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SENATE BILL 428

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY
Joseph Cervantes

AN ACT

RELATING TO FIREARMS; INCLUDING FIREARMS AND DESTRUCTIVE
DEVICES IN THE UNFAIR PRACTICES ACT; EXPANDING PRIVATE REMEDIES
FOR UNFAIR, DECEPTIVE AND UNCONSCIONABLE TRADE PRACTICES;
MAKING TECHNICAL CHANGES.

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. "destructive device" means any:

(1) explosive, incendiary or poison gas:

(a) bomb;

(b) grenade;

(c) rocket having a propellant charge of

1 more than four ounces;

2 (d) missile having an explosive or
3 incendiary charge of more than one-fourth ounce;

4 (e) mine; or

5 (f) similar device;

6 (2) type of weapon by whatever name known that
7 will, or that may be readily converted to, expel a projectile
8 by the action of an explosive or other propellant, the barrel
9 or barrels of which have a bore of more than one-half inch in
10 diameter, except a shotgun shell that is generally recognized
11 as particularly suitable for sporting purposes;

12 (3) combination of parts either designed or
13 intended for use in converting a device into a destructive
14 device as defined in Paragraphs (1) and (2) of this subsection
15 and from which a destructive device may be readily assembled;
16 and

17 (4) device that is designed to convert a
18 semiautomatic firearm to fire more than one round through the
19 single activation of a trigger;

20 B. "destructive device" does not include any device
21 that is neither designed nor redesigned for use as a weapon or
22 any device, although originally designed for use as a weapon,
23 that is redesigned for use as a signaling, pyrotechnic, line-
24 throwing, safety or similar device;

25 C. "firearm" means any weapon that will or is

1 designed to or may readily be converted to expel a projectile
2 by the action of an explosion; the frame or receiver of any
3 such weapon; or any firearm muffler or firearm silencer.

4 "Firearm" includes any handgun, rifle or shotgun; but does not
5 include an antique firearm as defined in 18 U.S.C. Section
6 921(16), a powder-actuated tool or other device designed to be
7 used for construction purposes, an emergency flare or a firearm
8 in permanently inoperable condition;

9 D. "online marketplace" means any person or entity
10 that operates an electronically based or accessed platform
11 that:

12 (1) includes features that allow for,
13 facilitate or enable third-party sellers to engage in the sale,
14 purchase, payment, storage, shipping or delivery of a consumer
15 product in New Mexico; and

16 (2) is used by one or more third-party sellers
17 for such purposes;

18 ~~[A.]~~ E. "person" means, where applicable, natural
19 persons, corporations, trusts, partnerships, associations,
20 cooperative associations, clubs, companies, firms, joint
21 ventures or syndicates;

22 F. "seller" means any person who sells, offers to
23 sell or contracts to sell a consumer product in New Mexico
24 through an online marketplace;

25 ~~[B.]~~ G. "seller-initiated telephone or internet

1 sale" means a sale, lease or rental of goods or services in
2 which the seller or the seller's representative solicits the
3 sale by telephoning, ~~[the]~~ sending electronic mail, soliciting
4 through a website or computer program or application a
5 prospective purchaser and in which the sale is consummated
6 entirely by telephone, ~~[or]~~ mail, electronic mail or other
7 online communication but does not include a transaction:

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

11 (2) in which the purchaser is accorded the
12 right of rescission by the provisions of the federal Consumer
13 Credit Protection Act, 15 U.S.C. 1635, or regulations issued
14 pursuant thereto;

15 H. "third-party seller" means any seller,
16 independent of an online marketplace, who sells, offers to sell
17 or contracts to sell a consumer product in New Mexico through
18 an online marketplace;

19 ~~[G.]~~ I. "trade" or "commerce" includes the
20 manufacturing, advertising, offering for sale or distribution
21 of any services and any property and any other article,
22 commodity or thing of value, including any trade or commerce
23 directly or indirectly affecting the people of this state;

24 ~~[D.]~~ J. "unfair or deceptive trade practice" means
25 an act specifically declared unlawful pursuant to the Unfair

1 Practices Act, a false or misleading oral or written statement,
2 visual description or other representation of any kind
3 knowingly made in connection with the sale, lease, rental or
4 loan of goods or services or in the extension of credit or in
5 the collection of debts by a person in the regular course of
6 the person's trade or commerce, that may, tends to or does
7 deceive or mislead any person and includes:

8 (1) representing goods or services as those of
9 another when the goods or services are not the goods or
10 services of another;

11 (2) representing goods or services as legal to
12 purchase under the laws of New Mexico or the United States when
13 the goods or services are not legal to purchase under the laws
14 of New Mexico or the United States;

15 [~~(2)~~] (3) causing confusion or
16 misunderstanding as to the source, sponsorship, approval or
17 certification of goods or services;

18 [~~(3)~~] (4) causing confusion or
19 misunderstanding as to affiliation, connection or association
20 with or certification by another;

21 [~~(4)~~] (5) using deceptive representations or
22 designations of geographic origin in connection with goods or
23 services;

24 [~~(5)~~] (6) representing that goods or services
25 have sponsorship, approval, characteristics, ingredients, uses,

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1 benefits or quantities that they do not have or that a person
2 has a sponsorship, approval, status, affiliation or connection
3 that the person does not have;

4 ~~[(6)]~~ (7) representing that goods are original
5 or new if they are deteriorated, altered, reconditioned,
6 reclaimed, used or secondhand;

7 ~~[(7)]~~ (8) representing that goods or services
8 are of a particular standard, quality or grade or that goods
9 are of a particular style or model if they are of another;

10 ~~[(8)]~~ (9) disparaging the goods, services or
11 business of another by false or misleading representations;

12 ~~[(9)]~~ (10) offering goods or services with
13 intent not to supply them in the quantity requested by the
14 prospective buyer to the extent of the stock available, unless
15 the purchaser is purchasing for resale;

16 ~~[(10)]~~ (11) offering goods or services with
17 intent not to supply reasonable expectable public demand;

18 ~~[(11)]~~ (12) making false or misleading
19 statements of fact concerning the price of goods or services,
20 the prices of competitors or one's own price at a past or
21 future time or the reasons for, existence of or amounts of
22 price reduction;

23 ~~[(12)]~~ (13) making false or misleading
24 statements of fact for the purpose of obtaining appointments
25 for the demonstration, exhibition or other sales presentation

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1 of goods or services;

2 [~~(13)~~] (14) packaging goods for sale in a
3 container that bears a trademark or trade name identified with
4 goods formerly packaged in the container, without
5 authorization, unless the container is labeled or marked to
6 disclaim a connection between the contents and the trademark or
7 trade name;

8 [~~(14)~~] (15) using exaggeration, innuendo or
9 ambiguity as to a material fact or failing to state a material
10 fact if doing so deceives or tends to deceive;

11 [~~(15)~~] (16) stating that a transaction
12 involves rights, remedies or obligations that it does not
13 involve;

14 [~~(16)~~] (17) stating that services,
15 replacements or repairs are needed if they are not needed;

16 [~~(17)~~] (18) failing to deliver the quality or
17 quantity of goods or services contracted for;

18 [~~(18)~~] (19) violating the Tobacco Escrow Fund
19 Act; [~~or~~]

20 [~~(19)~~] (20) offering or providing unposted or
21 unadvertised pricing or service based on the buyer's gender or
22 perceived gender identity; provided, however, that this
23 provision does not apply to persons regulated by the office of
24 superintendent of insurance pursuant to the New Mexico
25 Insurance Code; [~~and~~] or

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1 (21) knowingly manufacturing, advertising,
2 distributing or offering for sale a firearm, destructive
3 device, firearm part or firearm accessory contrary to the laws
4 of New Mexico or the United States; and

5 [~~E.~~] K. "unconscionable trade practice" means an
6 act or practice in connection with the sale, lease, rental or
7 loan, or in connection with the offering for sale, lease,
8 rental or loan, of any goods or services, including goods or
9 services offered for sale by an online marketplace whether
10 directly or by a third-party seller, and including services
11 provided by licensed professionals, or in the extension of
12 credit or in the collection of debts that to a person's
13 detriment:

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

17 (2) results in a gross disparity between the
18 value received by a person and the price paid; or

19 (3) violates state or federal law."

20 SECTION 2. Section 57-12-3.1 NMSA 1978 (being Laws 1991,
21 Chapter 28, Section 1) is amended to read:

22 "57-12-3.1. UNAUTHORIZED USE OF DELIVERY CONTAINER
23 PROHIBITED.--

24 A. It [~~shall be~~] is an unlawful practice within the
25 meaning of the Unfair Practices Act for any person to:

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1 (1) remove [~~the~~] an owner's container from the
2 owner's or a recipient's premises or parking area without the
3 permission of the owner or recipient;

4 (2) possess or use [~~the~~] an owner's container
5 if it has been removed from the owner's or recipient's premises
6 or parking area without the permission of the owner or
7 recipient;

8 (3) alter, convert, destroy or tamper with
9 [~~the~~] an owner's container without permission of the owner or
10 recipient; or

11 (4) sell [~~the~~] an owner's container to or
12 purchase [~~the~~] an owner's container from someone other than the
13 owner without the permission of the owner.

14 [~~B. As used in this section:~~

15 ~~(1) "bakery rack" means a metal frame that~~
16 ~~holds bakery trays or other bakery products and that is used by~~
17 ~~a bakery, distributor or retailer or its agent as a means to~~
18 ~~transport, store or carry bakery products;~~

19 ~~(2) "bakery tray" means a wire or plastic~~
20 ~~receptacle that holds bread, buns or other baked goods and that~~
21 ~~is used by a bakery, distributor or retailer or its agent as a~~
22 ~~means to transport, store or carry bakery products;~~

23 ~~(3) "container" means a bakery rack, bakery~~
24 ~~tray, dairy case, egg basket, poultry box, shopping cart or~~
25 ~~pallet;~~

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1 ~~(4) "dairy case" means a plastic receptacle~~
2 ~~that holds sixteen quarts or more of beverage and that is used~~
3 ~~by a dairy, distributor or retailer or its agent as a means to~~
4 ~~transport, store or carry dairy products;~~

5 ~~(5) "pallet" means a wooden or plastic base~~
6 ~~that allows stacks of merchandise to be placed upon it and that~~
7 ~~provides a space and support beneath the stack for forklift~~
8 ~~handling;~~

9 ~~(6) "parking area" means a lot or other~~
10 ~~property provided by a recipient for the use of its customers~~
11 ~~to park vehicles while at the recipient's establishment;~~

12 ~~(7) "poultry box" means a permanent type of~~
13 ~~container that is used by a processor, distributor, retailer or~~
14 ~~food service establishment or an agent of one of those persons~~
15 ~~to transport, store or carry poultry;~~

16 ~~(8) "recipient" means a person, firm,~~
17 ~~corporation or association that is authorized by the owner to~~
18 ~~use an owner's container; and~~

19 ~~(9) "shopping cart" means a basket that is~~
20 ~~mounted on wheels, or a similar device, that is generally used~~
21 ~~in a retail establishment by a customer to transport goods of~~
22 ~~any kind.~~

23 G.] B. No civil action shall be maintained pursuant
24 to this section against any person who returns to its owner
25 within sixty days after the effective date of this section a

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1 container that was unlawfully obtained."

2 SECTION 3. Section 57-12-7 NMSA 1978 (being Laws 1967,
3 Chapter 268, Section 6, as amended) is amended to read:

4 "57-12-7. EXEMPTIONS.--Nothing in the Unfair Practices
5 Act shall apply to actions or transactions expressly permitted
6 under laws administered by a regulatory body of New Mexico or
7 the United States, but all actions or transactions forbidden by
8 the regulatory body, ~~[and]~~ about which the regulatory body
9 remains silent, or which violate the laws of New Mexico or the
10 United States, are subject to the Unfair Practices Act. An
11 action brought pursuant to the Unfair Practices Act against a
12 manufacturer, advertiser, distributor, seller, online
13 marketplace seller or third-party seller of a firearm,
14 destructive device, firearm part or firearm accessory shall be
15 maintained only upon an allegation that the acts complained of
16 violated the laws of New Mexico or the United States applicable
17 to manufacturing, advertising, distribution, offering for sale
18 or sale of a firearm, destructive device, firearm part or
19 firearm accessory. No action brought pursuant to the Unfair
20 Practices Act against a manufacturer, advertiser, distributor,
21 seller, online marketplace seller or third-party seller of a
22 firearm, destructive device, firearm part or firearm accessory
23 shall be maintained if the acts complained of began and
24 occurred wholly outside of New Mexico or if the acts complained
25 of did not violate the laws of New Mexico or the United

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1 States."

2 SECTION 4. Section 57-12-8 NMSA 1978 (being Laws 1967,
3 Chapter 268, Section 7, as amended) is amended to read:

4 "57-12-8. RESTRAINT OF PROHIBITED ACTS--REMEDIES FOR
5 VIOLATIONS.--

6 A. Whenever the attorney general has reasonable
7 belief that [~~any~~] a person is using, has used or is about to
8 use any method, act or practice [~~which~~] that is declared by the
9 Unfair Practices Act to be unlawful and that proceedings would
10 be in the public interest, [~~he~~] the attorney general may bring
11 an action in the name of the state alleging violations of the
12 Unfair Practices Act. The action may be brought in the
13 district court of the county in which the person resides or has
14 [~~his~~] the person's principal place of business or in the
15 district court in [~~any~~] a county in which the person is using,
16 has used or is about to use the practice [~~which~~] that has been
17 alleged to be unlawful under the Unfair Practices Act. The
18 attorney general acting on behalf of the state [~~of New Mexico~~]
19 shall not be required to post bond when seeking a temporary or
20 permanent injunction in such action.

21 B. In [~~any~~] an action filed pursuant to the Unfair
22 Practices Act, including an action with respect to unimproved
23 real property, the attorney general may petition the district
24 court for temporary or permanent injunctive relief and
25 restitution."

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1 SECTION 5. Section 57-12-9 NMSA 1978 (being Laws 1971,
2 Chapter 240, Section 3, as amended) is amended to read:

3 "57-12-9. SETTLEMENTS.--

4 A. In lieu of beginning or continuing an action
5 pursuant to the Unfair Practices Act, the attorney general may
6 accept a written assurance of discontinuance of any practice in
7 violation of the Unfair Practices Act from the person who has
8 engaged in the unlawful practice. The attorney general may
9 require an agreement by the person engaged in the unlawful
10 practice that, by the date set by the attorney general and
11 stated in the assurance, ~~[he]~~ the person will make restitution
12 to all persons of money, property or other things received from
13 them in any transaction related to the unlawful practice. All
14 settlements are a matter of public record but are not
15 admissible against ~~[any]~~ a defendant in ~~[any]~~ an action brought
16 by any other person or public body against ~~[such]~~ the defendant
17 under the Unfair Practices Act ~~[and do not constitute a basis~~
18 ~~for the introduction of the assurance of discontinuance as~~
19 ~~prima facie evidence against such defendant in any action or~~
20 ~~proceeding].~~

21 B. A person need not accept restitution pursuant to
22 an assurance. ~~[His]~~ Acceptance of restitution bars recovery of
23 ~~[any]~~ damages in ~~[any]~~ an action by ~~[him]~~ the person or on
24 ~~[his]~~ the person's behalf against the same defendant on account
25 of the same unlawful practice unless the defendant fails to

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1 make restitution as agreed.

2 C. A violation of an assurance entered into
3 pursuant to this section is a violation of the Unfair Practices
4 Act."

5 SECTION 6. Section 57-12-10 NMSA 1978 (being Laws 1967,
6 Chapter 268, Section 8, as amended) is amended to read:

7 "57-12-10. PRIVATE REMEDIES.--

8 A. A person aware of or likely to be damaged by an
9 unfair or deceptive trade practice or by an unconscionable
10 trade practice of another may be granted an injunction against
11 it under the principles of equity and on terms that the court
12 considers reasonable. Proof of monetary damage, loss of
13 profits or intent to deceive or take unfair advantage of [~~any~~]
14 a person is not required. Relief granted for the copying of an
15 article shall be limited as to the prevention of confusion or
16 misunderstanding as to source.

17 B. Any person who [~~suffers any loss of money or~~
18 ~~property, real or personal, as a result of any employment by~~
19 ~~another person of a method, act or practice declared unlawful~~
20 ~~by the Unfair Practices Act may bring an action] is aware of or
21 likely to be damaged by an unfair or deceptive trade practice
22 or by an unconscionable trade practice of another and who
23 prevails in an action pursuant to the Unfair Practices Act
24 shall be entitled to recover actual damages or the sum of [~~one~~
25 ~~hundred dollars (\$100)] one thousand dollars (\$1,000),~~~~

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1 whichever is greater. Where the trier of fact finds that the
2 party charged with an unfair or deceptive trade practice or an
3 unconscionable trade practice has willfully engaged in the
4 trade practice, the court may award up to three times actual
5 damages or [~~three hundred dollars (\$300)~~] three thousand
6 dollars (\$3,000), whichever is greater, to the party
7 complaining of the practice. Where the trier of fact finds
8 that the party charged with an unfair or deceptive trade
9 practice or an unconscionable trade practice manufactured,
10 marketed, distributed or offered for sale a firearm,
11 destructive device, firearm part or firearm accessory and
12 knowingly engaged in the trade practice or unconscionable trade
13 practice that violated New Mexico or federal law, the court
14 shall award three times actual damages or two hundred fifty
15 thousand dollars (\$250,000) per violation, whichever is
16 greater, to the party complaining of the practice.

17 C. The court shall award attorney fees and costs to
18 the party complaining of an unfair or deceptive trade practice
19 or unconscionable trade practice if the party prevails. The
20 court shall award attorney fees and costs to the party charged
21 with an unfair or deceptive trade practice or an unconscionable
22 trade practice if it finds that the party complaining of such
23 trade practice brought an action that the party knew was
24 groundless at the time it was initiated.

25 D. The relief provided in this section is in

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1 addition to remedies otherwise available against the same
2 conduct under the common law or other statutes of this state.

3 E. In ~~[any]~~ a class action filed under this
4 section, the court may award damages to the named plaintiffs as
5 provided in Subsection B of this section and may award members
6 of the class such actual damages as were suffered by each
7 member of the class as a result of the unlawful method, act or
8 practice.

9 F. A party to a court action for a private remedy
10 pursuant to this section may request in writing during the
11 thirty-day period following service of the summons and
12 complaint on all parties named in the action that the parties
13 attempt to settle the claim in early mediation. If a request
14 for mediation is made and the parties agree to mediate, the
15 parties shall choose a mutually acceptable mediator and enter
16 into mediation within sixty days of the appointment of an
17 acceptable mediator unless otherwise agreed by the parties. A
18 request for mediation may be rescinded at any time if agreed to
19 by all parties.

20 G. If the parties do not agree on a mutually
21 acceptable mediator, the court shall appoint the mediator. If
22 the early mediation pursuant to this section is entered into
23 within sixty days following the appointment of the mediator,
24 the parties suing on the basis of unfair, deceptive or
25 unconscionable trade practices or acts under the Unfair

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1 Practices Act shall be required to pay no more than fifty
2 dollars (\$50.00) toward the cost of the mediation and the other
3 party shall pay the remainder of such cost, unless otherwise
4 agreed by the parties. If a person is seeking injunctive
5 relief in accordance with Subsection A of this section, the
6 person may pursue the claim for injunctive relief without
7 following the mediation requirements of this subsection and
8 Subsection F of this section.

9 H. Multiple parties acting in concert to
10 manufacture, advertise, distribute or offer for sale a firearm,
11 destructive device, firearm part or firearm accessory, which
12 would violate the laws of New Mexico or the United States,
13 shall be jointly and severally liable for any violations of the
14 Unfair Practices Act.

15 I. An online marketplace that offers for sale or
16 allows third-party sellers to offer for sale a firearm,
17 destructive device, firearm part or firearm accessory, the
18 manufacture, advertising, distribution or sale of which would
19 violate the laws of New Mexico or the United States, shall be
20 jointly and severally liable for any violations of the Unfair
21 Practices Act that occurred on the online marketplace.

22 J. In any action brought pursuant to the Unfair
23 Practices Act against a third-party seller on an online
24 marketplace, the online marketplace shall provide the name,
25 physical address, mailing address, tax identification number or

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1 other tax information that may assist in identifying the third-
2 party seller, any email addresses, telephone numbers and a copy
3 of any government-issued identification that the third-party
4 seller provided to the online marketplace, upon request of the
5 party bringing the Unfair Practices Act suit. The information
6 shall be provided not later than fourteen days after a request
7 is made. The fourteen-day period may be extended by written
8 agreement with the party requesting the information or by an
9 order of the district court in which the Unfair Practices Act
10 case is pending. Failure to provide this information shall
11 itself be a violation of the Unfair Practices Act, for which
12 the court shall award the requesting party one thousand dollars
13 (\$1,000) and attorney fees and costs associated with the
14 request for information, unless the Unfair Practices Act case
15 involves an allegation that an unfair or deceptive trade
16 practice or an alleged unconscionable trade practice occurred
17 by a third-party seller who knowingly violated the laws of New
18 Mexico or the United States in the manufacturing, advertising,
19 distributing or offering for sale a firearm, destructive
20 device, firearm part or firearm accessory, in which case the
21 court shall award two hundred fifty thousand dollars (\$250,000)
22 and attorney fees and costs associated with the request for
23 information."

24 SECTION 7. Section 57-12-11 NMSA 1978 (being Laws 1970,
25 Chapter 38, Section 2) is amended to read:

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1 "57-12-11. CIVIL PENALTY.--In any action brought under
2 Section [~~49-15-7 NMSA 1953~~] 57-12-8 NMSA 1978, if the court
3 finds that a person is willfully using or has willfully used a
4 method, act or practice declared unlawful by the Unfair
5 Practices Act, the attorney general, upon petition to the
6 court, may recover on behalf of the state [~~of New Mexico~~] a
7 civil penalty [~~of~~] not exceeding five thousand dollars (\$5,000)
8 per violation, unless the violation involved the manufacturing,
9 advertising, distribution or sale of a firearm, in which case
10 the attorney general may petition the court for a civil penalty
11 not exceeding two hundred fifty thousand dollars (\$250,000) per
12 violation."

13 SECTION 8. Section 57-12-12 NMSA 1978 (being Laws 1967,
14 Chapter 268, Section 10) is amended to read:

15 "57-12-12. CIVIL INVESTIGATIVE DEMAND.--

16 A. Whenever the attorney general has reason to
17 believe that [~~any~~] a person may be in possession, custody or
18 control of an original or copy of [~~any~~] a book, record, report,
19 memorandum, paper, communication, tabulation, map, chart,
20 photograph, mechanical transcription or other tangible document
21 or recording [~~which he~~] that the attorney general believes to
22 be relevant to the subject matter of an investigation of a
23 probable violation of the Unfair Practices Act, [~~he~~] the
24 attorney general may, prior to the institution of a civil
25 proceeding, execute in writing and cause to be served upon the

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1 person a civil investigative demand requiring ~~[such]~~ the person
2 to produce documentary material and permit the inspection and
3 copying of the material. The demand of the attorney general
4 shall not be a matter of public record and shall not be
5 published by ~~[him]~~ the attorney general except by order of the
6 court.

7 B. Each demand shall:

8 (1) state the general subject matter of the
9 investigation;

10 (2) describe the classes of documentary
11 material to be produced with reasonable certainty; and

12 (3) prescribe the return date within which the
13 documentary material is to be produced, which in no case shall
14 be less than ten days after the date of service. [~~and~~

15 ~~(4) identify the members of the attorney~~
16 ~~general's staff to whom such documentary material is to be made~~
17 ~~available for inspection and copying.]~~

18 C. No demand shall:

19 (1) contain ~~[any]~~ a requirement ~~[which]~~ that
20 would be unreasonable or improper if contained in a subpoena
21 duces tecum issued by a court of this state; [~~or~~]

22 (2) require the disclosure of any documentary
23 material ~~[which]~~ that would be privileged or ~~[which]~~ that for
24 any other reason would not be required by a subpoena duces
25 tecum issued by a court of this state; or

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1 (3) require the removal of any documentary
2 material from the custody of the person upon whom the demand is
3 served except in accordance with the provisions of Subsection E
4 of this section.

5 D. Service of the demand may be made by:

6 (1) delivering a duly executed copy [~~thereof~~]
7 to the person to be served or, if the person is not a natural
8 person, to the statutory agent for the person or to [~~any~~] an
9 officer of the person to be served; [~~or~~]

10 (2) delivering a duly executed copy [~~thereof~~]
11 to the principal place of business in this state of the person
12 to be served; or

13 (3) mailing by registered or certified mail a
14 duly executed copy of the demand addressed to the person to be
15 served at [~~his~~] the person's principal place of business in
16 this state or, if the person has no place of business in this
17 state, to [~~his~~] the person's principal office or place of
18 business.

19 E. Documentary material demanded pursuant to the
20 provisions of this section shall be produced for inspection and
21 copying during normal business hours at the principal office or
22 place of business of the person served or may be inspected and
23 copied at such other times and places as may be agreed upon by
24 the person served and the attorney general.

25 F. [~~No documentary~~] Documentary material produced

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1 pursuant to a demand, or copies thereof, shall, unless
2 otherwise ordered by the district court in the county in which
3 the person resides or has ~~[his]~~ the person's principal place of
4 business or is about to perform or is performing the practice
5 ~~[which]~~ that is alleged to be unlawful under the Unfair
6 Practices Act, ~~[for good cause shown]~~ be ~~[produced for~~
7 ~~inspection or copying by anyone other than an authorized~~
8 ~~employee of the attorney general nor shall the contents thereof~~
9 ~~be disclosed to anyone other than an authorized employee of the~~
10 ~~attorney general or in court in an action relating to a~~
11 ~~violation of the]~~ subject to the Inspection of Public Records
12 Act and discoverable by any party to an action brought pursuant
13 to the Unfair Practices Act.

14 G. At any time before the return date of the
15 demand, a petition to set aside the demand, modify the demand
16 or extend the return date ~~[thereon]~~ on the demand may be filed
17 in the district court in the county in which the person resides
18 or has ~~[his]~~ the person's principal place of business or is
19 about to perform or is performing the practice ~~[which]~~ that is
20 alleged to be unlawful under the Unfair Practices Act, and the
21 court upon a showing of good cause may set aside the demand,
22 modify it or extend the return date of the demand.

23 H. After service of the investigative demand upon
24 ~~[him]~~ the person, if ~~[any]~~ the person neglects or refuses to
25 comply with the demand, the attorney general may invoke the aid

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underscoring material = new
~~[bracketed material]~~ = delete

1 of the court in the enforcement of the demand. In appropriate
2 cases, the court shall issue its order requiring the person to
3 appear and produce the documentary material required in the
4 demand and may, upon failure of the person to comply with the
5 order, punish the person for contempt.

6 I. This section shall not be applicable to criminal
7 prosecutions."

8 SECTION 9. Section 57-12-15 NMSA 1978 (being Laws 1967,
9 Chapter 268, Section 12) is amended to read:

10 "57-12-15. ENFORCEMENT.--In order to promote the uniform
11 administration of the Unfair Practices Act in New Mexico, the
12 attorney general is to be responsible for its enforcement, but
13 ~~[he]~~ the attorney general may in appropriate cases delegate
14 this authority to the district attorneys of the state, and when
15 this is done, the district attorneys shall have every power
16 conferred upon the attorney general by the Unfair Practices
17 Act."

18 SECTION 10. Section 57-12-16 NMSA 1978 (being Laws 1967,
19 Chapter 268, Section 13, as amended) is amended to read:

20 "57-12-16. ADVERTISING MEDIA EXCLUDED.--The Unfair
21 Practices Act does not apply to publishers, broadcasters,
22 printers or other persons engaged in the dissemination of
23 information or reproduction of printed or pictorial matters who
24 publish, broadcast or reproduce material without knowledge of
25 its deceptive or unconscionable character, unless the

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underscoring material = new
~~[bracketed material]~~ = delete

1 publication, broadcast or reproduction violates the laws of New
2 Mexico or the United States."

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