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## FISCAL IMPACT REPORT

**LAST UPDATED** \_\_\_\_\_  
**ORIGINAL DATE** 2/4/25

**SPONSOR** Chandler/Silva/Anyanonu

**BILL**  
**NUMBER** House Bill 61

**SHORT TITLE** Unfair Practices Act Changes

**ANALYST** Chavez

### REVENUE\* (dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
Fines and forfeitures	No fiscal impact	Indeterminate but minimal gain	Indeterminate but minimal gain	Indeterminate but minimal gain	Indeterminate but minimal gain	Recurring	General Fund

Parentheses ( ) indicate revenue decreases.

\*Amounts reflect most recent analysis of this legislation.

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

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>AOC</b>	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
<b>Courts</b>	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
<b>Total</b>	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 60

### Sources of Information

LFC Files

#### Agency Analysis Received From

Administrative Office of the Courts (AOC)

New Mexico Attorney General (NMAG)

Workers' Compensation Administration (WCA)

#### Agency Analysis was Solicited but Not Received From

Administrative Office of the District Attorneys (AODA)

Tax and Revenue Department (TRD)

## SUMMARY

### Synopsis of House Bill 61

House Bill 61 (HB61) amends Section 57-12-2 NMSA 1978, within the Unfair Practices Act, to

expand the definition of “trade” or “commerce.” HB61 removes financial instruments from the definition of “unconscionable trade practice” and adds the removed financial instruments to the definitions of “trade” or “commerce.” Also included in the definition of “trade” or “commerce” is every type of property, including tangible or intangible, real, or personal, or a mix. HB61 also removes financial instruments from the definition of “unfair or deceptive trade practice” and adds language regarding any unfair methods of competition or practices and acts that are unfair or deceptive in ordinary trade or commerce proceedings. HB61 replaces the financial instruments defined in the definition of “unconscionable trade practice” with “trade or commerce.” Also amended in the definition of “unconscionable trade practice” is adding gross disparity between value exchanged in a proceeding and not just value received, or price paid.

HB161 also amends the civil penalties section of the Unfair Practices Act, Section 57-12-11 NMSA 1978. HB161 raises the financial penalties for violations of the Unfair Practices Act, increasing the maximum civil penalty from \$5,000 to \$10 thousand per violation. Moreover, if a violation occurs during a declared state of emergency or disaster by federal, state or local officials, the penalty increases to a maximum of \$25 thousand per violation. The Attorney General is authorized to petition the court for these penalties and can also recover investigation and enforcement costs whenever a court imposes civil liability.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

## **FISCAL IMPLICATIONS**

The Administrative Office of the Courts (AOC) provides the following:

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the increase in the number of requests for injunction and actions brought pursuant to Section 57-12-10 NMSA 1978, any increase in the number of petitions for recovery of civil penalties by the AG under Section 57-12-11 NMSA, and any increase in the number of appeals from the granting of injunctions, awards of damages, and the imposition of civil fines. New laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase

## **SIGNIFICANT ISSUES**

The Administrative Office of the Courts (AOC) provides the following:

- 1) The expanded HB61 definition of “trade” or “commerce” and the linking of the definitions of “unfair or deceptive trade practice” and “unconscionable trade practice” to “trade or commerce” will allow for an increased number of requests for an injunction and actions seeking a private remedy under Section 57-12-10 NMSA 1978 and potentially more petitions from the AG for recovery of a civil penalty, under Section 57-12-11 NMSA 1978, on behalf of the state.
- 2) Increased penalties are a likely result in additional appeals from the imposition of civil penalties.
- 3) New Mexico does not have a specific statute that addresses price gouging, unlike Colorado, which prohibits charging excessive prices for food, building materials, fuel

and other necessities during a declared disaster (with a look-back period of immediately before the declaration), and imposes civil penalties of up to \$20 thousand per violation (or up to \$50 thousand if the violation affected an elderly consumer) and restitution for consumers. See Colorado Revised Statutes, Sections 6-1-730 and 6-1-112. See also [Price Gouging Laws by State - FindLaw](#) for a 2024 listing of state price gouging laws and penalties.

Under the UPA, however, it's illegal to take advantage of consumers to a grossly unfair degree, which may include price gouging. See Section 57-12-2(E)(2) defining “unconscionable trade practice” to mean an act or practice in connection with trade or commerce that results in a gross disparity between the value received by a person and the price paid or value exchanged. The HB 61 amendment to this statutory section adds the words “or value exchanged” to now include nonmonetary exchanges.

Following the South Fork and Salt fires in southern New Mexico, the [New Mexico Attorney General] received complaints of price gouging and sent cease and desist notices to several Roswell hotels, requesting immediate cessation from engaging in business practices that violate the NM UPA. Under the HB61 amendments to the UPA, the potential for the imposition of increased civil penalties being imposed for practices undertaken during and arising out of a disaster or state of emergency may help to deter price gouging and other unfair and unconscionable practices during these times.

## PERFORMANCE IMPLICATIONS

The courts participate in performance-based budgeting and the bill may have an impact on the following performance measures: cases disposed of as a percentage of cases filed (clearance rate), and percent change in case filings by case type.

## CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The New Mexico Attorney General (NMAG) provides the following:

Related: HB 60, proposing to create the Artificial Intelligence Act, states that any violation of the Artificial Intelligence Act constitutes an unfair practice pursuant to the UPA and may be enforced under that law

## TECHNICAL ISSUES

The New Mexico Attorney General (NMAG) provides the following:

In Section 2 of the Bill, it states, “In any action brought under Section [49-15-7 NMSA 1953] 57-12-8 NMSA 1978, [...]” However, neither NMOneSource, nor the hard copy statutory compilation contain the citation to 49-15-7 NMSA 1953. Both of those sources reflect 57-12-11 as reading “In any action brought under Section 57-12-8 NMSA 1978, [...]” The reference to 49-15-7 may be a technical drafting error that should be reviewed and potentially corrected.