

LFC Requester:

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION
WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO
AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov
(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 1/19/25 *Check all that apply:*
Bill Number: HB 61 Original Correction
 Amendment Substitute

Sponsor: Rep. Christine Chandler **Agency Name and Code:** AOC
Short Title: Unfair Practices Act Changes **Number:** 218
Title: _____ **Person Writing:** Kathleen Sabo
Phone: 505-470-3214 **Email:** aoccaj@nmcourts.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
None	None	Rec.	General

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
Unknown	Unknown	Unknown	Rec.	General

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Unknown	Unknown	Unknown	Unknown	Rec.	General

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: None.

Duplicates/Relates to Appropriation in the General Appropriation Act: None.

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 61 amends Section 57-12-2 NMSA 1978, within the Unfair Practices Act (UPA), to define “trade” or “commerce” to include the following:

C. ...the advertising, the sale, lease, rent or loan, the offering for sale, lease, rent or loan, the extension of credit or collection of debts or the distribution of any services, including services provided by licensed professionals, any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value, including any trade or commerce directly or indirectly affecting the people of this state.

Additionally, the law amends Subsection D to define “unfair or deceptive trade practice” to include “other unfair methods of competition or unfair or deceptive acts or practices in the regular course of trade or commerce”.

HB 61 also amends Subsection E to define “unconscionable trade practice” to mean an act or practice in connection with trade or commerce that affects a person to their detriment, as specifically described, including an act or practice that results in a gross disparity between the value received by a person and the price paid or value exchanged.

HB 61 amends Section 57-12-11 NMSA 1978, also within the UPA, to increase the civil penalty per violation when a court finds that a person is willfully using or has willfully used a method, act or practice declared unlawful by the UPA, from \$5,000 to \$10,000 per violation. The HB 61 amendment also permits the Attorney General (AG), upon petition to the court, to recover on behalf of the state an additional amount of up to \$25,000 per violation if an unfair or deceptive trade practice or unconscionable trade practice arises out of a disaster or state of emergency as declared by a federal, state or local official. The law permits the AG to recover the costs of investigation and enforcement whenever a court imposes a civil liability.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the increase in the number of requests for injunction and actions brought pursuant to Section 57-12-10 NMSA 1978, any increase in the number of petitions for recovery of civil penalties by the AG under Section 57-12-11 NMSA, and any increase in the number of appeals from the granting of injunctions, awards of damages, and the imposition of civil fines. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

1) The expanded HB 61 definition of “trade” or “commerce” and the linking of the definitions of “unfair or deceptive trade practice” and “unconscionable trade practice” to “trade or commerce” will allow for an increased number of requests for an injunction and actions seeking a private remedy under Section 57-12-10 NMSA 1978 and potentially more petitions from the AG for

recovery of a civil penalty, under Section 57-12-11 NMSA 1978, on behalf of the State.

2) Increased penalties are likely result in additional appeals from the imposition of civil penalties.

2) NM does not have a specific statute that addresses price gouging, unlike Colorado, which prohibits charging excessive prices for food, building materials, fuel and other necessities during a declared disaster (with a look-back period of immediately before the declaration), and imposes civil penalties of up to \$20K per violation (or up to \$50K if the violation affected an elderly consumer) and restitution for consumers. See Colorado Revised Statutes, Sections 6-1-730 and 6-1-112. See also <https://www.findlaw.com/consumer/consumer-transactions/price-gouging-laws-by-state.html> for a 2024 listing of state price gouging laws and penalties.

Under the UPA, however, it's illegal to take advantage of consumers to a grossly unfair degree, which may include price gouging. See Section 57-12-2(E)(2) defining “unconscionable trade practice” to mean an act or practice in connection with trade or commerce that results in a gross disparity between the value received by a person and the price paid or value exchanged. The HB 61 amendment to this statutory section adds the words “or value exchanged” to now include non-monetary exchanges.

Following the South Fork and Salt fires in southern NM, the NM Dept. of Justice received complaints of price gouging and sent cease and desist notices to several Roswell hotels, requesting immediate cessation from engaging in business practices that violate the NM UPA. Under the HB 61 amendments to the UPA, the potential for the imposition of increased civil penalties being imposed for practices undertaken during and arising out of a disaster or state of emergency may help to deter price gouging and other unfair and unconscionable practices during these times.

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

See “Fiscal Implications,” above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS

