A person aware of an unfair or deceptive trade practice or an unconscionable trade practice of another involving the manufacture, marketing, distributing, sale or

offering for sale a firearm, destructive device, firearm part or firearm accessory that violated New Mexico or federal law may be granted an injunction against the practice under the principles of equity and on terms that the court considers reasonable and shall be awarded two hundred fifty thousand dollars (\$250,000) per violation.

D. Proof of a claim involving the manufacture, marketing, distributing, sale or offering for sale a firearm, destructive device, firearm part or firearm accessory or other unfair trade practice or an unconscionable trade practice shall comply with the specific requirements placed on such a claim by the Unfair Practices Act. Beyond those specific requirements, proof of monetary damage, loss of profits or intent to deceive or take unfair advantage of any person is not required.←HJC

HJC→C.←HJC HJC→E.←HJC 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 the party knew was groundless at the time it was initiated.

HJC→D.←HJC HJC→F.←HJC The relief provided in this section is in addition to remedies otherwise available against

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the same conduct under the common law or other statutes of this state.

HJC→~~E.~~←HJC HJC→~~G.~~←HJC In [any] a 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~~

.226046.6AIC March 20, 2023 (12:23pm)

~~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.]~~

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

HJC→G.←HJC HJC→I.←HJC An online marketplace that offers for sale or allows third-party sellers to offer for sale a firearm, destructive device, firearm part or firearm accessory, the manufacture, advertising, distribution or sale of which would violate the laws of New Mexico or the United States, shall be jointly and severally liable for any violations of the Unfair Practices Act that occurred on the online marketplace.

HJC→H.←HJC HJC→J.←HJC In any action brought pursuant to the Unfair Practices Act against a third-party seller on an online marketplace, the online marketplace shall
HJC→ , upon request of the party bringing the Unfair Practices

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~~Act suit, provide all of the following related to a third-party seller:~~

~~(1) name;~~

~~(2) physical address;~~

~~(3) mailing address;~~

~~(4) email address;~~

~~(5) telephone number;~~

~~(6) tax identification number or other tax information that may assist in identifying the third-party seller; and~~

~~(7) a copy of any government-issued identification that the third-party seller provided pursuant to a validly issued subpoena.~~ ←HJC HJC→ **comply with validly issued subpoenas that seek information about a third-party seller.** ←HJC

HJC→ **I.** ←HJC HJC→ **K.** ←HJC HJC→ ~~Failure or refusal to provide the information described in Subsection H of this section shall itself be a violation of the Unfair Practices Act, for which the court shall award the requesting party ten thousand dollars (\$10,000) and attorney fees and costs associated with the request for information unless the request for information is made in an action that involves an allegation that an unfair or deceptive trade practice or an alleged unconscionable trade practice involved a third-party seller who knowingly violated the laws of New Mexico or the United States in the manufacturing, advertising, distributing~~

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~~or offering for sale a firearm, destructive device, firearm part or firearm accessory, in which case the court shall award two hundred fifty thousand dollars (\$250,000) and attorney fees and costs associated with the request for information.~~ ←HJC

HJC→A willful failure or refusal to respond to a subpoena described in Subsection H of this section shall itself be a violation of the Unfair Practices Act, for which the court shall award the requesting party statutory damages of:

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

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

HJC→J. ←HJC HJC→L. ←HJC An online marketplace, seller or third-party seller that does not maintain a place of business in the United States or that conceals its place of business and offers goods or services for sale inside New Mexico shall be deemed, such that a suit may be maintained against the online marketplace, seller or third-party seller

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without violating the standards of fair play and substantial justice, to have:

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

SECTION 8. Section 57-12-11 NMSA 1978 (being Laws 1970, Chapter 38, Section 2) is amended to read:

"57-12-11. CIVIL PENALTY.--In any action brought under Section [~~49-15-7 NMSA 1953~~] 57-12-8 NMSA 1978, if the court finds that a person is willfully using or has willfully used a method, act or practice declared unlawful by the Unfair Practices Act, the attorney general, upon petition to the court, may recover on behalf of the state [~~of New Mexico~~] a civil penalty [~~of~~] not exceeding [five thousand dollars (\$5,000)] twenty-five thousand dollars (\$25,000) per violation, unless the violation involved the manufacturing, advertising, distribution or sale of a firearm, in which case the attorney general may petition the court for a civil penalty not exceeding two hundred fifty thousand dollars (\$250,000) per violation."

SECTION 9. Section 57-12-12 NMSA 1978 (being Laws 1967,

.226046.6AIC March 20, 2023 (12:23pm)

Chapter 268, Section 10) is amended to read:

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

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

B. Each demand shall:

- (1) state the general subject matter of the investigation;
- (2) describe the classes of documentary material to be produced with reasonable certainty; and
- (3) prescribe the return date within which the documentary material is to be produced, which in no case shall

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be less than ten days after the date of service. [~~and~~

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

C. No demand shall:

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

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

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

D. Service of the demand may be made by:

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

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

(3) mailing by registered or certified mail a

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delete = **red highlight, strikethrough**

duly executed copy of the demand addressed to the person to be served at ~~[his]~~ the person's principal place of business in this state or, if the person has no place of business in this state, to ~~[his]~~ the person's principal office or place of business.

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

F. ~~[No documentary]~~ Documentary material produced pursuant to a demand, or copies thereof, shall, unless otherwise ordered by the district court in the county in which the person resides or has ~~[his]~~ the person's principal place of business or is about to perform or is performing the practice ~~[which]~~ that is alleged to be unlawful under the Unfair Practices Act, ~~[for good cause shown]~~ be ~~[produced for inspection or copying by anyone other than an authorized employee of the attorney general nor shall the contents thereof be disclosed to anyone other than an authorized employee of the attorney general or in court in an action relating to a violation of the]~~ subject to the Inspection of Public Records Act and discoverable by any party to an action brought pursuant to the Unfair Practices Act.

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

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

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

SECTION 10. Section 57-12-15 NMSA 1978 (being Laws 1967, Chapter 268, Section 12) is amended to read:

"57-12-15. ENFORCEMENT.--In order to promote the uniform administration of the Unfair Practices Act in New Mexico, the attorney general is to be responsible for its enforcement, but [~~he~~] the attorney general may in appropriate cases delegate

.226046.6AIC March 20, 2023 (12:23pm)

this authority to the district attorneys of the state, and when this is done, the district attorneys shall have every power conferred upon the attorney general by the Unfair Practices Act."

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

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

SECTION 12. A new Section 57-12-3.2 NMSA 1978 is enacted to read:

"57-12-3.2. [NEW MATERIAL] UNLAWFUL MANUFACTURE, ADVERTISING, DISTRIBUTION OR SALE OF A FIREARM PROHIBITED.--It shall be an unlawful practice within the meaning of the Unfair Practices Act for any person to violate:

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

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