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FISCAL IMPACT REPORT

ORIGINAL DATE 2-27-09
 SPONSOR Rehm LAST UPDATED 3-15-09 HB 776/aHAPAC
 SHORT TITLE Certain Contract Renewals as Unfair Practice SB _____
 ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Unknown	Unknown	Unknown	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of HAPAC Bill

The House Consumer and Public Affairs Committee amendment to House Bill 776 specifies that a contract to a consumer for or on the consumer's residential property can be renewed for a term no greater than a month. It inserts an new subsection that states that nothing in this new section shall prohibit payment in advance of services to be rendered.

Synopsis of Original Bill

House Bill 776 enacts a new section of the Unfair Practices Act, Section 57-12-1 et. seq. NMSA 1978, to prohibit automatic renewals of contracts for residential consumer services for a term greater than one month. A violation constitutes an unfair or deceptive trade practice under the Act.

FISCAL IMPLICATIONS

Since enforcement of this action would be pursuant to the New Mexico Unfair Trade Practices Act, any violation would be a civil matter and not a criminal matter, explains the Attorney General's Office. The per se nature of the violation makes it an easier action to pursue. However, the Attorney General's office would be charged with enforcing this act, which would further add to the duties of the Attorney General's office without any additional personnel or resources.

SIGNIFICANT ISSUES

The NM Attorney General has just proposed regulations which address the issue of automatic renewal of contacts. The Rule was published on Dec. 1, 2008, a hearing was held on Jan. 13, 2009 and the final report from the hearing officer on the Rule should be finalized shortly. The regulation provides more disclosure requirements as well as additional consumer protections, than the bill as proposed. This bill would not invalidate the regulations as it stands.

PERFORMANCE IMPLICATIONS

According to AOC HB776 provides an additional act constituting an unfair or deceptive trade practice under the Unfair Practices Act. The application of the following provisions of that Act may have an impact upon the courts and court resources:

- The AG, upon reasonable belief that a person is using, has used or is about to use any method, act or practice that is unlawful under the Act, may either bring an action in district court in the name of the state, pursuant to Section 57-12-8 NMSA 1978, or accept written assurance of discontinuance of any practice in violation of the Act from the person who has engaged in the unlawful practice, and may require restitution to be made, pursuant to Section 57-12-9 NMSA 1978.
- The Act also offers private remedies under Section 57-12-10 NMSA 1978, including injunctive relief or an action to recover actual damages.
- Section 57-12-11 NMSA 1978 provides that in any action brought under Section 57-12-8 NMSA 1978, when the court finds willful use of an unlawful method, act or practice, the AG may petition the court and may recover a civil penalty on behalf of the state.
- Section 57-12-12 NMSA 1978 permits the AG to serve a civil investigative demand requiring a person to produce documentary material and permit inspection and copying of the material believed to be relevant to the subject matter of an investigation of a probable violation of the Act. Under Section 57-12-12 the person to whom the demand is addressed may file a petition in the district court to set aside the demand, modify the demand or extend the return date. The AG may invoke the aid of the court in the enforcement of the demand.