SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 118

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

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 [unconsionable] 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,

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the court may award damages to the named plaintiffs as provided

in Subsection B of this section and may award members of the

class such actual damages as were suffered by each member of

the class as a result of the unlawful method, act or practice.

F.   A party to a court action for a private remedy

pursuant to this section may request in writing during the

thirty-day period following service of the summons and

complaint on all parties named in the action that the parties

attempt to settle the claim in early mediation. If a request

for mediation is made, the parties shall choose a mutually

acceptable mediator and enter into mediation within sixty days

of the appointment of an acceptable mediator unless otherwise

agreed by the parties. A request for mediation may be

rescinded at any time if agreed to by all parties.

G.   If the parties do not agree on a mutually

acceptable mediator, the court shall appoint the mediator. If

the early mediation pursuant to this section is entered into

within sixty days following the appointment of the mediator,

the parties suing on the basis of unfair, deceptive or

unconscionable trade practices or acts under the Unfair

Practices Act shall be required to pay no more than fifty

dollars ($50.00) toward the cost of the mediation and the other

party shall pay the remainder of such cost, unless otherwise

agreed by the parties. If a person is seeking injunctive

relief in accordance with Subsection A of this section, the

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underscored material = new
[bracketed material] = delete

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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