

LFC Requester:

Emily Hilla

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

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

Date Prepared: 02/21/2025

Check all that apply:

Bill Number: SB439

Original Correction
Amendment Substitute

Sponsor: Sen. Joshua A. Sanchez

Agency Name and Code Number: 305 – New Mexico Department of Justice

Short Title: DECEPTIVE FRANCHISE PRACTICES ACT

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(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						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: Defines “Franchise” differently than the Franchise Termination Act, Section 57-23-1 to -8 NMSA 1978.

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis: SB439 creates a “Deceptive Franchise Practices Act,” forbidding certain provisions or practices related to franchise agreements. The bill forbids franchisors from coercing franchisees through unfair practices and allows for franchisees to bring actions to recover damages for violations. SB439’s language is closely related to Indiana’s existing Deceptive Franchise Practices Act, IN Code Section 23–2–2.7-1 to -7, which as passed in 1976.

Section 1 defines the act as the “Deceptive Franchise Practices Act.

Section 2 contains definitions. Section 2 defines "franchise" as an agreement where a manufacturer or distributor grants a license to use a trade name or related trademark in exchange for community involvement in the marketing of products or services. This is a different definition than used in the Franchise Termination Act, which defines “franchise” as “a written or oral contract or agreement between a supplier and a dealer, that may be called a "dealership" or by any other name, by which the dealer is authorized to engage in the business of the retail sale of inventory according to the methods and procedures prescribed by the supplier” Section 57-23-2(D) NMSA 1978.

Section 3 declares certain agreements and provisions related to “franchise” agreements unlawful. These provisions include: (1) requiring exclusive purchasing from franchisor-designated sources when alternatives exist; (2) franchisors competing unfairly with franchisees in their territory; (3) unilateral modification of the franchise agreement by the franchisor; (4) franchisor obtaining benefits from third parties without passing them on to the franchisee; (5) requiring the franchisee to release claims or refer disputes to non-independent arbitrators; (6) price increases without proper notice; (7) unfair termination or non-renewal of the franchise without good cause; (8) unreasonably long non-compete clauses; (9) unclear or excessive financial requirements for participation in promotional activities.

Section 4 declares certain unfair acts and practices to be unlawful. These acts and practices include: (1) coercing franchisees into unnecessary purchases or agreements; (2) failing to deliver goods or services as agreed; (3) preventing the spouse, heirs, or estate of a deceased franchisee from continuing ownership; (4) competing unfairly with franchisees within their exclusive territory; (5) discriminating among franchisees or failing to adhere to the franchise agreement;

(6) taking benefits from transactions with third parties without passing them on to the franchisee; (7) raising prices of ordered goods without proper notice; (8) using deceptive advertising or practices.

Section 5 requires that, unless otherwise provided, any termination of a franchise or election not to renew shall be made on at least ninety (90) days notice.

Section 6 provides for recovery of damages by a franchisee who is a party to a franchise agreement that contains any of the unlawful provisions enumerated in the Act or who is injured by an act or practice deemed unlawful in Section 3.

Section 7 details a statute of limitations. No action may be brought for a violation more than five (5) years after the violation.

Section 8 states that the provisions of SB439 apply only to agreements entered into or renewed, or an act or practice occurring after June 30, 2025.

Section 9 sets the effective date of this act as July 1, 2025.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

N/A

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to franchises envisioned in the Franchise Termination Act, Section 57-23-1 to -8 NMSA 1978.

TECHNICAL ISSUES

SB439 does not provide information on where (what chapter or article) the proposed text should be added. Language could be added to clarify.

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS