

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 428

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

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 53-17-2 NMSA 1978 (being Laws 1967,
Chapter 81, Section 104) is amended to read:

"53-17-2. POWERS OF FOREIGN CORPORATION.--A foreign
corporation ~~[which]~~ that has received a certificate of
authority under the Business Corporation Act consents to
general personal jurisdiction in this state and shall, until a
certificate of revocation or of withdrawal has been issued as
provided in the Business Corporation Act, enjoy the same, but
no greater, rights and privileges as a domestic corporation

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underscored material = new
[bracketed material] = delete

1 organized for the purposes set forth in the application
2 pursuant to which the certificate of authority is issued; and,
3 except as otherwise provided in the Business Corporation Act,
4 is subject to the same duties, restrictions, penalties and
5 liabilities now or hereafter imposed upon a domestic
6 corporation of like character."

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

9 "57-12-2. DEFINITIONS.--As used in the Unfair Practices
10 Act:

11 A. "destructive device" means any:

12 (1) explosive, incendiary or poison gas:

13 (a) bomb;

14 (b) grenade;

15 (c) rocket having a propellant charge of
16 more than four ounces;

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

19 (e) mine; or

20 (f) similar device;

21 (2) type of weapon by whatever name known that
22 will, or that may be readily converted to, expel a projectile
23 by the action of an explosive or other propellant, the barrel
24 or barrels of which have a bore of more than one-half inch in
25 diameter, except a shotgun shell that is generally recognized

1 as particularly suitable for sporting purposes;

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

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

10 B. "destructive device" does not include any device
11 that is neither designed nor redesigned for use as a weapon or
12 any device, although originally designed for use as a weapon,
13 that is redesigned for use as a signaling, pyrotechnic, line-
14 throwing, safety or similar device;

15 C. "firearm" means any weapon that will or is
16 designed to or may readily be converted to expel a projectile
17 by the action of an explosion; the frame or receiver of any
18 such weapon; or any firearm muffler or firearm silencer.

19 "Firearm" includes any handgun, rifle or shotgun; but does not
20 include an antique firearm as defined in 18 U.S.C. Section
21 921(16), a powder-actuated tool or other device designed to be
22 used for construction purposes, an emergency flare or a firearm
23 in permanently inoperable condition;

24 D. "firearm accessory" means:

25 (1) any device specifically adapted to enable:

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1 (a) the wearing or carrying about one's
2 person of a firearm; or

3 (b) the storage or mounting in or on any
4 conveyance of a firearm; and

5 (2) any attachment or device specifically
6 adapted to be inserted into or affixed onto any firearm to
7 enable, alter or improve the functioning or capabilities of the
8 firearm;

9 E. "firearm part" means any component part of a
10 firearm, including ammunition;

11 F. "online marketplace" means any person, business
12 or other entity that hosts, publishes or operates an
13 electronically accessed platform that facilitates or enables
14 third-party sellers to transact or engage in the sale,
15 purchase, payment, storage, shipping or delivery of goods or
16 services in New Mexico;

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

21 H. "seller" means any person, business or other
22 entity that sells or offers to sell any products or services in
23 New Mexico or for delivery to New Mexico;

24 ~~[B.]~~ I. "seller-initiated telephone or internet
25 sale" means a sale, lease or rental of goods or services in

1 which the seller or the seller's representative solicits the
2 sale by telephoning, ~~[the]~~ electronic mail, internet marketing,
3 soliciting through a website or computer program or application
4 a prospective purchaser and in which the sale is consummated
5 entirely by telephone, [or] mail, [but does not include a
6 transaction:

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

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

15 J. "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.]~~ K. "trade" or "commerce" includes the
20 manufacturing, advertising, offering for sale or distribution,
21 [of any] distribution or delivery of any goods, products,
22 services [and any], property and any other article, commodity
23 or thing of value, including:

24 (1) any trade or commerce [directly or
25 indirectly affecting the people of this state] with a person in

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1 New Mexico or to a location within this state; or

2 (2) any trade or commerce by a person,
3 business or other entity that systematically serves a market in
4 New Mexico for the same or similar goods or services at issue
5 in any action brought in this state whether or not the specific
6 goods and services were purchased in New Mexico, which shall be
7 deemed, to the maximum extent permitted under the doctrine of
8 interstate federalism, to create specific jurisdiction against
9 a person, business or other entity that has:

10 (a) enjoyed the benefits and protection
11 of the laws of New Mexico;

12 (b) benefited from the ability to
13 enforce contracts, defend property or form effective markets in
14 New Mexico; or

15 (c) sold or otherwise placed a product
16 of goods into the national market or the stream of commerce;

17 ~~[D-]~~ L. "unfair or deceptive trade practice" means
18 an act specifically declared unlawful pursuant to the Unfair
19 Practices Act, a false or misleading oral or written statement,
20 visual description or other representation of any kind
21 knowingly made in connection with the sale, lease, rental or
22 loan of goods or services or in the extension of credit or in
23 the collection of debts by a person in the regular course of
24 the person's trade or commerce, that may, tends to or does
25 deceive or mislead any person and includes:

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1 (1) representing goods or services as those of
2 another when the goods or services are not the goods or
3 services of another;

4 (2) representing goods or services as legal to
5 purchase under the laws of New Mexico or the United States when
6 the goods or services are not legal to purchase under the laws
7 of New Mexico or the United States;

8 [~~(2)~~] (3) causing confusion or
9 misunderstanding as to the source, sponsorship, approval or
10 certification of goods or services;

11 [~~(3)~~] (4) causing confusion or
12 misunderstanding as to affiliation, connection or association
13 with or certification by another;

14 [~~(4)~~] (5) using deceptive representations or
15 designations of geographic origin in connection with goods or
16 services;

17 [~~(5)~~] (6) representing that goods or services
18 have sponsorship, approval, characteristics, ingredients, uses,
19 benefits or quantities that they do not have or that a person
20 has a sponsorship, approval, status, affiliation or connection
21 that the person does not have;

22 [~~(6)~~] (7) representing that goods are original
23 or new if they are deteriorated, altered, reconditioned,
24 reclaimed, used or secondhand;

25 [~~(7)~~] (8) representing that goods or services

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1 are of a particular standard, quality or grade, ~~[or]~~ that the
2 goods meet the warranty of merchantability or are fit for a
3 particular purpose or are of a particular style or model if
4 they are of another;

5 ~~[(8)]~~ (9) disparaging the goods, services or
6 business of another by false or misleading representations;

7 ~~[(9)]~~ (10) offering goods or services with
8 intent not to supply them in the quantity requested by the
9 prospective buyer to the extent of the stock available, unless
10 the purchaser is purchasing for resale;

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

13 ~~[(11)]~~ (12) making false or misleading
14 statements of fact concerning the price of goods or services,
15 the prices of competitors or one's own price at a past or
16 future time or the reasons for, existence of or amounts of
17 price reduction;

18 ~~[(12)]~~ (13) making false or misleading
19 statements of fact for the purpose of obtaining appointments
20 for the demonstration, exhibition or other sales presentation
21 of goods or services;

22 ~~[(13)]~~ (14) packaging goods for sale in a
23 container that bears a trademark or trade name identified with
24 goods formerly packaged in the container, without
25 authorization, unless the container is labeled or marked to

1 disclaim a connection between the contents and the trademark or
2 trade name;

3 ~~[(14)]~~ (15) using exaggeration, innuendo or
4 ambiguity as to a material fact or failing to state a material
5 fact if doing so deceives or tends to deceive;

6 ~~[(15)]~~ (16) stating that a transaction
7 involves rights, remedies or obligations that it does not
8 involve;

9 ~~[(16)]~~ (17) stating that services,
10 replacements or repairs are needed if they are not needed;

11 ~~[(17)]~~ (18) failing to deliver the quality or
12 quantity of goods or services contracted for;

13 ~~[(18)]~~ (19) violating the Tobacco Escrow Fund
14 Act; ~~[or]~~

15 ~~[(19)]~~ (20) offering or providing unposted or
16 unadvertised pricing or service based on the buyer's gender or
17 perceived gender identity; provided, however, that this
18 provision does not apply to persons regulated by the office of
19 superintendent of insurance pursuant to the New Mexico
20 Insurance Code; ~~[and]~~ or

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

25 ~~[E.]~~ M. "unconscionable trade practice" means an

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1 act or practice in connection with the sale, lease, rental or
2 loan, or in connection with the offering for sale, lease,
3 rental or loan, of any goods or services, including goods or
4 services offered for sale by an online marketplace whether
5 directly or by a third-party seller, and including services
6 provided by licensed professionals, or in the extension of
7 credit or in the collection of debts that to a person's
8 detriment:

9 (1) takes advantage of the lack of knowledge,
10 ability, experience or capacity of a person to a grossly unfair
11 degree; ~~or~~

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

14 (3) violates state or federal law."

15 SECTION 3. Section 57-12-3.1 NMSA 1978 (being Laws 1991,
16 Chapter 28, Section 1) is amended to read:

17 "57-12-3.1. UNAUTHORIZED USE OF DELIVERY CONTAINER
18 PROHIBITED.--

19 A. It ~~shall be~~ is an unlawful practice within the
20 meaning of the Unfair Practices Act for any person to:

21 (1) remove ~~the~~ an owner's container from the
22 owner's or a recipient's premises or parking area without the
23 permission of the owner or recipient;

24 (2) possess or use ~~the~~ an owner's container
25 if it has been removed from the owner's or recipient's premises

1 or parking area without the permission of the owner or
2 recipient;

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

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

9 B. As used in this section:

10 (1) "bakery rack" means a metal frame that
11 holds bakery trays or other bakery products and that is used by
12 a bakery, distributor or retailer or its agent as a means to
13 transport, store or carry bakery products;

14 (2) "bakery tray" means a wire or plastic
15 receptacle that holds bread, buns or other baked goods and that
16 is used by a bakery, distributor or retailer or its agent as a
17 means to transport, store or carry bakery products;

18 (3) "owner's container" means a bakery rack,
19 bakery tray, dairy case, egg basket, poultry box, shopping cart
20 or pallet;

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

25 (5) "pallet" means a wooden or plastic base

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1 that allows stacks of merchandise to be placed upon it and that
2 provides a space and support beneath the stack for forklift
3 handling;

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

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

11 (8) "recipient" means a person, firm,
12 corporation or association that is authorized by the owner to
13 use an owner's container; and

14 (9) "shopping cart" means a basket that is
15 mounted on wheels, or a similar device, that is generally used
16 in a retail establishment by a customer to transport goods of
17 any kind.

18 C. No civil action shall be maintained pursuant to
19 this section against any person who returns to its owner within
20 sixty days after the effective date of this section a container
21 that was unlawfully obtained."

22 SECTION 4. Section 57-12-7 NMSA 1978 (being Laws 1967,
23 Chapter 268, Section 6, as amended) is amended to read:

24 "57-12-7. EXEMPTIONS.--Nothing in the Unfair Practices
25 Act shall apply to actions or transactions:

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1 A. expressly permitted [~~under laws administered~~] by
 2 the laws of the United States or New Mexico or by a regulatory
 3 body of New Mexico or the United States; [~~but all actions or~~
 4 transactions forbidden by the regulatory body, and about which
 5 the regulatory body remains silent, are subject to the Unfair
 6 Practices Act]

7 B. for which a person, business or other entity is
 8 immune from suit under the laws of the United States or New
 9 Mexico or by a regulatory body of New Mexico or the United
 10 States; or

11 C. without including any allegation or proof
 12 specifically required by the laws of the United States or New
 13 Mexico, including where explicitly required:

14 (1) proximate cause resulting in harm; or

15 (2) establishing that the actions or
 16 transactions giving rise to claims made pursuant to the Unfair
 17 Practices Act occurred, in whole or in part, inside New
 18 Mexico."

19 SECTION 5. Section 57-12-8 NMSA 1978 (being Laws 1967,
 20 Chapter 268, Section 7, as amended) is amended to read:

21 "57-12-8. RESTRAINT OF PROHIBITED ACTS--REMEDIES FOR
 22 VIOLATIONS.--

23 A. Whenever the attorney general has reasonable
 24 belief that [~~any~~] a person is using, has used or is about to
 25 use any method, act or practice [~~which~~] that is declared by the

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1 Unfair Practices Act to be unlawful and that proceedings would
2 be in the public interest, [~~he~~] the attorney general may bring
3 an action in the name of the state alleging violations of the
4 Unfair Practices Act. The action may be brought in the
5 district court of the county in which the person resides or has
6 [~~his~~] the person's principal place of business or in the
7 district court in [~~any~~] a county in which the person is using,
8 has used or is about to use the practice [~~which~~] that has been
9 alleged to be unlawful under the Unfair Practices Act. The
10 attorney general acting on behalf of the state [~~of New Mexico~~]
11 shall not be required to post bond when seeking a temporary or
12 permanent injunction in such action.

13 B. In [~~any~~] an action filed pursuant to the Unfair
14 Practices Act, including an action with respect to unimproved
15 real property, the attorney general may petition the district
16 court for temporary or permanent injunctive relief and
17 restitution."

18 SECTION 6. Section 57-12-9 NMSA 1978 (being Laws 1971,
19 Chapter 240, Section 3, as amended) is amended to read:

20 "57-12-9. SETTLEMENTS.--

21 A. In lieu of beginning or continuing an action
22 pursuant to the Unfair Practices Act, the attorney general may
23 accept a written assurance of discontinuance of any practice in
24 violation of the Unfair Practices Act from the person who has
25 engaged in the unlawful practice. The attorney general may

1 require an agreement by the person engaged in the unlawful
2 practice that, by the date set by the attorney general and
3 stated in the assurance, ~~[he]~~ the person will make restitution
4 to all persons of money, property or other things received from
5 them in any transaction related to the unlawful practice. All
6 settlements are a matter of public record but are not
7 admissible against ~~[any]~~ a defendant in ~~[any]~~ an action brought
8 by any other person or public body against ~~[such]~~ the defendant
9 under the Unfair Practices Act ~~[and do not constitute a basis~~
10 ~~for the introduction of the assurance of discontinuance as~~
11 ~~prima facie evidence against such defendant in any action or~~
12 ~~proceeding].~~

13 B. A person need not accept restitution pursuant to
14 an assurance. ~~[His]~~ Acceptance of restitution bars recovery of
15 ~~[any]~~ damages in ~~[any]~~ an action by ~~[him]~~ the person or on
16 ~~[his]~~ the person's behalf against the same defendant on account
17 of the same unlawful practice unless the defendant fails to
18 make restitution as agreed.

19 C. A violation of an assurance entered into
20 pursuant to this section is a violation of the Unfair Practices
21 Act."

22 SECTION 7. Section 57-12-10 NMSA 1978 (being Laws 1967,
23 Chapter 268, Section 8, as amended) is amended to read:

24 "57-12-10. PRIVATE REMEDIES.--

25 A. A person aware of or likely to be damaged by an

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1 unfair or deceptive trade practice or by an unconscionable
2 trade practice of another may be granted an injunction against
3 it under the principles of equity and on terms that the court
4 considers reasonable. Proof of monetary damage, loss of
5 profits or intent to deceive or take unfair advantage of ~~[any]~~
6 a person is not required. Relief granted for the copying of an
7 article shall be limited as to the prevention of confusion or
8 misunderstanding as to source.

9 B. Any person who ~~[suffers any loss of money or~~
10 ~~property, real or personal, as a result of any employment by~~
11 ~~another person of a method, act or practice declared unlawful~~
12 ~~by the Unfair Practices Act may bring an action]~~ is aware of or
13 likely to be damaged by an unfair or deceptive trade practice
14 or by an unconscionable trade practice of another and who
15 prevails in an action pursuant to the Unfair Practices Act
16 shall be entitled to recover actual damages or the sum of [one
17 ~~hundred dollars (\$100)] ten thousand dollars (\$10,000),~~
18 whichever is greater. Where the trier of fact finds that the
19 party charged with an unfair or deceptive trade practice or an
20 unconscionable trade practice has willfully engaged in the
21 trade practice, the court may award up to three times actual
22 damages or [three hundred dollars (\$300)] ten thousand dollars
23 (\$10,000), whichever is greater, to the party complaining of
24 the practice. Where the trier of fact finds that the party
25 charged with an unfair or deceptive trade practice or an

1 unconscionable trade practice manufactured, marketed,
2 distributed or offered for sale a firearm, destructive device,
3 firearm part or firearm accessory and knowingly engaged in the
4 trade practice or unconscionable trade practice that violated
5 New Mexico or federal law, the court shall award three times
6 actual damages or two hundred fifty thousand dollars (\$250,000)
7 per violation, whichever is greater, to the party complaining
8 of the practice.

9 C. The court shall award attorney fees and costs to
10 the party complaining of an unfair or deceptive trade practice
11 or unconscionable trade practice if the party prevails. The
12 court shall award attorney fees and costs to the party charged
13 with an unfair or deceptive trade practice or an unconscionable
14 trade practice if it finds that the party complaining of such
15 trade practice brought an action that the party knew was
16 groundless at the time it was initiated.

17 D. The relief provided in this section is in
18 addition to remedies otherwise available against the same
19 conduct under the common law or other statutes of this state.

20 E. In [~~any~~] a class action filed under this
21 section, the court may award damages to the named plaintiffs as
22 provided in Subsection B of this section and may award members
23 of the class such actual damages as were suffered by each
24 member of the class as a result of the unlawful method, act or
25 practice.

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1 ~~[F. A party to a court action for a private remedy~~
2 ~~pursuant to this section may request in writing during the~~
3 ~~thirty-day period following service of the summons and~~
4 ~~complaint on all parties named in the action that the parties~~
5 ~~attempt to settle the claim in early mediation. If a request~~
6 ~~for mediation is made, the parties shall choose a mutually~~
7 ~~acceptable mediator and enter into mediation within sixty days~~
8 ~~of the appointment of an acceptable mediator unless otherwise~~
9 ~~agreed by the parties. A request for mediation may be~~
10 ~~rescinded at any time if agreed to by all parties.~~

11 ~~G. If the parties do not agree on a mutually~~
12 ~~acceptable mediator, the court shall appoint the mediator. If~~
13 ~~the early mediation pursuant to this section is entered into~~
14 ~~within sixty days following the appointment of the mediator,~~
15 ~~the parties suing on the basis of unfair, deceptive or~~
16 ~~unconscionable trade practices or acts under the Unfair~~
17 ~~Practices Act shall be required to pay no more than fifty~~
18 ~~dollars (\$50.00) toward the cost of the mediation and the other~~
19 ~~party shall pay the remainder of such cost, unless otherwise~~
20 ~~agreed by the parties. If a person is seeking injunctive~~
21 ~~relief in accordance with Subsection A of this section, the~~
22 ~~person may pursue the claim for injunctive relief without~~
23 ~~following the mediation requirements of this subsection and~~
24 ~~Subsection F of this section.]~~

25 F. Multiple parties acting in concert to

1 manufacture, advertise, distribute or offer for sale a firearm,
2 destructive device, firearm part or firearm accessory, which
3 would violate the laws of New Mexico or the United States,
4 shall be jointly and severally liable for any violations of the
5 Unfair Practices Act.

6 G. An online marketplace that offers for sale or
7 allows third-party sellers to offer for sale a firearm,
8 destructive device, firearm part or firearm accessory, the
9 manufacture, advertising, distribution or sale of which would
10 violate the laws of New Mexico or the United States, shall be
11 jointly and severally liable for any violations of the Unfair
12 Practices Act that occurred on the online marketplace.

13 H. In any action brought pursuant to the Unfair
14 Practices Act against a third-party seller on an online
15 marketplace, the online marketplace shall, upon request of the
16 party bringing the Unfair Practices Act suit, provide all of
17 the following related to a third-party seller:

18 (1) name;

19 (2) physical address;

20 (3) mailing address;

21 (4) email address;

22 (5) telephone number;

23 (6) tax identification number or other tax

24 information that may assist in identifying the third-party
25 seller; and

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1 (7) a copy of any government-issued
2 identification that the third-party seller provided pursuant to
3 a validly issued subpoena.

4 I. Failure or refusal to provide the information
5 described in Subsection H of this section shall itself be a
6 violation of the Unfair Practices Act, for which the court
7 shall award the requesting party ten thousand dollars (\$10,000)
8 and attorney fees and costs associated with the request for
9 information unless the request for information is made in an
10 action that involves an allegation that an unfair or deceptive
11 trade practice or an alleged unconscionable trade practice
12 involved a third-party seller who knowingly violated the laws
13 of New Mexico or the United States in the manufacturing,
14 advertising, distributing or offering for sale a firearm,
15 destructive device, firearm part or firearm accessory, in which
16 case the court shall award two hundred fifty thousand dollars
17 (\$250,000) and attorney fees and costs associated with the
18 request for information.

19 J. An online marketplace, seller or third-party
20 seller that does not maintain a place of business in the United
21 States or that conceals its place of business and offers goods
22 or services for sale inside New Mexico shall be deemed, such
23 that a suit may be maintained against the online marketplace,
24 seller or third-party seller without violating the standards of
25 fair play and substantial justice, to have:

- 1 (1) minimum contacts with New Mexico;
 2 (2) invoked the benefits and protections of
 3 the laws of New Mexico;
 4 (3) purposely availed itself of the privileges
 5 of conducting activities within New Mexico; and
 6 (4) reasonably anticipated being haled into a
 7 court within New Mexico."

8 SECTION 8. Section 57-12-11 NMSA 1978 (being Laws 1970,
 9 Chapter 38, Section 2) is amended to read:

10 "57-12-11. CIVIL PENALTY.--In any action brought under
 11 Section [~~49-15-7 NMSA 1953~~] 57-12-8 NMSA 1978, if the court
 12 finds that a person is willfully using or has willfully used a
 13 method, act or practice declared unlawful by the Unfair
 14 Practices Act, the attorney general, upon petition to the
 15 court, may recover on behalf of the state [~~of New Mexico~~] a
 16 civil penalty [~~of~~] not exceeding [~~five thousand dollars~~
 17 ~~(\$5,000)~~] twenty-five thousand dollars (\$25,000) per violation,
 18 unless the violation involved the manufacturing, advertising,
 19 distribution or sale of a firearm, in which case the attorney
 20 general may petition the court for a civil penalty not
 21 exceeding two hundred fifty thousand dollars (\$250,000) per
 22 violation."

23 SECTION 9. Section 57-12-12 NMSA 1978 (being Laws 1967,
 24 Chapter 268, Section 10) is amended to read:

25 "57-12-12. CIVIL INVESTIGATIVE DEMAND.--

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1 A. Whenever the attorney general has reason to
2 believe that [~~any~~] a person may be in possession, custody or
3 control of an original or copy of [~~any~~] a book, record, report,
4 memorandum, paper, communication, tabulation, map, chart,
5 photograph, mechanical transcription or other tangible document
6 or recording [~~which he~~] that the attorney general believes to
7 be relevant to the subject matter of an investigation of a
8 probable violation of the Unfair Practices Act, [~~he~~] the
9 attorney general may, prior to the institution of a civil
10 proceeding, execute in writing and cause to be served upon the
11 person a civil investigative demand requiring [~~such~~] the person
12 to produce documentary material and permit the inspection and
13 copying of the material. The demand of the attorney general
14 shall not be a matter of public record and shall not be
15 published by [~~him~~] the attorney general except by order of the
16 court.

17 B. Each demand shall:

18 (1) state the general subject matter of the
19 investigation;

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

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

25 ~~(4) identify the members of the attorney~~

1 ~~general's staff to whom such documentary material is to be made~~
 2 ~~available for inspection and copying.]~~

3 C. No demand shall:

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

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

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

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

16 (1) delivering a duly executed copy ~~[thereof]~~
 17 to the person to be served or, if the person is not a natural
 18 person, to the statutory agent for the person or to ~~[any]~~ an
 19 officer of the person to be served; ~~[or]~~

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

23 (3) mailing by registered or certified mail a
 24 duly executed copy of the demand addressed to the person to be
 25 served at ~~[his]~~ the person's principal place of business in

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1 this state or, if the person has no place of business in this
2 state, to [~~his~~] the person's principal office or place of
3 business.

4 E. Documentary material demanded pursuant to the
5 provisions of this section shall be produced for inspection and
6 copying during normal business hours at the principal office or
7 place of business of the person served or may be inspected and
8 copied at such other times and places as may be agreed upon by
9 the person served and the attorney general.

10 F. [~~No documentary~~] Documentary material produced
11 pursuant to a demand, or copies thereof, shall, unless
12 otherwise ordered by the district court in the county in which
13 the person resides or has [~~his~~] the person's principal place of
14 business or is about to perform or is performing the practice
15 [~~which~~] that is alleged to be unlawful under the Unfair
16 Practices Act, [~~for good cause shown~~] be [~~produced for~~
17 ~~inspection or copying by anyone other than an authorized~~
18 ~~employee of the attorney general nor shall the contents thereof~~
19 ~~be disclosed to anyone other than an authorized employee of the~~
20 ~~attorney general or in court in an action relating to a~~
21 ~~violation of the~~] subject to the Inspection of Public Records
22 Act and discoverable by any party to an action brought pursuant
23 to the Unfair Practices Act.

24 G. At any time before the return date of the
25 demand, a petition to set aside the demand, modify the demand

1 or extend the return date [~~thereon~~] on the demand may be filed
2 in the district court in the county in which the person resides
3 or has [~~his~~] the person's principal place of business or is
4 about to perform or is performing the practice [~~which~~] that is
5 alleged to be unlawful under the Unfair Practices Act, and the
6 court upon a showing of good cause may set aside the demand,
7 modify it or extend the return date of the demand.

8 H. After service of the investigative demand upon
9 [~~him~~] the person, if [~~any~~] the person neglects or refuses to
10 comply with the demand, the attorney general may invoke the aid
11 of the court in the enforcement of the demand. In appropriate
12 cases, the court shall issue its order requiring the person to
13 appear and produce the documentary material required in the
14 demand and may, upon failure of the person to comply with the
15 order, punish the person for contempt.

16 I. This section shall not be applicable to criminal
17 prosecutions."

18 **SECTION 10.** Section 57-12-15 NMSA 1978 (being Laws 1967,
19 Chapter 268, Section 12) is amended to read:

20 "57-12-15. ENFORCEMENT.--In order to promote the uniform
21 administration of the Unfair Practices Act in New Mexico, the
22 attorney general is to be responsible for its enforcement, but
23 [~~he~~] the attorney general may in appropriate cases delegate
24 this authority to the district attorneys of the state, and when
25 this is done, the district attorneys shall have every power

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1 conferred upon the attorney general by the Unfair Practices
2 Act."

3 SECTION 11. Section 57-12-16 NMSA 1978 (being Laws 1967,
4 Chapter 268, Section 13, as amended) is amended to read:

5 "57-12-16. ADVERTISING MEDIA EXCLUDED.--The Unfair
6 Practices Act does not apply to publishers, broadcasters,
7 printers or other persons engaged in the dissemination of
8 information or reproduction of printed or pictorial matters who
9 publish, broadcast or reproduce material without knowledge of
10 its deceptive or unconscionable character, unless the
11 publication, broadcast or reproduction violates the laws of New
12 Mexico or the United States."

13 SECTION 12. A new Section 57-12-3.2 NMSA 1978 is enacted
14 to read:

15 "57-12-3.2. [NEW MATERIAL] UNLAWFUL MANUFACTURE,
16 ADVERTISING, DISTRIBUTION OR SALE OF A FIREARM PROHIBITED.--It
17 shall be an unlawful practice within the meaning of the Unfair
18 Practices Act for any person to violate:

- 19 A. the provisions of Section 30-7-7 NMSA 1978; or
20 B. the laws of New Mexico or the United States
21 controlling the manufacture, advertising, distribution or sale
22 of firearms."