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FISCAL IMPACT REPORT

SPONSOR Lujan ORIGINAL DATE 02/26/21
LAST UPDATED _____ HB 349
SHORT TITLE "False Advertising" Definitions SB _____
ANALYST Gaussoin

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General (NMAG)

Administrative Office of the Courts (declined)

SUMMARY

Synopsis of Bill

House Bill 349 expands the definition of false advertising in Section 57-15-2 NMSA 1978 to include the use of intellectual property, trademarks, logos, menus, or implied partnerships in marketing without the permission of the creator, owner, or authorized user.

There is no effective date of this bill. It is assumed the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

State law provides for the Attorney General to enforce laws against false advertising, punishable with a civil penalty. It is possible that the expansion of the definition could increase the number of complaints; however, NMAG indicated SB349 would have no fiscal impact on the office.

SIGNIFICANT ISSUES

The current definition of false advertising in state statute is focused on misleading information and would seem to cover the unauthorized use of trademarks and logos in that their inclusion would

falsely imply an endorsement or partnership. The statute:

57-15-2. False advertising defined.

The term false advertising means advertising, including labeling, which is misleading in any material respect; and in determining whether any advertising is misleading, there shall be taken into account (among other things) not only representations made by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertising fails to reveal facts material in the light of such representations with respect to the commodity to which the advertising relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual.

Further, the use of menus, logo artwork, and intellectual property without permission of the creator or owner is restricted under copyright law. (While the user agreements for many social media platforms, including Facebook, essentially exempt postings from copyright when used within the platform, copyright laws apply for use outside of the platform.)

TECHNICAL ISSUES

NMAG notes the use of the word “and” between the existing language defining false advertising and the proposed language implies the conditions in both sections must be present for advertising or labeling to be false. In other words, materials would have to be both misleading AND use the listed materials without permission to be considered false. From NMAG: “If the intent was to broaden the statute with the addition of a cause of action for intellectual property, etc. ‘and’ should be replaced with ‘or.’”

HG/rl/sb