

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 360

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

AN ACT

RELATING TO UNFAIR TRADE PRACTICES; REQUIRING OPPORTUNITY FOR  
MEDIATION WITHIN SIXTY DAYS AFTER FILING AN ACTION FOR A  
PRIVATE REMEDY.

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

Section 1. Section 57-12-10 NMSA 1978 (being Laws 1967,  
Chapter 268, Section 8, as amended) is amended to read:

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

A. A person likely to be damaged by an unfair or  
deceptive trade practice or by an unconscionable trade practice  
of another may be granted an injunction against it under the  
principles of equity and on terms that the court considers  
reasonable. Proof of monetary damage, loss of profits or  
intent to deceive or take unfair advantage of any person is not  
required. Relief granted for the copying of an article shall

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1 be limited as to the prevention of confusion or  
2 misunderstanding as to source.

3 B. Any person who suffers any loss of money or  
4 property, real or personal, as a result of any employment by  
5 another person of a method, act or practice declared unlawful  
6 by the Unfair Practices Act may bring an action to recover  
7 actual damages or the sum of one hundred dollars (\$100),  
8 whichever is greater. Where the trier of fact finds that the  
9 party charged with an unfair or deceptive trade practice or an  
10 [~~unconscionable~~] unconscionable trade practice has willfully  
11 engaged in the trade practice, the court may award up to three  
12 times actual damages or three hundred dollars (\$300), whichever  
13 is greater, to the party complaining of the practice.

14 C. The court shall award [~~attorneys'~~] attorney fees  
15 and costs to the party complaining of an unfair or deceptive  
16 trade practice or unconscionable trade practice if [~~he~~] the  
17 party prevails. The court shall award [~~attorneys'~~] attorney  
18 fees and costs to the party charged with an unfair or deceptive  
19 trade practice or an unconscionable trade practice if it finds  
20 that the party complaining of such trade practice brought an  
21 action [~~which~~] that was groundless.

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

25 E. In any class action filed under this section,

1 the court may award damages to the named plaintiffs as provided  
2 in Subsection B of this section and may award members of the  
3 class such actual damages as were suffered by each member of  
4 the class as a result of the unlawful method, act or practice.

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

15 G. If the parties do not agree on a mutually  
16 acceptable mediator, the court shall appoint the mediator. If  
17 the early mediation pursuant to this section is entered into  
18 within sixty days following the appointment of the mediator,  
19 the parties suing on the basis of unfair, deceptive or  
20 unconscionable trade practices or acts under the Unfair  
21 Practices Act shall be required to pay no more than fifty  
22 dollars (\$50.00) toward the cost of the mediation and the other  
23 party shall pay the remainder of such cost, unless otherwise  
24 agreed by the parties. If a person is seeking injunctive  
25 relief in accordance with Subsection A of this section, the

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1 person may pursue the claim for injunctive relief without  
2 following the mediation requirements of this subsection and  
3 Subsection F of this section."

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