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FISCAL IMPACT REPORT

ORIGINAL DATE 2/19/07

SPONSOR Grubestic LAST UPDATED _____ HB _____

SHORT TITLE Lender use of Similar Names & Trademarks SB 930

ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

SUMMARY

Synopsis of Bill

Senate Bill 930 prohibits use of a similar trademark or name of a lender in a solicitation offering services or products without consent of the lender and shall not reference loan number, loan amount or other specific loan information that is publicly available in a solicitation offering services or products, unless the solicitation conspicuously states next to the trademark or name the following:

1. name, address and phone number of person making the solicitation;
2. the person soliciting is not affiliated with the lender;
3. the solicitation is unauthorized by the lender; and
4. the loan information referenced was not provided by the lender.

The above list would not apply to lender or affiliate of a lender with a current customer of the lender or with a person was a customer during the eighteen months immediately preceding the communication.

The bill further prohibits use of the name of a lender or name similar directed to consumers if that use could cause a reasonable person to be deceived as to:

1. the lender's sponsorship, affiliation, connection or association with the person using the name;

2. the lender's approval or endorsement of the person using the name or the person's services or products.

Finally, it prohibits any reference to an outstanding loan on the outside of an envelope, that is visible through the envelope window or that appears on a postcard unless consent of the lender is obtained.

A lender or owner of a trade name or mark may seek an injunction in a state district court against a person who violates the items noted above.

SIGNIFICANT ISSUES

The law of unfair competition is primarily comprised of torts that cause an economic injury to a business, through a deceptive or wrongful business practice. Unfair competition can be broken down into two broad categories. First, the term "unfair competition" is sometimes used to refer only to those torts that are meant to confuse consumers as to the source of the product. The other category, "unfair trade practices", comprises all other forms of unfair competition. The law of unfair competition is mainly governed by state common law. In the areas of trademarks, copyrights, and false advertising Federal law may apply. http://www.law.cornell.edu/wex/index.php/Unfair_competition

Chapter 57, Article 12 NMSA 1978 Whenever the attorney general has reasonable belief that any person is using, has used or is about to use any method, act or practice which is declared by the Unfair Practices Act [Chapter 57, Article 12 NMSA 1978] to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the state alleging violations of the Unfair Practices Act. The action may be brought in the district court of the county in which the person resides or has his principal place of business or in the district court in any county in which the person is using, has used or is about to use the practice which has been alleged to be unlawful under the Unfair Practices Act. The attorney general acting on behalf of the state of New Mexico shall not be required to post bond when seeking a temporary or permanent injunction in such action.

In any action filed pursuant to the Unfair Practices Act, including an action with respect to unimproved real property, the attorney general may petition the district court for temporary or permanent injunctive relief and restitution.

ADMINISTRATIVE IMPLICATIONS

LFC staff indicates that it may increase court caseload.

POSSIBLE QUESTIONS

How will consumers be educated of the difference between the authentic trademark/name vs. the deceptive trademark/name?

EO/mt