

LFC Requester:

Felix Chavez

### AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

#### SECTION I: GENERAL INFORMATION

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Date Prepared: 02/07/2025

Check all that apply:

Bill Number: HB285

Original  Correction   
Amendment  Substitute

Sponsor: Rep. Sarah Silva

Agency Name and Code Number: 305 – New Mexico Department of Justice

Short Title: USE OF CERTAIN DYNAMIC PRICING AS UNFAIR

Person Writing Analysis: AAG Jeff Dan Herrera  
Phone: 505-537-7676  
Email: legisfir@nmag.gov

#### SECTION II: FISCAL IMPACT

##### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis ( ) indicate expenditure decreases)

##### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis ( ) indicate revenue decreases)

##### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
 Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

*This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.*

**BILL SUMMARY**

Synopsis:

House Bill 285 (“HB285” or the “Bill”) creates one new section in the Unfair Practices Act, Chapter 57, Article 12 NMSA 1978 (the “UPA”). HB285 would prohibit as an unfair or deceptive trade practice certain forms of dynamic pricing in grocery or retail stores.

Subsection A of the Bill defines terms used in the new section. Most critically, the Bill defines “dynamic pricing” as a digital process that uses software to change the price of a good or service displayed on an electronic shelving label. The Bill also defines “electronic shelving label” and “store.”

Subsection B outlines the substantive prohibitions that the Bill would prohibit as unfair trade practices. The Subsection provides that using dynamic pricing to change prices for goods or services that experience a sudden increase in demand during holidays, weather events, natural disasters, supply chain disruptions or other events is an unfair trade practice. The Subsection also prohibits using dynamic pricing based on personal data or purchasing patterns, whether by facial recognition or other digital or electronic process.

Subsection C requires that any store using dynamic pricing display conspicuous signage inside the store to inform customers of the use of dynamic pricing, the factors the store uses in dynamic pricing, that dynamic pricing in violation of Subsection B is an unfair trade practice, that customers have a right to know how personal data is collected and used, and that a customer has the option to opt out of the collection of personal data or purchasing patterns.

**FISCAL IMPLICATIONS**

N/A.

**SIGNIFICANT ISSUES**

Public reports have suggested some companies are considering implementing dynamic pricing to increase profits based on times with higher demand. See, e.g., Retail Wire, *Wendy’s CEO Faced Backlash Over Dynamic Pricing Strategy*, <https://shorturl.at/gyBRM> (July 15, 2024). Ride-share apps such as Uber and Lyft already implement a comparable strategy. Section 2(B)(1) of the Bill prohibits dynamic pricing to change the price of a good or service sold by a store during “other

events that can cause a sudden increased demand for goods and services.” In the case of Wendy’s, the company reportedly considered utilizing dynamic pricing to increase prices for meals at lunchtime. While the rest of Section 2(B)(1) seems to suggest a prohibition against dynamic pricing in cases more akin to price gouging during natural disasters or supply chain disruptions, it is unclear if common, everyday occurrences such as significantly increased demand at a particular time of day would constitute “events that can cause a sudden increased demand for goods or services.” Legislators may consider revision to more explicitly identify the nature of events that fall within the scope of this prohibition.

## **PERFORMANCE IMPLICATIONS**

Investigating and enforcing the provisions of this legislation may require additional labor hours for attorneys, investigators, and paralegals within the Consumer Protection Division of the New Mexico Department of Justice (“NMDOJ”).

## **ADMINISTRATIVE IMPLICATIONS**

N/A

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

### Related

HB61, also amending the UPA, provides for an elevated civil monetary penalty in when unfair or deceptive trade practices or unconscionable trade practices arise out disasters or declared states of emergency. This increased fine would likely apply to some violations of HB285’s proposed prohibitions.

## **TECHNICAL ISSUES**

N/A

## **OTHER SUBSTANTIVE ISSUES**

N/A

## **ALTERNATIVES**

N/A

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

## **AMENDMENTS**

N/A