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FISCAL IMPACT REPORT

LAST UPDATED _____
ORIGINAL DATE 2/17/25

SPONSOR Silva/Martinez, J.

BILL

SHORT TITLE Use of Certain Dynamic Pricing as Unfair **NUMBER** House Bill 285

ANALYST Chavez

REVENUE* (dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
Fines and Forfeitures	See fiscal implication.	See fiscal implication.	See fiscal implication.	See fiscal implication.	See fiscal implication.	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
NMAG	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 61

Sources of Information

LFC Files

Agency Analysis Received From
New Mexico Attorney General (NMAG)

Agency Analysis was Solicited but Not Received From
Economic Development Department (EDD)

Agency Declined to Respond
Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of House Bill 285

House Bill 285 (HB285) amends the Unfair Practices Act by adding a section to restrict the use of dynamic pricing in grocery and retail stores under certain conditions. The first section of HB285 defines:

- “Dynamic pricing” as a digital program that determines or changes the price of a

- good or service displayed on an electronic shelving label in a store;
- “Electronic shelving label” as a digital label or price tag that displays the price of a good or service; and
- “Store” as a grocery or retail store.

Section 2 describes the use of dynamic pricing to change the price of a good or service during events that could cause a sudden increase in demand for goods or services (HB285 specifically calls out holidays, weather events, natural disasters, and supply chain disruptions) as an unfair or deceptive trade practice. HB285 also defines the use of dynamic pricing changes the price of a good or service based on personal data or data collected on purchasing patterns as an unfair or deceptive trade practices.

Section 3 defines measures for grocery or retail stores to take if dynamic pricing is used to determine or change prices. If a grocery or retail store were to use dynamic pricing, they would have to have clear visible signage in their store that:

- Informs customers on the dynamic pricing process;
- Informs customers of factors used to change the price of goods and services;
- Informs customers that the use of dynamic pricing under certain circumstances is an unfair or deceptive trade practice;
- If personal or purchasing patterns are being collected by the store, that a customer has a right to know how their data is collected, with what entities the data is being shared with, and if and how that data is used to determine or change the price of the goods and services sold; and
- Informs customers that they have the option to opt out of personal data or purchasing patterns data collection.

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 Unfair Practices Act empowers the New Mexico Attorney General (NMAG) to enforce the act as well as allows NMAG to impose a civil fine not exceeding \$5 thousand per violation. To create an estimate of the possible revenue, the analysis will focus on if a percentage of grocery stores did not comply with HB285. There are 476 grocery stores in New Mexico;¹ if 25 percent, or 119 grocery stores, did not comply with the provisions of HB285, enforcement actions would generate around \$595 thousand in revenues. However this estimate is subject to:

- The ability of NMAG can prosecute entities subject to HB285;
- The additional number of retail stores in New Mexico that are also subject to HB285; and
- The number of grocery and retail stores that have the ability to implement dynamic pricing.

NMAG’s estimated additional operating budget impact reflects an indeterminate but minimal increase because NMAG as the agency already investigates significant price increases due surges

¹ [Grocery Stores in New Mexico](#)

in demand for goods or services. For example, NMAG issued cease-and-desist letters to various hotels whose prices changed in the aftermath of the South Fork and Salt Fires.² While the example is not related to grocery or retail stores, NMAG could feasibly transition to enforce the provisions of HB285.

SIGNIFICANT ISSUES

Dynamic pricing has faced significant scrutiny due to concerns over fairness, transparency, and consumer trust. In 2024, Wendy's announced plans to implement surge pricing, adjusting menu prices based on demand, which led to consumer backlash and forced the company to clarify its intentions.³ In the airline industry, U.S. senators questioned Frontier and Spirit Airlines in 2025 about potential manipulation of seat pricing, suggesting that personal customer information might be used to set variable fees, thereby undermining consumer trust.⁴ While these examples would not be directly affected by HB285, they show how the use of dynamic pricing can cause ethical considerations that could be addressed by the bill.

There are existing forms of dynamic pricing that are seen as more traditional but could fall under the regulations of HB285 even if the practice has long been accepted and seen as a benefit to consumers. These traditional dynamic pricing practices include practices like happy hour discounts or seasonal pricing for retail goods, holiday price specials, or back-to-school season where pricing changes to capitalize on peak demand.^{5,6} Grocery or retail stores engaging in these traditional pricing methods, using digital price programming, could be subject to HB285's signage regulations or the bill's prohibition on dynamic pricing.

HB285 does not provide provisions for offerings by grocery or retail stores that a consumer may opt in to, such as a rewards program, that could use personal information to change pricing. Grocery or retail stores could use data collected from an individual's purchase history to help design a reward structure that is more suitable to the needs of the consumer. If the rewards program clearly asks for consent and provides information on the use of the data, it could be seen as a benefit to the consenting consumer but would still be seen as an unfair or deceptive trade practice under HB285.

NMAG provides the following:

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").

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

NMAG provides the following with references to "UPA" referring to the Unfair Practices Act: House Bill 61, also amending the UPA, provides for an elevated civil monetary penalty in

² [Media Alert: The New Mexico Department of Justice Sends Cease and Desist Letters to Several Hotels for Alleged Price Gouging - New Mexico Department of Justice](#)

³ [Wendy's says it won't use surge pricing | CNN Business](#)

⁴ [Senators Question if Frontier, Spirit Airlines Are Manipulating Seat Pricing](#)

⁵ [From Happy Hour To Digital Markets: Making Dynamic Pricing Work](#)

⁶ [Dynamic Pricing: Comprehensive Analysis and Strategies](#)

when unfair or deceptive trade practices or unconscionable trade practices arise out of disasters or declared states of emergency. This increased fine would likely apply to some violations of HB285's proposed prohibitions.

OTHER SUBSTANTIVE ISSUES

NMAG provides the following:

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.

FC/hj