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SENATE BILL 582

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Phil A. Griego

AN ACT

RELATING TO BUSINESS; ENACTING THE LOCAL HISPANO ARTS AND CRAFTS SALES ACT; PROVIDING REQUIREMENTS FOR THE LABELING OF ITEMS AS AUTHENTIC LOCAL HISPANO ARTS AND CRAFTS; PROVIDING PENALTIES.

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

Section 1. SHORT TITLE.--This act may be cited as the "Local Hispano Arts and Crafts Sales Act".

Section 2. DEFINITIONS.--As used in the Local Hispano Arts and Crafts Sales Act:

A. "authentic local Hispano arts and crafts" means any products, including tinwork, furniture, straw applique and woven goods, that are:

(1) made from materials harvested or produced in New Mexico;

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1 (2) local Hispano handmade; and

2 (3) not made by machine;

3 B. "local Hispano" means a person of Spanish
4 descent who has documentation demonstrating that:

5 (1) the person resides in New Mexico;

6 (2) the person's family has resided in New
7 Mexico for four generations; and

8 (3) at least one of the person's parents has a
9 Spanish surname;

10 C. "local Hispano crafted" means any product that
11 is made by a local Hispano but is not entirely local Hispano
12 handmade or is at least in part made by machine, including
13 local Hispano-assembled and local Hispano-decorated products
14 and other products consistent with this definition and approved
15 by rules adopted under the Local Hispano Arts and Crafts Sales
16 Act;

17 D. "local Hispano handmade" means any product in
18 which the entire shaping and forming of the product from raw
19 materials and its finishing and decoration are accomplished by
20 local Hispano hand labor and manually controlled methods that
21 permit the maker to control and vary the construction, shape,
22 design or finish of each part of each individual product, but
23 does not exclude the use of hand tools and equipment for
24 buffing, polishing, grinding, drilling, sawing or sewing and
25 other processes approved by rules adopted under the Local

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1 Hispano Arts and Crafts Sales Act; and

2 E. "made by machine" means the producing or
3 reproducing of a product in mass production by mechanically
4 stamping, blanking, weaving or offset printing.

5 Section 3. PROHIBITIONS ON REPRESENTATION OF LOCAL
6 HISPANO-MADE PRODUCTS AS GENUINE.--It is unlawful to barter,
7 trade, sell or offer for sale or trade any product represented
8 as produced by a local Hispano unless the product is produced,
9 designed or created by the labor or workmanship of a local
10 Hispano.

11 Section 4. INQUIRY AS TO PRODUCER--DUTY OF INQUIRY--
12 ELECTION TO LABEL AUTHENTIC LOCAL HISPANO ARTS AND CRAFTS.--

13 A. It is the duty of every person selling or
14 offering for sale a product that is represented to be authentic
15 local Hispano arts and crafts to make due inquiry of the
16 person's suppliers concerning the true nature of the materials,
17 product design and process of manufacture to determine whether
18 the product may be lawfully represented as authentic local
19 Hispano arts and crafts.

20 B. Each person may elect to label or otherwise
21 clearly and conspicuously disclose as authentic local Hispano
22 arts and crafts all articles that are authentic local Hispano
23 arts and crafts in accordance with the Local Hispano Arts and
24 Crafts Sales Act and rules adopted pursuant to that act.

25 C. Rules adopted under the Local Hispano Arts and

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1 Crafts Sales Act may specify designations other than "authentic
2 local Hispano arts and crafts", including a designation of
3 "local Hispano crafted", for authorized labeling as local
4 Hispano arts and crafts.

5 Section 5. UNLAWFUL ACTS.--It is unlawful for any person
6 to:

7 A. sell or offer for sale any products represented
8 to be local Hispano handmade or authentic local Hispano arts
9 and crafts unless such products are in fact local Hispano
10 handmade or authentic local Hispano arts and crafts;

11 B. sell or offer for sale any products represented
12 to be local Hispano crafted unless such products are in fact
13 local Hispano crafted;

14 C. represent that any local Hispano arts and crafts
15 product is made of a material unless it is made of that
16 material;

17 D. solicit or buy for resale as authentic local
18 Hispano arts and crafts any products that are known in fact not
19 to be authentic; or

20 E. prepare, disseminate or otherwise engage in any
21 unfair or deceptive trade practice, including any false,
22 misleading or deceptive advertising, or any unconscionable
23 trade practice, regarding local Hispano arts and crafts.

24 Section 6. ENFORCEMENT BY ATTORNEY GENERAL OR DISTRICT
25 ATTORNEY.--The attorney general or a district attorney with

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1 jurisdiction over a matter shall enforce the provisions of the
2 Local Hispano Arts and Crafts Sales Act. Either the attorney
3 general or a district attorney with jurisdiction over a matter
4 may take action to enforce the provisions of the Local Hispano
5 Arts and Crafts Sales Act.

6 Section 7. VIOLATION OF ACT--PENALTIES.--

7 A. In an action brought by the attorney general or
8 a district attorney for a violation under the provisions of the
9 Local Hispano Arts and Crafts Sales Act, the district court may
10 order temporary or permanent injunctive relief. The district
11 court shall order restitution and such other relief as may be
12 necessary to redress injury to any person resulting from the
13 violation.

14 B. In any action brought under the Local Hispano
15 Arts and Crafts Sales Act, if the court finds that a person is
16 willfully using or has willfully used a method, act or practice
17 declared unlawful by the Local Hispano Arts and Crafts Sales
18 Act, the attorney general or district attorney, upon petition
19 to the court, may recover, on behalf of the state, a civil
20 penalty not to exceed five hundred dollars (\$500) per
21 violation.

22 C. Any person willfully and knowingly violating the
23 provisions of the Local Hispano Arts and Crafts Sales Act is
24 guilty of a petty misdemeanor when the violation involves
25 property valued at less than two thousand five hundred dollars

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1 (\$2,500) and shall be punished by a fine of not less than one
2 hundred dollars (\$100) per violation per day, up to a maximum
3 fine of five hundred dollars (\$500) or imprisonment for a
4 definite term not to exceed six months, or both.

5 D. Any person willfully and knowingly violating the
6 provisions of the Local Hispano Arts and Crafts Sales Act is
7 guilty of a misdemeanor when the violation involves property
8 valued at or in excess of two thousand five hundred dollars
9 (\$2,500) and less than twenty thousand dollars (\$20,000) and
10 shall be punished by a fine of not less than one hundred
11 dollars (\$100) per violation per day, up to a maximum fine of
12 one thousand dollars (\$1,000) or by imprisonment for a definite
13 term not to exceed one year, or both.

14 E. Any person willfully and knowingly violating the
15 provisions of the Local Hispano Arts and Crafts Sales Act is
16 guilty of a fourth degree felony when the violation involves
17 property valued at or in excess of twenty thousand dollars
18 (\$20,000) and shall be punished by a fine of not less than one
19 hundred dollars (\$100) per violation per day, up to a maximum
20 fine of five thousand dollars (\$5,000) or by imprisonment for a
21 definite term not to exceed eighteen months, or both.

22 Section 8. PRIVATE RIGHT OF ACTION--DAMAGES.--Any person
23 who suffers financial injury or damages by reason of any
24 conduct declared to be in violation of the provisions of the
25 Local Hispano Arts and Crafts Sales Act may sue in district

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1 court. Upon a showing that the Local Hispano Arts and Crafts
2 Sales Act is being violated, the court may award damages and
3 order injunctive relief and shall award the cost of the suit,
4 including reasonable attorney fees. If the court finds that
5 the party charged with violating the Local Hispano Arts and
6 Crafts Sales Act has willfully violated that act, the court may
7 award treble damages to the party complaining of the violation.

8 Section 9. ADMINISTRATIVE RULES.--The attorney general is
9 authorized to promulgate necessary rules, pursuant to the
10 Administrative Procedures Act, to further the purpose and
11 implement the provisions of the Local Hispano Arts and Crafts
12 Sales Act.