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## FISCAL IMPACT REPORT

SPONSOR Padilla ORIGINAL DATE 1/20/19  
LAST UPDATED 2/01/19 HB \_\_\_\_\_  
SHORT TITLE No Differential Pricing Based on Gender SB 25/aSPAC/aSJC  
ANALYST Chilton

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	NFI	NFI	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Office of the Superintendent of Insurance (OSI)

### SUMMARY

#### Synopsis of the SJC Amendment

The Senate Judiciary Committee amendment has removed the Senate Public Affairs Committee's changes in the bill, restoring it to its original state. As written, the twice-amended bill would again exempt application of gender-equality in OSI-regulated products.

#### Synopsis of the SPAC Amendment

The Senate Public Affairs Committee has removed the exception from the unfair practice act that is mentioned below: "This prohibition would not apply to products regulated by OSI (i.e., insurance products)." The prohibition of gender or gender identity pricing discrimination now would apply to OSI-regulated products if Senate Bill 25 is enacted as amended.

#### Synopsis of Original Bill

Senate Bill 25 amends the Unfair Practices Act (Section 57-12 NMSA 1978) to define price discrimination based on a person's gender to be part of the definition of an unfair practice, punishable by law.

Other parts of the definition of "unfair practices" include

- 1) Representing goods or services as being one's own when they are those of another person,
- 2) Causing misunderstanding of important aspects of a product or service,
- 3) Causing deception regarding geographic origin of a good or service
- 4) Misrepresenting sponsorship or endorsement of a good or service,
- 5) Representing a product as new when in fact it is used or damaged
- 6) Representing goods or services as of a grade or quality higher than they actually are
- 7) Disparaging another's goods, services or business...

In all, the law currently lists 18 categories of unfair trade practice, to which would be added a nineteenth: differential pricing based on a buyer's gender or gender identity. This prohibition would not apply to products regulated by OSI (i.e., insurance products; see significant issues below).

The Unfair Practices Act has been annotated as follows to define when a plaintiff can make a case against someone violating an aspect of the act:

Claims must be based on regular course of trade or commerce. — Claims made under the Unfair Practices Act must be based on conduct occurring in defendant's regular course of trade or commerce. *Klein v. Bronstein*, 39 B.R. 20 (Bankr. D.N.M. 1984).

Three essential elements of a claim under the Unfair Practices Act. — A successful plaintiff must prove (1) the defendant made an oral or written statement, a visual description or a representation of any kind that was either false or misleading; (2) the false or misleading representation was knowingly made in connection with the sale, lease, rental, or loan of goods or services in the regular course of the defendant's business; and (3) the representation was of the type that may, tends to, or does deceive or mislead any person. *Dollens v. Wells Fargo Bank*, 2015-NMCA-096.

## **FISCAL IMPLICATIONS**

No fiscal impact is identified.

## **SIGNIFICANT ISSUES**

As noted, differential pricing based on gender or gender identity are not prohibited in sales of insurance products. Reasons for this might include

- 1) Costs relating to pregnancy, increasing the cost of providing insurance for females in child-bearing years, and, on the contrary
- 2) Shorter life-span of males, increasing costs earlier on, and
- 3) Higher rate of accidental injury and death in males than in females.