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**HOUSE BILL 104**

**45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001**

**INTRODUCED BY**

**Luciano "Lucky" Varela**

**AN ACT**

**RELATING TO TRADE PRACTICES; CLARIFYING WHEN SELLERS OF MOTOR  
VEHICLES ARE NOT LIABLE FOR FAILURE TO DISCLOSE VEHICLE  
DAMAGES.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. Section 57-12-6 NMSA 1978 (being Laws 1971,  
Chapter 274, Section 1, as amended) is amended to read:**

**"57-12-6. MISREPRESENTATION OF MOTOR VEHICLES--  
PENALTY. --**

**A. The willful misrepresentation of the age or  
condition of a motor vehicle by any person, including  
regrooving tires or performing chassis repair, without  
informing the purchaser of the vehicle that the regrooving or  
chassis repair has been performed, is an unlawful practice  
within the meaning of the Unfair Practices Act, unless the**

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1 alleged misrepresentation is based wholly on repair of damage,  
2 the disclosure of which was not required pursuant to  
3 Subsection C of this section. The failure to provide an  
4 affidavit pursuant to Subsection B of this section when there  
5 has been repair for which disclosure is required shall  
6 constitute prima facie evidence of willful misrepresentation.

7 B. Except as provided in Subsections C and D of  
8 this section, a seller of a motor vehicle shall furnish at the  
9 time of sale of a motor vehicle an affidavit that:

10 (1) describes the vehicle; and

11 (2) states to the best of the seller's  
12 knowledge whether there has been an alteration or chassis  
13 repair due to wreck damage.

14 C. No affidavit shall be required pursuant to this  
15 section if the flat rate manual cost of the alteration or  
16 chassis repair is less than six percent of the sales price of  
17 the vehicle.

18 D. In the case of a private-party sale of a  
19 vehicle, an affidavit shall be furnished only upon the request  
20 of the purchasing party.

21 E. Notwithstanding the provisions of Subsection D  
22 of Section 57-12-10 NMSA 1978, the award of three times actual  
23 damages as provided for in that section shall be in lieu of  
24 any award of punitive damages based only on those facts  
25 constituting the unfair or deceptive trade practice or

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1 unconscionable trade practice.

2 F. Except as provided in Subsection G of this  
3 section, the seller of a motor vehicle shall not be liable for  
4 failure to disclose damage to a vehicle if:

5 (1) the seller has obtained from the person  
6 from whom the vehicle was purchased a statement that the  
7 vehicle had not been damaged at the time of that sale;

8 (2) the seller does not have actual knowledge  
9 of the damage; and

10 (3) one or more of the following applies to  
11 the damage:

12 (a) the damage was to a frame that was  
13 replaced with a new frame;

14 (b) the damage was to the frame and an  
15 actual inspection did not reveal the damage; or

16 (c) the damage was to exterior metal,  
17 glass, rubber or plastic parts and all damaged parts have been  
18 replaced with new items or the parts have been repaired in a  
19 manner that was not revealed by actual inspection.

20 G. A purchaser of a vehicle on which there was  
21 damage required to be disclosed pursuant to Subsection B of  
22 this section but for which the seller is not liable pursuant  
23 to Subsection F of this section may demand that the seller of  
24 the vehicle rescind the transaction if the vehicle purchased  
25 can be delivered back to the seller in substantially the same

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1 condition as it was in when delivered to the purchaser. Upon  
2 a recision and redelivery pursuant to this subsection, the  
3 purchaser shall be entitled only to the return of any money  
4 paid for the vehicle, excluding interest, and the return of  
5 any vehicle trade-in or, if the vehicle trade-in cannot be  
6 returned for any reason, the value actually given for the  
7 trade-in, excluding any overallowance given for financing  
8 purposes.

9 [F-] H. Any person who violates this section is guilty  
10 of a misdemeanor. "