

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 267

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

AN ACT

RELATING TO HOUSING; REQUIRING OWNERS TO PROVIDE NOTICE TO
DWELLING UNIT APPLICANTS OF FEES RELATED TO APPLICANT
SCREENING; REQUIRING OWNERS TO RETURN AN APPLICANT SCREENING
FEE IN CERTAIN CIRCUMSTANCES; REQUIRING OWNERS TO PROVIDE
NOTICE OF FEE INCREASES; REDUCING THE LIMIT ON LATE FEES;
EXPANDING PRIVATE REMEDIES; DECLARING AN UNFAIR OR DECEPTIVE
TRADE PRACTICE.

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

SECTION 1. Section 47-8-3 NMSA 1978 (being Laws 1975,
Chapter 38, Section 3, as amended) is amended to read:

"47-8-3. DEFINITIONS.--As used in the Uniform Owner-
Resident Relations Act:

A. "abandonment" means absence of the resident from
the dwelling, without notice to the owner, in excess of seven

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underscored material = new
[bracketed material] = delete

1 continuous days; providing such absence occurs only after rent
2 for the dwelling unit is delinquent;

3 B. "action" includes recoupment, counterclaim, set-
4 off, suit in equity and any other proceeding in which rights
5 are determined, including an action for possession;

6 C. "amenity" means a facility appurtenance or area
7 supplied by the owner and the absence of which would not
8 materially affect the health and safety of the resident or the
9 habitability of the dwelling unit;

10 D. "applicant" means a person who submits an
11 application to rent a dwelling unit to the owner or who agrees
12 to act as a guarantor or cosigner on a rental agreement;

13 [~~D.~~] E. "codes" includes building codes, housing
14 codes, health and safety codes, sanitation codes and any law,
15 ordinance or governmental regulation concerning fitness for
16 habitation or the construction, maintenance, operation,
17 occupancy or use of a dwelling unit;

18 [~~E.~~] F. "deposit" means an amount of currency or
19 instrument delivered to the owner by the resident as a pledge
20 to abide by terms and conditions of the rental agreement;

21 [~~F.~~] G. "dwelling unit" means a structure, mobile
22 home or the part of a structure, including a hotel or motel,
23 that is used as a home, residence or sleeping place by one
24 person who maintains a household or by two or more persons who
25 maintain a common household and includes a parcel of land

1 leased by its owner for use as a site for the parking of a
2 mobile home;

3 ~~[G.]~~ H. "eviction" means any action initiated by
4 the owner to regain possession of a dwelling unit and use of
5 the premises ~~[under]~~ pursuant to the terms of the Uniform
6 Owner-Resident Relations Act;

7 ~~[H.]~~ I. "fair rental value" is that value that is
8 comparable to the value established in the market place;

9 ~~[I.]~~ J. "good faith" means honesty in fact in the
10 conduct of the transaction concerned as evidenced by all
11 surrounding circumstances;

12 ~~[J.]~~ K. "normal wear and tear" means deterioration
13 that occurs based upon the use for which the rental unit is
14 intended, without negligence, carelessness, accident, abuse or
15 intentional damage of the premises, equipment or chattels of
16 the owner by the residents or by any other person in the
17 dwelling unit or on the premises with the resident's consent;
18 however, uncleanliness does not constitute normal wear and
19 tear;

20 ~~[K.]~~ L. "organization" includes a corporation,
21 government, governmental subdivision or agency thereof,
22 business trust, estate, trust, partnership or association, two
23 or more persons having a joint or common interest or any other
24 legal or commercial entity;

25 ~~[L.]~~ M. "owner" means one or more persons, jointly

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1 or severally, in whom is vested:

2 (1) all or part of the legal title to
3 property, but shall not include the limited partner in an
4 association regulated [~~under~~] pursuant to the Uniform Limited
5 Partnership Act; or

6 (2) all or part of the beneficial ownership
7 and a right to present use and enjoyment of the premises and
8 agents thereof and includes a mortgagee in possession and the
9 lessors, but shall not include a person or persons, jointly or
10 severally, who as owner leases the entire premises to a lessee
11 of vacant land for apartment use;

12 [~~M.~~] N. "person" includes an individual,
13 corporation, entity or organization;

14 [~~N.~~] O. "premises" means facilities, facilities and
15 appurtenances, areas and other facilities held out for use of
16 the resident or whose use is promised to the resident
17 coincidental with occupancy of a dwelling unit;

18 [~~Q.~~] P. "rent" means payments in currency or in-
19 kind [~~under~~] pursuant to terms and conditions of the rental
20 agreement for use of a dwelling unit or premises, to be made to
21 the owner by the resident, but does not include deposits;

22 [~~R.~~] Q. "rental agreement" means all agreements
23 between an owner and resident and valid rules and regulations
24 adopted under Section 47-8-23 NMSA 1978 embodying the terms and
25 conditions concerning the use and occupancy of a dwelling unit

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1 or premises;

2 [Q-] R. "resident" means a person entitled [~~under~~]
3 pursuant to a rental agreement to occupy a dwelling unit in
4 peaceful possession to the exclusion of others and includes the
5 owner of a mobile home renting premises, other than a lot or
6 parcel in a mobile home park, for use as a site for the
7 location of the mobile home;

8 [R-] S. "roomer" means a person occupying a
9 dwelling unit that lacks a major bathroom or kitchen facility
10 in a structure where one or more major facilities are used in
11 common by occupants of the dwelling units. As referred to in
12 this subsection, "major facility", in the case of a bathroom,
13 means toilet and either a bath or shower and, in the case of a
14 kitchen, means refrigerator, stove or sink;

15 T. "screening fee" means a one-time charge that is
16 charged to an applicant by an owner to recoup the owner's cost
17 of purchasing a consumer credit report or reference check or
18 the assistance of a screening service to validate, review or
19 otherwise process an application for renting a dwelling unit;

20 [S-] U. "single family residence" means a structure
21 maintained and used as a single dwelling unit. Notwithstanding
22 that a dwelling unit shares one or more walls with another
23 dwelling unit, it is a single family residence if it has direct
24 access to a street or thoroughfare and shares neither heating
25 facilities, hot water equipment nor any other essential

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1 facility or service with any other dwelling unit;

2 [F-] V. "substantial violation" means a violation
3 of the rental agreement or rules and regulations by the
4 resident or occurring with the resident's consent that occurs
5 in the dwelling unit, on the premises or within three hundred
6 feet of the premises and that includes the following conduct,
7 which shall be the sole grounds for a substantial violation:

8 (1) possession, use, sale, distribution or
9 manufacture of a controlled substance, excluding misdemeanor
10 possession and use;

11 (2) unlawful use of a deadly weapon;

12 (3) unlawful action causing serious physical
13 harm to another person;

14 (4) sexual assault or sexual molestation of
15 another person;

16 (5) entry into the dwelling unit or vehicle of
17 another person without that person's permission and with intent
18 to commit theft or assault;

19 (6) theft or attempted theft of the property
20 of another person by use or threatened use of force; or

21 (7) intentional or reckless damage to property
22 in excess of one thousand dollars (\$1,000);

23 [U-] W. "term" is the period of occupancy specified
24 in the rental agreement; and

25 [V-] X. "transient occupancy" means occupancy of a

1 dwelling unit for which rent is paid on less than a weekly
 2 basis or where the resident has not manifested an intent to
 3 make the dwelling unit a residence or household."

4 SECTION 2. A new section of the Uniform Owner-Resident
 5 Relations Act is enacted to read:

6 "[NEW MATERIAL] OWNER DISCLOSURE TO APPLICANTS.--An owner
 7 shall disclose to applicants in plain language all costs of a
 8 rental agreement in a published listing of the dwelling unit,
 9 including the base rent that will be assessed and a description
 10 of all fees or charges that will be assessed during the
 11 residency, which shall be itemized and readily identifiable in
 12 the listing. An owner shall not be liable for violating the
 13 provisions of the Uniform Owner-Resident Relations Act for a
 14 third-party website's failure to represent all costs provided
 15 by the owner."

16 SECTION 3. A new section of the Uniform Owner-Resident
 17 Relations Act is enacted to read:

18 "[NEW MATERIAL] DWELLING UNIT APPLICANT SCREENING FEE--
 19 PROHIBITED FEES.--

20 A. An owner may charge an applicant a screening fee
 21 that shall not exceed fifty dollars (\$50.00) to cover the cost
 22 of obtaining information about the applicant, including the
 23 cost of a consumer credit report, a reference check or a
 24 screening service; provided that the owner:

25 (1) provides the applicant with written or

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1 digital notice of the screening fee and the applicant agrees in
2 writing to pay the screening fee;

3 (2) shall not charge the applicant a screening
4 fee when the owner knows or should know that a dwelling unit is
5 not available for rent at that time or will not be available at
6 the beginning of the residency;

7 (3) provides the applicant with a written or
8 digital receipt for the screening fee paid by the applicant;

9 (4) shall place a hold on a credit card or
10 wait to deposit cash or checks for an applicant's screening fee
11 until all prior applicants have either been screened and
12 rejected or offered the dwelling unit and declined to enter
13 into a rental agreement; and

14 (5) shall not charge any other fees to process
15 an application.

16 B. An owner shall return the screening fee within
17 thirty calendar days to an applicant if:

18 (1) a prior applicant is offered the dwelling
19 unit and agrees to enter into a rental agreement; or

20 (2) the owner does not:
21 (a) obtain a consumer credit report;
22 (b) perform a reference check;
23 (c) use a screening service to obtain
24 information about the applicant; or

25 (d) process the application.

1 C. A screening fee that is returned as provided in
2 Subsection B of this section shall be:

- 3 (1) returned by certified mail;
4 (2) destroyed upon the applicant's request if
5 paid by check; or
6 (3) made available for the applicant to
7 retrieve."

8 SECTION 4. A new section of the Uniform Owner-Resident
9 Relations Act is enacted to read:

10 "[NEW MATERIAL] BACKGROUND CHECKS.--

11 A. An owner may require a background check of an
12 applicant before entering a rental agreement. An owner shall
13 not charge more than one screening fee to the same applicant if
14 the screening was completed within ninety calendar days of the
15 application date for any properties under the same ownership.

16 B. An owner shall provide the applicant with a copy
17 of any reports used to screen the applicant."

18 SECTION 5. A new section of the Uniform Owner-Resident
19 Relations Act is enacted to read:

20 "[NEW MATERIAL] NOTICE OF FEE CHANGES REQUIRED.--An owner
21 may increase a fee that is provided pursuant to the terms of a
22 rental agreement by providing written notice at least sixty
23 days prior to the periodic rental date specified in the rental
24 agreement or at least sixty days prior to the end of the term
25 of a fixed term residency. In the case of a periodic residency

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1 of less than one month, written notice shall be provided at
2 least one rental period in advance of the first fee payment to
3 be increased."

4 SECTION 6. Section 47-8-15 NMSA 1978 (being Laws 1975,
5 Chapter 38, Section 15, as amended) is amended to read:

6 "47-8-15. PAYMENT OF RENT.--

7 A. The resident shall pay rent in accordance with
8 the rental agreement. In the absence of an agreement, the
9 resident shall pay as rent the fair rental value for the use of
10 the premises and occupancy of the dwelling unit.

11 B. Rent is payable without demand or notice at the
12 time and place agreed upon by the parties. Unless otherwise
13 agreed, rent is payable at the dwelling unit. Unless otherwise
14 agreed, periodic rent is payable at the beginning of any term
15 of one month or less and otherwise in equal monthly
16 installments at the beginning of each monthly period. The date
17 of one month to the same date of the following month shall
18 constitute a term of one month.

19 C. Unless the rental agreement fixes a definite
20 term, the residency is week-to-week in the case of a person who
21 pays weekly rent and in all other cases month-to-month.

22 D. If the rental agreement provides for the
23 charging of a late fee and if the resident does not pay rent in
24 accordance with the rental agreement, the owner may charge the
25 resident a late fee in an amount not to exceed [~~ten~~] five

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1 percent of the ~~[total rent payment]~~ rent for each rental period
2 that the resident is in default. Late fees shall be calculated
3 only based on rent. Rent calculations to determine late fees
4 shall not include deposits, additional fees or utilities. To
5 assess a late fee, the owner shall provide notice of the late
6 fee charged no later than the last day of the next rental
7 period immediately following the period in which the default
8 occurred.

9 E. An owner may not assess a fee from the resident
10 for occupancy of the dwelling unit by a reasonable number of
11 guests for a reasonable length of time. This shall not
12 preclude charges for use of premises or facilities other than
13 the dwelling unit by guests.

14 F. An owner may increase the rent payable by the
15 resident in a month-to-month residency by providing written
16 notice to the resident of the proposed increase at least thirty
17 days prior to the periodic rental date specified in the rental
18 agreement or, in the case of a fixed term residency, at least
19 thirty days prior to the end of the term. In the case of a
20 periodic residency of less than one month, written notice shall
21 be provided at least one rental period in advance of the first
22 rental payment to be increased.

23 G. Unless agreed upon in writing by the owner and
24 the resident, a resident's payment of rent may not be allocated
25 to any deposits or damages."

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1 SECTION 7. Section 47-8-48 NMSA 1978 (being Laws 1975,
2 Chapter 38, Section 48, as amended) is amended to read:

3 "47-8-48. PREVAILING PARTY RIGHTS IN ~~[LAW-SUIT]~~
4 LAWSUIT--[CIVIL-PENALTIES] PRIVATE ENFORCEMENT.--

5 A. If suit is brought by an applicant or any party
6 to the rental agreement to enforce the terms and conditions of
7 the rental agreement or to enforce any provisions of the
8 Uniform Owner-Resident Relations Act, the prevailing party
9 shall be entitled to reasonable attorneys' fees and court costs
10 to be assessed by the court.

11 B. An owner who charges an unauthorized screening
12 fee shall be liable for two hundred fifty dollars (\$250) and
13 shall return all fees paid by the applicant.

14 ~~[B.—Any]~~ C. An owner who violates a provision of
15 Section 47-8-36 or 47-8-39 NMSA 1978 shall be ~~[subject to a~~
16 ~~civil penalty equal to]~~ liable for two times the amount of the
17 monthly rent.

18 ~~[C.—Any]~~ D. A resident who intentionally violates
19 a provision of Subsection F of Section 47-8-22 NMSA 1978 shall
20 be ~~[subject to a civil penalty equal to]~~ liable for two times
21 the amount of the monthly rent."

22 SECTION 8. Section 57-12-2 NMSA 1978 (being Laws 1967,
23 Chapter 268, Section 2, as amended) is amended to read:

24 "57-12-2. DEFINITIONS.--As used in the Unfair Practices
25 Act:

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

5 B. "seller-initiated telephone sale" means a sale,
6 lease or rental of goods or services in which the seller or the
7 seller's representative solicits the sale by telephoning the
8 prospective purchaser and in which the sale is consummated
9 entirely by telephone or mail, but does not include a
10 transaction:

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

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

18 C. "trade" or "commerce" includes the advertising,
19 offering for sale or distribution of any services and any
20 property and any other article, commodity or thing of value,
21 including any trade or commerce directly or indirectly
22 affecting the people of this state;

23 D. "unfair or deceptive trade practice" means an
24 act specifically declared unlawful pursuant to the Unfair
25 Practices Act, a false or misleading oral or written statement,

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1 visual description or other representation of any kind
2 knowingly made in connection with the sale, lease, rental or
3 loan of goods or services or in the extension of credit or in
4 the collection of debts by a person in the regular course of
5 the person's trade or commerce, that may, tends to or does
6 deceive or mislead any person and includes:

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

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

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

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

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

24 (6) representing that goods are original or
25 new if they are deteriorated, altered, reconditioned,

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1 reclaimed, used or secondhand;

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

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

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

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

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

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

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

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1 name;

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

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

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

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

11 (18) violating the Tobacco Escrow Fund Act;

12 [~~or~~]

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

19 (20) charging an applicant a fee that is not a
20 screening fee or a deposit or that was not published in a
21 listing for rental of a dwelling unit or charging rent or fees
22 that are not included in a rental agreement in violation of the
23 Uniform Owner-Resident Relations Act; and

24 E. "unconscionable trade practice" means an act or
25 practice in connection with the sale, lease, rental or loan, or

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1 in connection with the offering for sale, lease, rental or
 2 loan, of any goods or services, including services provided by
 3 licensed professionals, or in the extension of credit or in the
 4 collection of debts that to a person's detriment:

5 (1) takes advantage of the lack of knowledge,
 6 ability, experience or capacity of a person to a grossly unfair
 7 degree; or

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

10 SECTION 9. A new section of the Unfair Practices Act is
 11 enacted to read:

12 "[NEW MATERIAL] PROHIBITED CONDUCT IN RENTING OF DWELLING
 13 UNITS.--

14 A. As used in this section:

15 (1) "applicant" means a person who submits an
 16 application to rent a dwelling unit to the owner or agrees to
 17 act as a guarantor or cosigner on a rental agreement;

18 (2) "dwelling unit" means a structure, mobile
 19 home or the part of a structure, including a hotel or motel,
 20 that is used as a home, residence or sleeping place by one
 21 person who maintains a household or by two or more persons who
 22 maintain a common household and includes a parcel of land
 23 leased by the owner for use as a site for the parking of a
 24 mobile home;

25 (3) "owner" means one or more persons, jointly

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1 or severally, in whom is vested all or part of the:

2 (a) legal title to a property, but does
3 not include the limited partner in an association regulated
4 under the Uniform Revised Limited Partnership Act; or

5 (b) beneficial ownership and a right to
6 present use and enjoyment of the premises and agents thereof
7 and includes a mortgagee in possession and the lessors, but
8 does not include a person or persons, jointly or severally, who
9 as owner leases the entire premises to a lessee of vacant land
10 for apartment use;

11 (4) "rent" means payments in currency or
12 in-kind under terms and conditions of the rental agreement for
13 use of a dwelling unit or premises, to be made to the owner by
14 the resident, but does not include deposits; and

15 (5) "rental agreement" means all agreements
16 between an owner and resident and valid rules and regulations
17 adopted pursuant to Section 47-8-23 NMSA 1978 embodying the
18 terms and conditions concerning the use and occupancy of a
19 dwelling unit or premises.

20 B. It is an unfair or deceptive trade practice for
21 an owner to charge a fee to an applicant that is not a
22 screening fee or deposit or that was not published in a listing
23 for rental of a dwelling unit in violation of the Uniform
24 Owner-Resident Relations Act.

25 C. It is an unfair or deceptive trade practice for

1 an owner to charge fees that are not included in the rental
2 agreement in violation of the Uniform Owner-Resident Relations
3 Act."

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underscoring material = new
~~[bracketed material] = delete~~

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