

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 31

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO TRADE PRACTICES; ENCOURAGING SETTLEMENT OF CLAIMS
AND LIMITING CERTAIN REMEDIES FOR A CLAIM BASED ON
MISREPRESENTATION OF MOTOR VEHICLES; AMENDING AND ENACTING
SECTIONS OF THE NMSA 1978.

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

Section 1. Section 57-12-6 NMSA 1978 (being Laws 1971,
Chapter 274, Section 1, as amended) is amended to read:

"57-12-6. MISREPRESENTATION OF MOTOR VEHICLES--
PENALTY. --

A. The willful misrepresentation of the age or
condition of a motor vehicle by any person, including
 regrooving tires or performing chassis repair, without
informing the purchaser of the vehicle that the regrooving or
chassis repair has been performed, is an unlawful practice

1 within the meaning of the Unfair Practices Act, unless the
2 alleged misrepresentation is based wholly on repair of damage,
3 the disclosure of which was not required pursuant to Subsection
4 C of this section. The failure to provide an affidavit
5 pursuant to Subsection B of this section when there has been
6 repair for which disclosure is required shall constitute prima
7 facie evidence of willful misrepresentation.

8 B. Except as provided in Subsections C and D of
9 this section, a seller of a motor vehicle shall furnish at the
10 time of sale of a motor vehicle an affidavit that:

11 (1) describes the vehicle; and

12 (2) states to the best of the seller's
13 knowledge whether there has been an alteration or chassis
14 repair due to wreck damage.

15 C. No affidavit shall be required pursuant to this
16 section if the flat rate manual cost of the alteration or
17 chassis repair is less than six percent of the sales price of
18 the vehicle.

19 D. In the case of a private-party sale of a
20 vehicle, an affidavit shall be furnished only upon the request
21 of the purchasing party.

22 E. ~~[Notwithstanding the provisions of Subsection D~~
23 ~~of Section 57-12-10 NMSA 1978]~~ The award of three times actual
24 damages as provided for in ~~[that]~~ Subsection B of Section
25 57-12-10 NMSA 1978 shall be in lieu of any award of punitive

1 damages based only on those facts constituting the unfair or
2 deceptive trade practice or unconscionable trade practice.

3 F. Any person who violates this section is guilty
4 of a misdemeanor and shall be sentenced pursuant to Section
5 31-19-1 NMSA 1978. "

6 Section 2. A new section of the Unfair Practices Act,
7 Section 57-12-6.1 NMSA 1978, is enacted to read:

8 "57-12-6.1. [NEW MATERIAL] MOTOR VEHICLE MAKE-WHOLE
9 REPURCHASE AGREEMENTS. --

10 A. In case of prior collisions or flood damage, a
11 seller shall not be subject to treble damages or attorney fees
12 if the seller offers to make the buyer whole by meeting all of
13 the following conditions:

14 (1) the seller offers in writing to complete a
15 repurchase of the vehicle within thirty days after the seller
16 is first advised that the vehicle was damaged prior to sale,
17 and the repurchase price offered is at least equal to the
18 original purchase price:

19 (a) plus tax, title, license, dealer
20 transfer service fees and other charges paid to or through the
21 seller; and

22 (b) minus a mileage allowance for
23 mileage driven between the date of sale and the date of
24 repurchase in excess of one thousand miles per month at forty
25 percent of the mileage rate then current for deduction purposes

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underscored material = new
[bracketed material] = delete

1 by the federal internal revenue service; and minus the
2 reasonable cost to repair damage to the vehicle occurring after
3 its sale; and

4 (2) the seller had no knowledge before the
5 sale of damage that was required to be disclosed and failed to
6 disclose it; for purposes of this subsection, "knowledge" means
7 that the seller or an agent of the seller had obtained
8 information that would lead a reasonable person in similar
9 circumstances to believe that the vehicle had such prior
10 damage, including information obtained from a previous owner,
11 through an investigation of the vehicle's history where
12 appropriate, or which was obtained or should have been obtained
13 through a reasonable inspection of the vehicle under the
14 circumstances.

15 B. The purchase price payable pursuant to
16 Subsection A of this section shall be paid first to discharge
17 any lien on the vehicle incurred by the buyer, and the balance,
18 if any, shall be paid to the buyer."

19 Section 3. Section 57-12-10 NMSA 1978 (being Laws 1967,
20 Chapter 268, Section 8, as amended) is amended to read:

21 "57-12-10. PRIVATE REMEDIES. --

22 A. A person likely to be damaged by an unfair or
23 deceptive trade practice or by an unconscionable trade practice
24 of another may be granted an injunction against it under the
25 principles of equity and on terms that the court considers

1 reasonable. Proof of monetary damage, loss of profits or
 2 intent to deceive or take unfair advantage of any person is not
 3 required. Relief granted for the copying of an article shall
 4 be limited as to the prevention of confusion or
 5 misunderstanding as to source.

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

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

25 D. Except as provided in Subsection E of Section

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1 57-12-6 NMSA 1978, and as further limited in Section 57-12-6.1
2 NMSA 1978, the relief provided in this section is in addition
3 to remedies otherwise available against the same conduct under
4 the common law or other statutes of this state.

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

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