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

B. Any person who suffers any loss of money or
property, real or personal, as a result of any employment by
another person of a method, act or practice declared unlawful
by the Unfair Practices Act may bring an action to recover
actual damages or the sum of one hundred dollars (\$100),
whichever is greater. Where the trier of fact finds that the
party charged with an unfair or deceptive trade practice or

1 an unconscionable trade practice has willfully engaged in the
2 trade practice, the court may award up to three times actual
3 damages or three hundred dollars (\$300), whichever is
4 greater, to the party complaining of the practice.

5 C. The court shall award attorney fees and costs
6 to the party complaining of an unfair or deceptive trade
7 practice or unconscionable trade practice if the party
8 prevails. The court shall award attorney fees and costs to
9 the party charged with an unfair or deceptive trade practice
10 or an unconscionable trade practice if it finds that the
11 party complaining of such trade practice brought an action
12 that was groundless.

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

16 E. In any class action filed under this section,
17 the court may award damages to the named plaintiffs as
18 provided in Subsection B of this section and may award
19 members of the class such actual damages as were suffered by
20 each member of the class as a result of the unlawful method,
21 act or practice.

22 F. A party to a court action for a private remedy
23 pursuant to this section may request in writing during the
24 thirty-day period following service of the summons and
25 complaint on all parties named in the action that the parties

1 attempt to settle the claim in early mediation. If a request
2 for mediation is made, the parties shall choose a mutually
3 acceptable mediator and enter into mediation within sixty
4 days of the appointment of an acceptable mediator unless
5 otherwise agreed by the parties. A request for mediation may
6 be rescinded at any time if agreed to by all parties.

7 G. If the parties do not agree on a mutually
8 acceptable mediator, the court shall appoint the mediator. If
9 the early mediation pursuant to this section is entered into
10 within sixty days following the appointment of the mediator,
11 the parties suing on the basis of unfair, deceptive or
12 unconscionable trade practices or acts under the Unfair
13 Practices Act shall be required to pay no more than fifty
14 dollars (\$50.00) toward the cost of the mediation and the
15 other party shall pay the remainder of such cost, unless
16 otherwise agreed by the parties. If a person is seeking
17 injunctive relief in accordance with Subsection A of this
18 section, the person may pursue the claim for injunctive relief
19 without following the mediation requirements of this
20 subsection and Subsection F of this section." _____

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