

1 SENATE BILL 92

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Michael Padilla

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10 AN ACT

11 RELATING TO TRADE PRACTICES; PROHIBITING DIFFERENTIAL PRICING
12 OR SERVICE BASED ON THE BUYER'S GENDER.

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

15 SECTION 1. Section 57-12-2 NMSA 1978 (being Laws 1967,
16 Chapter 268, Section 2, as amended) is amended to read:

17 "57-12-2. DEFINITIONS.--As used in the Unfair Practices
18 Act:

19 A. "person" means, where applicable, natural
20 persons, corporations, trusts, partnerships, associations,
21 cooperative associations, clubs, companies, firms, joint
22 ventures or syndicates;

23 B. "seller-initiated telephone sale" means a sale,
24 lease or rental of goods or services in which the seller or the
25 seller's representative solicits the sale by telephoning the

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1 prospective purchaser and in which the sale is consummated
2 entirely by telephone or mail, but does not include a
3 transaction:

4 (1) in which a person solicits a sale from a
5 prospective purchaser who has previously made an authorized
6 purchase from the seller's business; or

7 (2) in which the purchaser is accorded the
8 right of rescission by the provisions of the federal Consumer
9 Credit Protection Act, 15 U.S.C. 1635 or regulations issued
10 pursuant thereto;

11 C. "trade" or "commerce" includes the advertising,
12 offering for sale or distribution of any services and any
13 property and any other article, commodity or thing of value,
14 including any trade or commerce directly or indirectly
15 affecting the people of this state;

16 D. "unfair or deceptive trade practice" means an
17 act specifically declared unlawful pursuant to the Unfair
18 Practices Act, a false or misleading oral or written statement,
19 visual description or other representation of any kind
20 knowingly made in connection with the sale, lease, rental or
21 loan of goods or services or in the extension of credit or in
22 the collection of debts by a person in the regular course of
23 the person's trade or commerce, that may, tends to or does
24 deceive or mislead any person and includes:

25 (1) representing goods or services as those of

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1 another when the goods or services are not the goods or
2 services of another;

3 (2) causing confusion or misunderstanding as
4 to the source, sponsorship, approval or certification of goods
5 or services;

6 (3) causing confusion or misunderstanding as
7 to affiliation, connection or association with or certification
8 by another;

9 (4) using deceptive representations or
10 designations of geographic origin in connection with goods or
11 services;

12 (5) representing that goods or services have
13 sponsorship, approval, characteristics, ingredients, uses,
14 benefits or quantities that they do not have or that a person
15 has a sponsorship, approval, status, affiliation or connection
16 that the person does not have;

17 (6) representing that goods are original or
18 new if they are deteriorated, altered, reconditioned,
19 reclaimed, used or secondhand;

20 (7) representing that goods or services are of
21 a particular standard, quality or grade or that goods are of a
22 particular style or model if they are of another;

23 (8) disparaging the goods, services or
24 business of another by false or misleading representations;

25 (9) offering goods or services with intent not

1 to supply them in the quantity requested by the prospective
2 buyer to the extent of the stock available, unless the
3 purchaser is purchasing for resale;

4 (10) offering goods or services with intent
5 not to supply reasonable expectable public demand;

6 (11) making false or misleading statements of
7 fact concerning the price of goods or services, the prices of
8 competitors or one's own price at a past or future time or the
9 reasons for, existence of or amounts of price reduction;

10 (12) making false or misleading statements of
11 fact for the purpose of obtaining appointments for the
12 demonstration, exhibition or other sales presentation of goods
13 or services;

14 (13) packaging goods for sale in a container
15 that bears a trademark or trade name identified with goods
16 formerly packaged in the container, without authorization,
17 unless the container is labeled or marked to disclaim a
18 connection between the contents and the trademark or trade
19 name;

20 (14) using exaggeration, innuendo or ambiguity
21 as to a material fact or failing to state a material fact if
22 doing so deceives or tends to deceive;

23 (15) stating that a transaction involves
24 rights, remedies or obligations that it does not involve;

25 (16) stating that services, replacements or

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1 repairs are needed if they are not needed;

2 (17) failing to deliver the quality or
3 quantity of goods or services contracted for; ~~[or]~~

4 (18) violating the Tobacco Escrow Fund Act;
5 ~~[and]~~ or

6 (19) offering or providing differential
7 pricing or service based on the buyer's gender; and

8 E. "unconscionable trade practice" means an act or
9 practice in connection with the sale, lease, rental or loan, or
10 in connection with the offering for sale, lease, rental or
11 loan, of any goods or services, including services provided by
12 licensed professionals, or in the extension of credit or in the
13 collection of debts that to a person's detriment:

14 (1) takes advantage of the lack of knowledge,
15 ability, experience or capacity of a person to a grossly unfair
16 degree; or

17 (2) results in a gross disparity between the
18 value received by a person and the price paid."