

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 809

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

INTRODUCED BY

Ben D. Altamirano

AN ACT

RELATING TO TRADE PRACTICES; REQUIRING DISCLOSURE OF DAMAGES OR
DEFECTS IN USED MOTOR VEHICLES.

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 NEW AND USED MOTOR
VEHICLES-- PENALTY. --

A. The willful misrepresentation of the age or
condition of a motor vehicle by [~~any person~~] a seller,
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 within the meaning of the Unfair Practices
Act, unless the alleged misrepresentation is based wholly on

underscored material = new
[bracketed material] = delete

1 repair of damage, the disclosure of which was not required
2 pursuant to Subsection C of this section. The failure to
3 provide an affidavit pursuant to Subsection B of this section
4 when there has been repair for which disclosure is required
5 shall constitute prima facie evidence of willful
6 misrepresentation.

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

10 (1) describes the vehicle; and

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

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

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

21 E. A seller of a used motor vehicle shall conduct a
22 reasonable inspection of the motor vehicle before offering it
23 for sale. The seller shall disclose in writing to the
24 purchaser before the sale is completed any material mechanical
25 defect in the motor vehicle and any damage sustained by the

underscored material = new
[bracketed material] = delete

1 motor vehicle due to fire, water, collision or other causes
2 known to the seller.

3 F. If a seller promises that any repairs will be
4 made or any conditions corrected in connection with the
5 purchase of a used motor vehicle the promises shall be provided
6 in writing and either attached to or incorporated into the
7 sales contract.

8 G. For purposes of this section:

9 (1) "known" means that a seller or the
10 seller's agent or employee has obtained facts or information
11 about the condition of a motor vehicle that would lead a
12 reasonable person in similar circumstances to believe that the
13 motor vehicle contained one or more material mechanical
14 defects. "Known" includes knowledge obtained through an
15 inspection, from a previous owner, from the salesperson at an
16 auction or another seller, or through other means;

17 (2) "material mechanical defect" means a
18 defect or malfunction that renders the motor vehicle
19 mechanically unsound, unsafe or inoperable; and

20 (3) "seller" means a dealer or a person who
21 offers a vehicle in a non-private-party transaction.

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

. 145872. 1

1 those facts constituting the unfair or deceptive trade practice
2 or unconscionable trade practice.

3 [F-] I. Any person who violates this section is
4 guilty of a misdemeanor. "

5 Section 2. EFFECTIVE DATE. --The effective date of the
6 provisions of this act is July 1, 2003.

7 - 4 -

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

underscored material = new
[bracketed material] = delete