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## FISCAL IMPACT REPORT

SPONSOR Cervantes DATE TYPED 02/28/05 HB 905

SHORT TITLE “Unfair or Deceptive Trade Practice” Defined SB \_\_\_\_\_

ANALYST Ford

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 360, SB 118

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Attorney General (AGO)  
 Regulation and Licensing Department (RLD)

### SUMMARY

#### Synopsis of Bill

House Bill 905 narrows the definition of unfair or deceptive trade practice for purposes of the Unfair Practices Act. The bill defines an unfair or deceptive trade practice as a practice or act that “deceives or misleads”, as opposed to the current law, which includes an action or practice that “may, tends to, or does deceive or mislead.”

#### Significant Issues

The Unfair Practices Act prohibits unfair or deceptive trade practices and unconscionable trade practices in the conduct of any trade or commerce. The Act provides for enforcement by the attorney general and also private remedies.

The AGO argues that the change proposed in House Bill 905 would significantly hamper its abil-

ity to halt deceptive trade practices before there is widespread consumer damage because it would establish a higher standard for claims brought under the Act. The AGO writes that adoption of the definition in House Bill 905 would:

“...[p]ossibly prohibit the courts from granting injunctive relief to the State without a showing of harm incurred by the public. New Mexico would thereby become the only state in the U.S. where the Attorney General would be prevented from taking remedial action to protect the public from possible harm. This is contrary to established law, as, to date, no court in the country has required any State to show reliance or damages when seeking injunctive relief to protect the public.

“Injunctive relief ... is designed to prevent future harm or to halt ongoing harm. Under current law, the Attorney General can seek a temporary or permanent injunction on behalf of the public if consumers are likely to be harmed. HB 905 would require the State to prove that consumers have actually been harmed before injunctive relief can be granted.”

The AGO notes that the change in the definition could also hamper private remedies. For example, under current law, a private business can request injunctive relief from the courts under the Unfair Practices Act for trademark infringement based on the argument that the practice is likely to deceive consumers. Under the proposed definition, it appears the claimant would have to identify a consumer who was actually deceived.

Finally, the AGO argues that adoption of House Bill 905 would put New Mexico law in conflict with case law precedent established by the U.S. Supreme Court, federal courts throughout the country, and many state courts.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

House Bill 905 relates to House Bill 360 and Senate Bill 118 would both require private claimants to participate in mediation before filing a claim under the Unfair Practices Act.

**EF/lg**