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HOUSE BILL 1200

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY
Irvin Harrison

AN ACT

RELATING TO HOLIDAYS; REPLACING "COLUMBUS DAY" WITH "INDIGENOUS DAY" IN STATUTE.

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

Section 1. Section 12-5-2 NMSA 1978 (being Laws 1969, Chapter 114, Section 1, as amended by Laws 1987, Chapter 3, Section 1 and also by Laws 1987, Chapter 309, Section 1) is amended to read:

"12-5-2. LEGAL HOLIDAYS--DESIGNATION.--Legal public holidays in New Mexico are:

- A. New Year's day, January 1;
- B. Martin Luther King, Jr.'s birthday, third Monday in January;
- C. Washington's and Lincoln's birthday, President's day, third Monday in February;

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- 1 D. Memorial day, last Monday in May;
2 E. Independence day, July 4;
3 F. Labor day, first Monday in September;
4 G. [~~Columbus~~] Indigenous day, second Monday in
5 October;
6 H. Armistice day and Veterans' day, November 11;
7 I. Thanksgiving day, fourth Thursday in November;
8 and
9 J. Christmas day, December 25."

10 Section 2. Section 57-12-21 NMSA 1978 (being Laws 1987,
11 Chapter 212, Section 1, as amended) is amended to read:

12 "57-12-21. DOOR-TO-DOOR SALES--CONTRACTS--REQUIREMENTS--
13 PROHIBITIONS.--

14 A. In connection with [~~any~~] a door-to-door sale, it
15 constitutes an unfair or deceptive trade practice for [~~any~~] a
16 seller to:

17 (1) fail to furnish the buyer with a fully
18 completed receipt or copy of [~~any~~] a contract pertaining to
19 [~~such~~] the sale at the time of its execution that is in the
20 same language as that principally used in the oral sales
21 presentation and that shows the date of the transaction and
22 contains the name and address of the seller and, in immediate
23 proximity to the space reserved in the contract for the
24 signature of the buyer or on the front page of the receipt if a
25 contract is not used and in bold face type of a minimum size of

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1 ten points, a statement in substantially the following form:

2 "You, the buyer, may cancel this transaction at any time
3 prior to midnight of the third business day after the date of
4 this transaction. See the attached notice of cancellation form
5 for an explanation of this right.";

6 (2) fail to furnish each buyer, at the time
7 ~~[he]~~ the buyer signs the door-to-door sales contract or
8 otherwise agrees to buy consumer goods or services from the
9 seller, a completed form in duplicate, captioned "NOTICE OF
10 CANCELLATION", that shall be attached to the contract or
11 receipt and easily detachable and that shall contain in
12 ten-point bold face type the following information and
13 statements in the same language as that used in the contract:

14 "NOTICE OF CANCELLATION

15 _____
16 date

17 You may cancel this transaction, without any penalty or
18 obligation, within three business days from the above date.

19 If you cancel, any property traded in, any payments made
20 by you under the contract or sale and any negotiable instrument
21 executed by you will be returned within ten business days
22 following receipt by the seller of your cancellation notice and
23 any security interest arising out of the transaction will be
24 canceled.

25 If you cancel, you must make available to the seller at

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1 your residence, in substantially as good condition as when
2 received, any goods delivered to you under this contract or
3 sale; or you may, if you wish, comply with the instructions of
4 the seller regarding the return shipment of the goods at the
5 seller's expense and risk.

6 If you do make the goods available to the seller and the
7 seller does not pick them up within twenty days of the date of
8 your notice of cancellation, you may retain or dispose of the
9 goods without any further obligation. If you fail to make the
10 goods available to the seller or if you agree to return the
11 goods to the seller and fail to do so, then you remain liable
12 for performance of all obligations under the contract.

13 To cancel this transaction, mail or deliver a signed and
14 dated copy of this cancellation notice or any other written
15 notice or send a telegram to:

16 _____
17 (name of seller)

18 at _____
19 (address of seller's place of business)

20 not later than midnight of _____
21 (date)

22 I hereby cancel this transaction.

23 _____
24 (date)

25 _____

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(buyer's signature)";

(3) fail, before furnishing copies of the notice of cancellation to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation;

(4) include in ~~[any]~~ a door-to-door contract or receipt ~~[any]~~ a confession of judgment or ~~[any]~~ a waiver of any of the rights to which the buyer is entitled under this section, including specifically ~~[his]~~ the buyer's right to cancel the sale in accordance with the provisions of this section;

(5) fail to inform each buyer orally, at the time ~~[he]~~ the buyer signs the contract or purchases the goods or services, of ~~[his]~~ the right to cancel;

(6) misrepresent in any manner the buyer's right to cancel;

(7) fail or refuse to honor ~~[any]~~ a valid notice of cancellation by a buyer and, within ten business days after the receipt of ~~[such]~~ the notice, fail to:

(a) refund all payments made under the contract or sale;

(b) return in substantially as good

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1 condition as when received by the seller any goods or property
2 traded in; and

3 (c) cancel and return any negotiable
4 instrument executed by the buyer in connection with the
5 contract or sale and take any action necessary or appropriate
6 to terminate promptly [~~any~~] a security interest created in the
7 transaction;

8 (8) negotiate, transfer, sell or assign any
9 notice or other evidence of indebtedness to a finance company
10 or other third party prior to midnight of the fifth business
11 day following the day the contract was signed or the goods or
12 services were purchased; and

13 (9) fail to notify the buyer, within ten
14 business days of receipt of [~~his~~] the notice of cancellation,
15 whether the seller intends to repossess or to abandon any
16 shipped or delivered goods.

17 B. The cancellation period provided for in this
18 section as applied to telephone initiated sales shall not begin
19 until the buyer has been informed of [~~his~~] the right to cancel
20 and has been provided with copies of the notice of
21 cancellation.

22 C. For the purposes of this section:

23 (1) "business day" means any calendar day
24 except Sunday or the following business holidays: new year's
25 day, [~~Washington's birthday~~] president's day, memorial day,

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1 independence day, labor day, [~~Columbus~~] indigenous day,
2 veterans' day, thanksgiving day, Christmas day, Martin Luther
3 King, Jr.'s birthday and any other legal public holiday of the
4 state of New Mexico or the United States;

5 (2) "consumer goods or services" means goods
6 or services other than perishable goods or agricultural
7 products purchased, leased or rented primarily for personal,
8 family or household purposes, including courses of instruction
9 or training, regardless of the purpose for which they are
10 taken;

11 (3) "door-to-door sale" means a sale, lease or
12 rental of consumer goods or services with a purchase price of
13 twenty-five dollars (\$25.00) or more, whether under single or
14 multiple contracts, in which the seller or [~~his~~] the seller's
15 representative personally solicits the sale, including those in
16 response to or following an invitation by the buyer, and the
17 buyer's agreement or offer to purchase is made at a place other
18 than the place of business of the seller. A door-to-door sale
19 includes seller initiated telephone sales. A door-to-door sale
20 does not include a transaction:

21 (a) made pursuant to prior negotiations
22 in the course of a visit by the buyer to a retail business
23 establishment having a fixed permanent location where the goods
24 are exhibited or the services are offered for sale on a
25 continuing basis;

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1 (b) in which the consumer is accorded
2 the right of rescission by the provisions of the Consumer
3 Credit Protection Act, 15 U.S.C. 1635, or regulations issued
4 pursuant thereto;

5 (c) in which the buyer has initiated the
6 contract and the goods or services are needed to meet a bona
7 fide immediate personal emergency of the buyer, and the buyer
8 furnishes the seller with a separate dated and signed personal
9 statement in the buyer's handwriting describing the situation
10 requiring immediate remedy and expressly acknowledging and
11 waiving the right to cancel the sale within three business
12 days;

13 (d) in which the buyer has initiated the
14 contract and specifically requested the seller to visit [~~his~~]
15 the buyer's home for the purpose of repairing or performing
16 maintenance upon the buyer's personal property. If in the
17 course of such a visit the seller sells the buyer the right to
18 receive additional services or goods other than replacement
19 parts necessarily used in performing the maintenance or in
20 making the repairs, the sale of those additional goods or
21 services would not fall within this exclusion;

22 (e) pertaining to the sale or rental of
23 real property, to the sale of insurance or to the sale of
24 securities or commodities by a broker-dealer registered with
25 the securities and exchange commission; or

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1 (f) in which a consumer acquires the use
2 of goods under the terms of a rental-purchase agreement made
3 pursuant to the provisions of the Rental-Purchase Agreement
4 Act, with an initial rental period of one week or less, by
5 placing a telephone call to a lessor and by requesting that
6 specific goods be delivered to the consumer's residence or such
7 other place as the consumer directs and consummation of the
8 rental-purchase agreement occurs after the goods are delivered;

9 (4) "place of business" means the main or
10 permanent branch office or local address of a seller;

11 (5) "purchase price" means the total price
12 paid or to be paid for the consumer goods or services,
13 including all interest and service charges; and

14 (6) "seller" means any person, partnership,
15 corporation or association engaged in the door-to-door sale of
16 consumer goods or services."

17 Section 3. Section 58-5-7 NMSA 1978 (being Laws 1975,
18 Chapter 330, Section 3, as amended) is amended to read:

19 "58-5-7. LEGAL HOLIDAYS FOR BANKS.--

20 A. The following legal holidays may be observed by
21 banks, notwithstanding the provisions of Sections 12-5-1
22 through 12-5-9 NMSA 1978:

23 New Year's Day January 1
24 Martin Luther King, Jr.'s Birthday 3rd Monday in
25 January

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1 Washington's Birthday 3rd Monday in
2 February

3 Memorial Day the date
4 determined by the director to be the date recognized by the
5 majority of the federal reserve districts in New Mexico

6 Independence Day July 4

7 Labor Day 1st Monday in
8 September

9 [~~Columbus~~] Indigenous Day 2nd
10 Monday in October

11 Armistice Day and Veterans' Day November 11

12 Thanksgiving Day 4th Thursday in
13 November

14 Christmas Day December 25.

15 Whenever one of these bank holidays falls on a Sunday, the
16 following Monday is a legal bank holiday. Whenever one of
17 these bank holidays falls on a Saturday, that Saturday and the
18 preceding Friday are legal bank holidays.

19 B. Nothing in this section shall be deemed to
20 require a bank to close or cease operating any remote financial
21 service unit installed pursuant to the Remote Financial Service
22 Unit Act or any automated teller machines located on the bank
23 premises during all or any part of a legal bank holiday."

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