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HOUSE BILL 899

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

W. C. "DUB" WILLIAMS

AN ACT

RELATING TO UNFAIR TRADE PRACTICES; AMENDING A SECTION OF THE
NMSA 1978 TO MAKE THE DECEPTIVE USE OF LOCALE NAMES AN UNFAIR
TRADE PRACTICE.

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

Section 1. Section 57-12-2 NMSA 1978 (being Laws 1967,
Chapter 268, Section 2, as amended) is amended to read:

"57-12-2. DEFINITIONS. -- As used in the Unfair Practices
Act:

A. "person" includes, where applicable, natural
persons, corporations, trusts, partnerships, associations,
cooperative associations, clubs, companies, firms, joint
ventures or syndicates;

B. "seller-initiated telephone sale" means a sale,
lease or rental of goods or services in which the seller or his

1 representative solicits the sale by telephoning the prospective
2 purchaser and in which the sale is consummated entirely by
3 telephone or mail, but does not include a transaction:

4 (1) in which a person solicits a sale from a
5 prospective purchaser who has previously made an authorized
6 purchase from the seller's business; or

7 (2) in which the purchaser is accorded the
8 right of rescission by the provisions of the Consumer Credit
9 Protection Act, 15 U.S.C. 1635 or regulations issued pursuant
10 thereto;

11 C. "trade" or "commerce" includes the advertising,
12 offering for sale, sale or distribution of any services and any
13 property and any other article, commodity or thing of value,
14 including any trade or commerce directly or indirectly affecting
15 the people of this state;

16 D. "unfair or deceptive trade practice" means any
17 false or misleading oral or written statement, visual
18 description or other representation of any kind knowingly made
19 in connection with the sale, lease, rental or loan of goods or
20 services or in the extension of credit or in the collection of
21 debts by any person in the regular course of his trade or
22 commerce, which may, tends to or does deceive or mislead any
23 person and includes but is not limited to:

24 (1) representing goods or services as those of
25 another when the goods or services are not the goods or services

1 of another;

2 (2) causing confusion or misunderstanding as to
3 the source, sponsorship, approval or certification of goods or
4 services;

5 (3) causing confusion or misunderstanding as to
6 affiliation, connection or association with or certification by
7 another;

8 (4) using deceptive representations or
9 designations of geographic origin in connection with goods or
10 services;

11 (5) representing that goods or services have
12 sponsorship, approval, characteristics, ingredients, uses,
13 benefits or quantities that they do not have or that a person
14 has a sponsorship, approval, status, affiliation or connection
15 that he does not have;

16 (6) representing that goods are original or new
17 if they are deteriorated, altered, reconditioned, reclaimed,
18 used or secondhand;

19 (7) representing that goods or services are of
20 a particular standard, quality or grade or that goods are of a
21 particular style or model if they are of another;

22 (8) disparaging the goods, services or business
23 of another by false or misleading representations;

24 (9) offering goods or services with intent not
25 to supply them in the quantity requested by the prospective

1 buyer to the extent of the stock available, unless the purchaser
2 is purchasing for resale;

3 (10) offering goods or services with intent not
4 to supply reasonable expectable public demand;

5 (11) making false or misleading statements of
6 fact concerning the price of goods or services, the prices of
7 competitors or one's own price at a past or future time or the
8 reasons for, existence of or amounts of price reduction;

9 (12) making false or misleading statements of
10 fact for the purpose of obtaining appointments for the
11 demonstration, exhibition or other sales presentation of goods
12 or services;

13 (13) packaging goods for sale in a container
14 that bears a trademark or trade name identified with goods
15 formerly packaged in the container, without authorization,
16 unless the container is labeled or marked to disclaim a
17 connection between the contents and the trademark or trade name;

18 (14) using exaggeration, innuendo or ambiguity
19 as to a material fact or failing to state a material fact if
20 doing so deceives or tends to deceive;

21 (15) stating that a transaction involves
22 rights, remedies or obligations that it does not involve;

23 (16) stating that services, replacements or
24 repairs are needed if they are not needed; [øø]

25 (17) failure to deliver the quality or quantity

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1 of goods or services contracted for; [~~and~~] or
2 (18) representing an actual physical presence
3 in a locale by the use of a locale name in an advertised name,
4 intending to mislead others to believe that the advertiser is
5 physically located in the locale named. For purposes of this
6 paragraph, "advertised name" includes telephone directory
7 listings and assistance service; and

8 E. "unconscionable trade practice" means any act or
9 practice in connection with the sale, lease, rental or loan, or
10 in connection with the offering for sale, lease, rental or loan,
11 of any goods or services or in the extension of credit or in the
12 collection of debts which to a person's detriment:

13 (1) takes advantage of the lack of knowledge,
14 ability, experience or capacity of a person to a grossly unfair
15 degree; or

16 (2) results in a gross disparity between the
17 value received by a person and the price paid. "

State of New Mexico
House of Representatives

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

February 27, 1997

Mr. Speaker:

**Your BUSINESS AND INDUSTRY COMMITTEE, to whom has
been referred**

HOUSE BILL 899

**has had it under consideration and reports same with
recommendation that it DO PASS, and thence referred to the
JUDICIARY COMMITTEE.**

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HBIC/HB 899

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Respectfully submitted,

Fred Luna, Chairman

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

Excused: Alwin, Kissner, Lutz, Olguin, Varela

Absent: Getty

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