

HOUSE COMMERCE AND ECONOMIC DEVELOPMENT
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 61

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

AN ACT

RELATING TO CONSUMER PROTECTION; AMENDING DEFINITIONS IN THE
UNFAIR PRACTICES ACT; INCREASING THE CIVIL PENALTY FOR
VIOLATIONS OF THAT ACT.

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

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

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

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

B. "seller-initiated telephone sale" means a sale,
lease or rental of goods or services in which the seller or the

1 seller's representative solicits the sale by telephoning the
2 prospective purchaser and in which the sale is consummated
3 entirely by telephone or mail, but does not include a
4 transaction:

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

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

12 C. "trade" or "commerce" includes the advertising,
13 the sale, lease, rental or loan, the offering for sale, lease,
14 rental or loan or the distribution of any goods or services,
15 [~~and~~] of any property, tangible or intangible, real, personal
16 or mixed, and of any other article, commodity or thing of value
17 and the extension of credit or collection of debts, including
18 any trade or commerce directly or indirectly affecting the
19 people of this state;

20 D. "unfair or deceptive trade practice" means an
21 act specifically declared unlawful pursuant to the Unfair
22 Practices Act, a false or misleading oral or written statement,
23 visual description or other representation of any kind
24 knowingly made [~~in connection with the sale, lease, rental or~~
25 ~~loan of goods or services or in the extension of credit or in~~

1 ~~the collection of debts]~~ by a person in connection with and in
 2 the regular course of the person's trade or commerce, that may,
 3 tends to or does deceive or mislead any person or unfair
 4 methods of competition in connection with and in the regular
 5 course of trade or commerce and includes:

6 (1) representing goods or services as those of
 7 another when the goods or services are not the goods or
 8 services of another;

9 (2) causing confusion or misunderstanding as
 10 to the source, sponsorship, approval or certification of goods
 11 or services;

12 (3) causing confusion or misunderstanding as
 13 to affiliation, connection or association with or certification
 14 by another;

15 (4) using deceptive representations or
 16 designations of geographic origin in connection with goods or
 17 services;

18 (5) representing that goods or services have
 19 sponsorship, approval, characteristics, ingredients, uses,
 20 benefits or quantities that they do not have or that a person
 21 has a sponsorship, approval, status, affiliation or connection
 22 that the person does not have;

23 (6) representing that goods are original or
 24 new if they are deteriorated, altered, reconditioned,
 25 reclaimed, used or secondhand;

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underscored material = new
 [bracketed material] = delete

1 (7) representing that goods or services are of
2 a particular standard, quality or grade or that goods are of a
3 particular style or model if they are of another;

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

6 (9) offering goods or services with intent not
7 to supply them in the quantity requested by the prospective
8 buyer to the extent of the stock available, unless the
9 purchaser is purchasing for resale;

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

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

16 (12) making false or misleading statements of
17 fact for the purpose of obtaining appointments for the
18 demonstration, exhibition or other sales presentation of goods
19 or services;

20 (13) packaging goods for sale in a container
21 that bears a trademark or trade name identified with goods
22 formerly packaged in the container, without authorization,
23 unless the container is labeled or marked to disclaim a
24 connection between the contents and the trademark or trade
25 name;

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1 (14) using exaggeration, innuendo or ambiguity
 2 as to a material fact or failing to state a material fact if
 3 doing so deceives or tends to deceive;

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

6 (16) stating that services, replacements or
 7 repairs are needed if they are not needed;

8 (17) failing to deliver the quality or
 9 quantity of goods or services contracted for;

10 (18) violating the Tobacco Escrow Fund Act; or

11 (19) offering or providing unposted or
 12 unadvertised pricing or service based on the buyer's gender or
 13 perceived gender identity; provided, however, that this
 14 provision does not apply to persons regulated by the office of
 15 superintendent of insurance pursuant to the New Mexico
 16 Insurance Code; and

17 E. "unconscionable trade practice" means an act or
 18 practice in connection with [~~the sale, lease, rental or loan,~~
 19 ~~or in connection with the offering for sale, lease, rental or~~
 20 ~~loan, of any goods or services]~~ trade or commerce, including
 21 services provided by licensed professionals, [~~or in the~~
 22 ~~extension of credit or in the collection of debts]~~ that to a
 23 person's detriment:

24 (1) takes advantage of the lack of knowledge,
 25 ability, experience or capacity of a person to a grossly unfair

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1 degree; or

2 (2) results in a gross disparity between the
3 value received by a person and the price paid or value
4 exchanged."

5 SECTION 2. Section 57-12-11 NMSA 1978 (being Laws 1970,
6 Chapter 38, Section 2) is amended to read:

7 "57-12-11. CIVIL PENALTY.--In any action brought under
8 Section [~~49-15-7 NMSA 1953~~] 57-12-8 NMSA 1978, if the court
9 finds that a person is willfully using or has willfully used a
10 method, act or practice declared unlawful by the Unfair
11 Practices Act, the attorney general, upon petition to the
12 court, may recover on behalf of the state [~~of New Mexico~~] a
13 civil penalty [~~of~~] not exceeding [five thousand dollars
14 (~~\$5,000~~) ten thousand dollars (\$10,000) per violation and an
15 additional amount not exceeding twenty-five thousand dollars
16 (\$25,000) per violation if an unfair or deceptive trade
17 practice or unconscionable trade practice arises out of a
18 disaster or state of emergency as declared by a federal, state
19 or local official. The attorney general may also recover
20 reasonable attorney fees and the costs of investigation and
21 enforcement whenever a court imposes a civil liability."

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