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SENATE BILL 133

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Don Kidd

AN ACT

RELATING TO TRADE PRACTICES; AMENDING THE UNFAIR PRACTICES ACT
TO INCLUDE ITS APPLICABILITY TO LEGAL SERVICES.

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" includes, 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
his representative solicits the sale by telephoning the

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1 prospective purchaser and in which the sale is consummated
2 entirely by telephone or mail, but does not include a
3 transaction:

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

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

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

16 D. "unfair or deceptive trade practice" means any
17 false or misleading oral or written statement, visual
18 description or other representation of any kind knowingly made
19 in connection with the sale, lease, rental or loan of goods or
20 services or in the extension of credit or in the collection of
21 debts by any person in the regular course of his trade or
22 commerce, which may, tends to or does deceive or mislead any
23 person and includes but is not limited to:

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

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1 services of another;

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

5 (3) causing confusion or misunderstanding as
6 to affiliation, connection or association with or
7 certification by another;

8 (4) using deceptive representations or
9 designations of geographic origin in connection with goods or
10 services;

11 (5) representing that goods or services have
12 sponsorship, approval, characteristics, ingredients, uses,
13 benefits or quantities that they do not have or that a person
14 has a sponsorship, approval, status, affiliation or connection
15 that he does not have;

16 (6) representing that goods are original or
17 new if they are deteriorated, altered, reconditioned,
18 reclaimed, used or secondhand;

19 (7) representing that goods or services are
20 of a particular standard, quality or grade or that goods are
21 of a particular style or model if they are of another;

22 (8) disparaging the goods, services or
23 business of another by false or misleading representations;

24 (9) offering goods or services with intent
25 not to supply them in the quantity requested by the

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1 prospective buyer to the extent of the stock available, unless
2 the purchaser is purchasing for resale;

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

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

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

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

19 (14) using exaggeration, innuendo or
20 ambiguity as to a material fact or failing to state a material
21 fact if doing so deceives or tends to deceive;

22 (15) stating that a transaction involves
23 rights, remedies or obligations that it does not involve;

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

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1 (17) failure to deliver the quality or
2 quantity of goods or services contracted for; and

3 E. "unconscionable trade practice" means any act
4 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 legal
7 services, or in the extension of credit or in the collection
8 of debts which to a person's detriment:

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

12 (2) results in a gross disparity between the
13 value received by a person and the price paid. "

1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

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4
5 February 2, 1999

6
7 Mr. President:

8
9 Your CORPORATIONS & TRANSPORTATION COMMITTEE, to
10 whom has been referred
11

12
13 SENATE BILL 133

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15 has had it under consideration and reports same with
16 recommendation that it DO PASS, and thence referred to the
17 JUDICIARY COMMITTEE.

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19 Respectfully submitted,
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Roman M. Maes, Chairman

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Adopted _____ Not

Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 7 For 1 Against

Yes: 7

No: Maloof

Excused: Macias, Robinson

Absent: None

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2 FORTY- FOURTH LEGI SLATURE

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4 FIRST SESSI ON, 1999

SB 133/a

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7
8 February 12, 1999

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10
11 Mr. President:

12
13 Your JUDI CI ARY COMMI TTEE, to whom has been referred

14
15 SENATE BILL 133

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17
18 has had it under consideration and reports same with

19 recommendation that it DO PASS, amended as follows:

- 20
21 1. On page 1, line 12, strike "LEGAL" and after "SERVICES"
22 insert "PROVIDED BY LICENSED PROFESSIONALS; CHANGING
23 EXEMPTION PROVISION".
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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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2. On page 5, line 6, strike "legal" and after "services" insert "provided by licensed professionals".

3. On page 5, between lines 13 and 14, insert the following section:

"Section 2. Section 57-12-7 NMSA 1978 (being Laws 1967, Chapter 268, Section 6) is amended to read:

"57-12-7. EXEMPTIONS. -- Nothing in the Unfair Practices Act shall apply to actions or transactions expressly permitted under laws administered 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. ""

FORTY- FOURTH LEGISLATURE
FIRST SESSION, 1999

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SJC/SB 133

Page 10

Respectfully submitted,

Michael S. Sanchez, Chairman

Adopted _____ Not

Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

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FORTY- FOURTH LEGI SLATURE
FIRST SESSION, 1999

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SJC/SB 133

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The roll call vote was 3 For 2 Against

Yes: 3

No: Aragon, Sanchez

Excused: Davis, Lopez, Tsosie

Absent: None

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1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999
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6 March 12, 1999
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8 Mr. Speaker:
9

10 Your JUDICIARY COMMITTEE, to whom has been referred
11

12 SENATE BILL 133, as amended
13

14 has had it under consideration and reports same with
15 recommendation that it DO PASS.

16 Respectfully submitted,
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20 _____
21 R. David Pederson, Chairman
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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

Page 13

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 9 For 0 Against

Yes: 9

Excused: Luna, Sanchez, Pederson

Absent: None

J: \99BillsWP\S0133

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