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## FISCAL IMPACT REPORT

SPONSOR	<u>Sanchez</u>	LAST UPDATED	<u>03/14/2025</u>
SHORT TITLE	<u>Deceptive Franchise Practices</u>	BILL NUMBER	<u>Senate Bill 439</u>
		ANALYST	<u>Gygi</u>

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
AOC	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

Agency Analysis Received From

Attorney General (NMAG)

Administrative Office of the Courts (AOC)

State Ethics Commission (SEC)

Regulation and Licensing Department (RLD)

## SUMMARY

### Synopsis of Senate Bill 439

Senate Bill 439 (SB439) enacts the Deceptive Franchise Practices Act prohibiting franchisors from coercing franchisees through unfair practices and allowing franchisees to bring actions to recover damages for violations, or reform a franchise agreement. These provisions will apply to a franchisee operating in New Mexico who enters into or renews a franchise agreement after July 1, 2025.

The bill defines a "franchise" as:

An oral or written arrangement for a definite or indefinite period in which a manufacturer, distributor or representative grants to a person a license to use a trade name, service mark or related characteristic and in which there is a community of interest in the marketing of products or services related to marketing, service or repair of products at wholesale, retail, leasing or otherwise.

The bill prohibits including the following unlawful provisions in a franchise agreement:

- Requiring assent to a non-compete clause for more than two years,
- Limiting litigation brought for breach of the agreement in any manner,
- Imposing exclusive purchasing requirements,

- Allowing franchisor to establish competing outlets within a franchisee's territory,
- Allowing unilateral modification of agreements, and
- Permitting unilateral termination without good cause.

The bill also specifies the following unlawful acts and practices:

- Discriminating unfairly among its franchisees or unreasonably failing or refusing to comply with any terms of a franchise agreement;
- Using deceptive advertising or engaging in deceptive acts in connection with the franchise or the franchisor's business;
- Coercing the franchisee to undertake specified actions or practices; and
- Establishing competing outlets within a franchisee's territory.

The bill would require 90-days notice of termination of a franchise agreement and imposes a five-year statute of limitations for actions brought for violations of the act.

The effective date of this bill is July 1, 2025.

## FISCAL IMPLICATIONS

There is no appropriation with SB439. Should the bill be enacted, the Administrative Office of the Courts (AOC) indicates there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. The agency also the new cause of action could increase caseloads for the courts but the associated costs are not quantified.

The Attorney General (NMG), New Mexico Regulation and Licensing Department, and the State Ethics Commission anticipate no fiscal impact.

## SIGNIFICANT ISSUES

AOC reports at least 15 other states have enacted laws with similar intent to SB439. In addition, the Federal Trade Commission has enacted the "Franchise Rule" to protect against deceptive practices by franchisors.<sup>1</sup>

NMG notes that SB439's language is closely related to Indiana's existing Deceptive Franchise Practices Act, IN Code Section 23-2-2.7-1 to -7, which was passed in 1976.

Under these various state laws, there is no single legal definition of a "franchise." The SB439 definition of "franchise" contains the following elements:

- Oral or written arrangement,
- Granting of a license to use a trade name, service mark or related characteristic, and
- Community of interest in the marketing of products or services exists.

NMG notes the bill relates to franchises as envisioned in the Franchise Termination Act

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<sup>1</sup> See Franchise Rule, 16 C.F.R. Part 436, Compliance Guide, May 2008, <https://www.ftc.gov/system/files/documents/plain-language/bus70-franchise-rule-compliance-guide.pdf>

(Section 57-23-1 to -8 NMSA 1978).

## **PERFORMANCE IMPLICATIONS**

AOC notes the courts are participating in performance-based budgeting. Increased caseloads due to SB439 may impact the following performance measures of the district courts:

- Cases disposed of as a percent of cases filed, and
- Percent change in case filings by case type.

## **TECHNICAL ISSUES**

AOC recommends adding definitions for “deceptive advertising” and/or “deceptive acts,” as well as “community of interest.”

NMAG SB439 recommends adding language regarding where in statute the proposed text should be added.

KG/hj/SL2