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HOUSE BILL 31

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

INTRODUCED BY

Luciano "Lucky" Varela

AN ACT

**RELATING TO TRADE PRACTICES; ENCOURAGING SETTLEMENT OF CLAIMS
AND LIMITING CERTAIN REMEDIES FOR A CLAIM BASED ON
MISREPRESENTATION OF MOTOR VEHICLES; AMENDING 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**

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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~~ An affidavit shall not be required pursuant
16 to this section if the flat rate manual cost of the alteration
17 or chassis repair is less than six percent of the sales price
18 of 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

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

3 F. If a seller offers to settle a buyer's claim
4 pursuant to this section by offering to repurchase a vehicle
5 after discovery of prior damage, the seller shall not be liable
6 for punitive damages or attorney fees pursuant to the Unfair
7 Practices Act. The limitation of remedies provided in this
8 subsection does not apply:

9 (1) unless the seller offers a repurchase
10 price at least equal to the original purchase price:

11 (a) plus tax, title, license and dealer
12 transfer service fees paid to or through the seller; and

13 (b) minus a mileage allowance for
14 mileage driven between the date of sale and the date of
15 repurchase at the mileage rate then current for deduction
16 purposes by the federal internal revenue service; and minus the
17 reasonable cost to repair damage to the vehicle occurring after
18 its sale; or

19 (2) if the seller had actual knowledge of
20 damage that was required to be disclosed and failed to disclose
21 it.

22 G. The repurchase price payable pursuant to
23 Subsection F of this section shall be paid first to discharge
24 any lien on the vehicle incurred by the buyer, and the balance,
25 if any, shall be paid to the buyer.

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

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

6 "57-12-10. PRIVATE REMEDIES. --

7 A. A person likely to be damaged by an unfair or
8 deceptive trade practice or by an unconscionable trade practice
9 of another may be granted an injunction against it under the
10 principles of equity and on terms that the court considers
11 reasonable. Proof of monetary damage, loss of profits or
12 intent to deceive or take unfair advantage of any person is not
13 required. Relief granted for the copying of an article shall
14 be limited as to the prevention of confusion or
15 misunderstanding as to source.

16 B. Any person who suffers any loss of money or
17 property, real or personal, as a result of any employment by
18 another person of a method, act or practice declared unlawful
19 by the Unfair Practices Act may bring an action to recover
20 actual damages or the sum of one hundred dollars (\$100),
21 whichever is greater. Where the trier of fact finds that the
22 party charged with an unfair or deceptive trade practice or an
23 unconscionable trade practice has willfully engaged in the trade
24 practice, the court may award up to three times actual damages
25 or three hundred dollars (\$300), whichever is greater, to the

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1 party complaining of the practice.

2 C. The court shall award ~~attorneys'~~ attorney fees
3 and costs to the party complaining of an unfair or deceptive
4 trade practice or unconscionable trade practice if he prevails.
5 The court shall award ~~attorneys'~~ attorney fees and costs to
6 the party charged with an unfair or deceptive trade practice or
7 an unconscionable trade practice if it finds that the party
8 complaining of such trade practice brought an action ~~which~~
9 that was groundless.

10 D. Except as provided in Subsection E of Section
11 57-12-6 NMSA 1978, and as further limited by Subsection F of
12 that section, the relief provided in this section is in
13 addition to remedies otherwise available against the same
14 conduct under the common law or other statutes of this state.

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