UNANNOTATED

CHAPTER 57
Trade Practices and Regulations

ARTICLE 1
Restraints of Trade

57-1-1. Contracts, agreements, combinations or conspiracies in restraint of trade.

Every contract, agreement, combination or conspiracy in restraint of trade or commerce, any part of which trade or commerce is within this state, is unlawful.

History: Laws 1891, ch. 10, § 1; C.L. 1897, § 1292; Code 1915, § 1685; C.S. 1929, § 35-2901; 1941 Comp., § 51-1101; 1953 Comp., § 49-1-1; Laws 1979, ch. 374, § 1; 1987, ch. 37, § 1.

57-1-1.1. Short title.

Sections 57-1-1 through 57-1-15 NMSA 1978 may be cited as the "Antitrust Act".

History: 1978 Comp., § 57-1-1.1, enacted by Laws 1979, ch. 374, § 2.

57-1-1.2. Definition.

As used in the Antitrust Act, "person" means an individual, corporation, business trust, partnership, association or any governmental or other legal entity with the exception of the state, except as used in Subsection B of Section 57-1-3 NMSA 1978, and the United States.

History: 1978 Comp., § 57-1-1.2, enacted by Laws 1979, ch. 374, § 3; 1987, ch. 37, § 2.

57-1-2. Monopolies.

It is hereby declared to be unlawful for any person to monopolize or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, trade or commerce, any part of which trade or commerce is within this state.

History: Laws 1891, ch. 10, § 2; C.L. 1897, § 1293; Code 1915, § 1686; C.S. 1929, § 35-2902; 1941 Comp., § 51-1102; 1953 Comp., § 49-1-2; Laws 1979, ch. 374, § 4.

57-1-3. Contracts for restraint of trade or monopoly void; civil liability of participants; injunctive relief; purchasers relieved from payment.

A. All contracts and agreements in violation of Section 57-1-1 or 57-1-2 NMSA 1978 shall be void, and any person threatened with injury or injured in his business or property, directly or indirectly, by a violation of Section 57-1-1 or 57-1-2 NMSA 1978 may bring an action for appropriate injunctive relief, up to threefold the damages sustained and costs and reasonable attorneys' fees. If the trier of fact finds that the facts so justify, damages may be awarded in an amount less than that requested, but not less than the damages actually sustained.

B. The attorney general may bring an action under Subsection A of this section on behalf of the state, a political subdivision thereof or any public agency.

C. In any action under this section, any defendant, as a partial or complete defense against a damage claim, may, in order to avoid duplicative liability, be entitled to prove that the plaintiff purchaser or seller in the chain of manufacture, production, or distribution who paid any overcharge or received any underpayment, passed on all or any part of such overcharge or underpayment to another purchaser or seller in such chain.

D. For the purposes of this section, "business or property" includes business or nonbusiness purchases and business and nonbusiness injuries.

History: Laws 1891, ch. 10, § 3; C.L. 1897, § 1294; Laws 1907, ch. 18, § 1; Code 1915, § 1687; C.S. 1929, § 35-2903; 1941 Comp., § 51-1103; 1953 Comp., § 49-1-3; Laws 1979, ch. 374, § 5.

57-1-4. Organizations exempted.

The labor of a human being is not a commodity or article of commerce. No law against monopolies or combinations in restraint of trade shall be held or construed to forbid the existence and operation of natural gas marketing, labor, agricultural or horticultural organizations instituted for purposes of mutual help and not having capital stock or conducted for profit to the organization or to forbid or restrain individual members of such organizations from lawfully carrying out the objects thereof; nor shall such organizations or the members thereof be held or construed to be illegal combinations or conspiracies in restraint of trade under any law against monopolies or combinations in restraint of trade. No natural gas marketing organization exempted herein shall be organized in such a manner so as to control more than ten percent of the natural gas market. Nothing in this section shall be held or construed to justify any restraint of trade or restriction of competition except such as is incident to the protection and promotion of the interests of the members of such organizations, in view of their situation and circumstances, but such organizations and their objects and the

effectuation thereof shall prima facie be presumed to be in reasonable restraint of trade or restriction of competition.

History: Laws 1923, ch. 37, § 1; C.S. 1929, § 35-2904; 1941 Comp., § 51-1104; 1953 Comp., § 49-1-4; 1987, ch. 243, § 1.

57-1-5. Attorney general; investigation.

A. If the attorney general has reasonable cause to believe that a person has information or may be in possession, custody or control of any document or other tangible object relevant to a civil investigation for violation of Section 57-1-1 or 57-1-2 NMSA 1978, he may, before bringing any action, apply to the district court of Santa Fe county for approval of a civil investigative demand, demanding, in writing, such person to appear and be examined under oath, to answer written interrogatories under oath, or to produce the document or object for inspection and copying. The demand shall:

(1) be served upon the person in the manner required for service of process in this state, or, if the person cannot be found or does not reside or maintain a principal place of business within this state, in the manner required for service of process in the state in which the person resides, maintains a principal place of business or can be found;

(2) describe the nature of the conduct under investigation;

(3) describe the class or classes of documents or objects with sufficient definiteness to permit them to be fairly identified, if the production of documents or objects is requested;

(4) contain a copy of the written interrogatories, if answers to written interrogatories are sought;

(5) prescribe a reasonable time at which the person must appear to testify, within which to answer the written interrogatories or within which the document or object must be produced;

(6) specify a place for the taking of testimony or for production and designate a person who may be an authorized employee of the attorney general, to be custodian of the document or object; and

(7) contain a copy of Subsections B, C and D of this section.

No demand to produce a document or object for inspection and copying shall contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued in a civil proceeding by a district court of this state.

The district court shall approve the demand if it finds that the attorney general has reasonable cause to believe that a person has information or may be in possession, custody or control of any document or other tangible object relevant to a civil investigation for violation of Section 57-1-1 or 57-1-2 NMSA 1978 and that the demand is proper in form. A demand shall not be issued without approval of the district court.

B. If a person fails to comply with the written demand served upon him under the provisions of Subsection A of this section, the attorney general may file in the district court of the county in which the person resides or in which he maintains a principal place of business within this state or of the county of Santa Fe if the person neither resides nor has a principal place of business in this state a petition for an order to enforce the demand. Notice of hearing the petition and a copy of the petition shall be served upon the person, who may appear in opposition to the petition. If the court finds that the demand is proper in form and there is reasonable cause to believe that the person has information or may be in possession, custody or control of any document or other tangible object relevant to a civil investigation for violation of Section 57-1-1 or 57-1-2 NMSA 1978, the court shall order the person to comply with the demand, subject to any modification that the court may prescribe. Upon motion by the person and for good cause shown, the court may make any further protective order in the proceedings that justice requires.

C. Prior to the filing of an action under the provisions of the Antitrust Act for the violation under investigation, any testimony taken or material produced under this section shall be kept confidential by the attorney general unless confidentiality is waived by the person being investigated and the person who has testified, answered interrogatories or produced material, or disclosure is authorized by the court. All court records, including docket, application, petitions, motions and other papers filed under this section shall be open to inspection only to the attorney general and the person upon whom the demand for which inspection is sought has been served, unless otherwise ordered by the court.

D. Any person compelled to appear under this section and required to testify under oath may be accompanied, represented and advised by counsel. An objection may properly be made, received and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege.

History: 1978 Comp., § 57-1-5, enacted by Laws 1979, ch. 374, § 6.

57-1-6. Criminal penalty.

A. Any person who violates Section 57-1-1 or 57-1-2 NMSA 1978 shall be guilty of a fourth-degree felony and, for conviction thereof, if a person other than an individual, it shall be punished by a fine not to exceed two hundred fifty thousand dollars ($250,000), or, if an individual, imprisonment in the penitentiary for a determinate term of not less than one year nor more than five years, or by the payment of a fine not to exceed fifty

thousand dollars ($50,000), or both such imprisonment and fine in the discretion of the court. An indictment must be found or information or complaint must be filed within three years from the time of the violation.

B. No criminal action may be brought against any person for the same violation for which such person has been convicted in a criminal proceeding for violation of the federal antitrust laws.

C. For the purposes of this section, "individual" means a person other than a corporation, business trust, partnership, association or other governmental or legal entity.

History: 1978 Comp., § 57-1-6, enacted by Laws 1979, ch. 374, § 7.

57-1-7. Civil penalty.

A. The attorney general may bring an action for civil penalties in the name of the state against any person for violation of Section 57-1-1 or 57-1-2 NMSA 1978. Any individual who violates Section 57-1-1 or 57-1-2 NMSA 1978 shall be subject to a civil penalty of not more than fifty thousand dollars ($50,000), or, if a person other than an individual, not to exceed two hundred fifty thousand dollars ($250,000).

B. Any person who fails to comply with a final judgement or decree of a court of this state issued for a violation of the Antitrust Act shall be subject to a civil penalty; if an individual, the penalty shall be not more than fifty thousand dollars ($50,000), or, if a person other than an individual, the penalty shall be not more than two hundred fifty thousand dollars ($250,000).

C. No action for a civil penalty may be brought against any person for the same violation for which such person has been convicted in a criminal proceeding for violation of the federal antitrust laws.

D. For the purposes of Subsections A and B of this section, "individual" means a person other than a corporation, business trust, partnership, association or other governmental or legal entity.

History: 1978 Comp., § 57-1-7, enacted by Laws 1979, ch. 374, § 8.

57-1-8. Attorney general; injunctive relief.

The attorney general may bring an action in the name of the state against any person to enjoin, restrain and prevent the doing in this state of any act declared unlawful under Section 57-1-1 or 57-1-2 NMSA 1978.

History: 1978 Comp., § 57-1-8, enacted by Laws 1979, ch. 374, § 9.

57-1-9. Election of remedies.

The obtaining of a judgement under the Antitrust Act to assess a civil penalty against a person shall be an election of remedies to not bring a criminal prosecution against such person under the Antitrust Act. The institution of a criminal prosecution under that act against a person by filing an information or complaint or returning an indictment shall be an election of remedies not to bring suit to assess a civil penalty against such person under that act.

History: 1978 Comp., § 57-1-9, enacted by Laws 1979, ch. 374, § 10.

57-1-10. District attorneys; enforcement.

In order to promote the uniform administration of the Antitrust Act in New Mexico, the attorney general is to be responsible for its enforcement, but he may, on a case-by-case basis, delegate this authority to the district attorneys of the state and when this is done, the district attorneys shall have every power and duty conferred upon the attorney general by this act [57-1-1 to 57-1-3, 57-1-5 to 57-1-19 NMSA 1978].

History: 1978 Comp., § 57-1-10, enacted by Laws 1979, ch. 374, § 11.

57-1-11. Judgment in favor of state as prima facie evidence.

A. A final judgment or decree in a civil or criminal proceeding determining that a person has violated Section 57-1-1 or 57-1-2 NMSA 1978 in an action brought by the state is prima facie evidence against such person in any other action against him under the provisions of Section 57-1-3 NMSA 1978 as to all matters with respect to which the judgment or decree would be an estoppel between the parties thereto. This section does not affect the application of collateral estoppel or issue preclusion.

B. For the purposes of Subsection A of this section, "final judgment" or "decree" shall not include a consent judgment or decree entered before any testimony has been taken at trial in a civil proceeding or a judgment based upon a plea of nolo contendere in a criminal proceeding.

History: 1978 Comp., § 57-1-11, enacted by Laws 1979, ch. 374, § 12.

57-1-12. Limitations of actions.

A. An action brought under the provisions of Section 57-1-7 or 57-1-8 NMSA 1978 is barred if it is not commenced within four years after the cause of action accrues or within four years after the plaintiff discovered, or by the exercise of reasonable diligence should have discovered, the facts relied upon for proof of the cause of action, whichever is later.

B. An action brought under the provisions of Section 57-1-3 NMSA 1978 to recover damages is barred if it is not commenced within four years after the cause of action accrues or within four years after the plaintiff discovered, or by the exercise of reasonable diligence should have discovered, the facts relied upon for proof of the cause of action, whichever is later. Provided, however, that a cause of action is not barred if it is commenced within one year after the conclusion of a timely action brought by the state under the provisions of Section 57-1-6, 57-1-7 or 57-1-8 NMSA 1978, based in whole or in part on any matter complained of in the action for damages, whichever is later.

C. For the purposes of this section, a cause of action for a continuing violation is deemed to accrue at any time during the period of the violation.

History: 1978 Comp., § 57-1-12, enacted by Laws 1979, ch. 374, § 13.

57-1-13. Actions involving interstate or foreign commerce.

No action under the Antitrust Act shall be barred on the ground that the activity or conduct complained of in any manner affects or involves interstate or foreign commerce.

History: 1978 Comp., § 57-1-13, enacted by Laws 1979, ch. 374, § 14.

57-1-14. Remedies cumulative.

Subject to Section 57-1-9 NMSA 1978, the remedies afforded the state under the Antitrust Act shall be cumulative.

History: 1978 Comp., § 57-1-14, enacted by Laws 1979, ch. 374, § 15.

57-1-15. Construction.

Unless otherwise provided in the Antitrust Act, the Antitrust Act shall be construed in harmony with judicial interpretations of the federal antitrust laws. This construction shall be made to achieve uniform application of the state and federal laws prohibiting restraints of trade and monopolistic practices.

History: 1978 Comp., § 57-1-15, enacted by Laws 1979, ch. 374, § 16.

57-1-16. [Lawful activities.]

Nothing contained in the Antitrust Act is intended to prohibit actions which are:

A. clearly and expressly authorized by any state agency or regulatory body acting under a clearly articulated and affirmatively expressed state policy to displace competition with regulation; and

B. actively supervised by the state agency or regulatory body which is constitutionally or statutorily granted the authority to supervise such actions when the agency or regulatory body does not have any proprietary interest in the actions.

History: 1978 Comp., § 57-1-16, enacted by Laws 1987, ch. 37, § 3.

57-1-17. Limitation on recovery of damages.

A. Notwithstanding the provisions of Section 57-1-3 NMSA 1978:

(1) no damages or interest on damages may be recovered under the Antitrust Act from any local government or official or employee thereof acting in an official capacity; provided, however, that in an action for a permanent injunction brought against a local government or official or employee thereof acting in an official capacity, costs and reasonable attorneys' fees may be granted to the prevailing party; and

(2) no damages or interest on damages may be recovered under the Antitrust Act in any claim against a person based on any official action directed by a local government or official or employee thereof acting in an official capacity; provided, however, that in an action for permanent injunction brought against a person based on any official action directed by a local government or official or employee thereof acting in an official capacity, costs and reasonable attorneys' fees may be granted to the prevailing party.

B. As used in this section:

(1) "local government" means:

(a) a city, county or any other general function governmental unit established by state law; or

(b) a school district, sanitary district or any other special function governmental unit established by state law; and

(2) "person" has the meaning given it in Section 57-1-1.2 NMSA 1978 but does not include any local government as defined in Paragraph (1) of this subsection.

History: 1978 Comp., § 57-1-17, enacted by Laws 1987, ch. 37, § 4.

57-1-18. Limitation of retail purchases unlawful.

It is unlawful for any merchant to advertise or offer for sale any item of merchandise with a limitation upon the number of the item that any retail purchaser may purchase at the advertised price. It is further unlawful for any merchant offering or advertising any item of merchandise in his place of business at any given price to refuse to sell to any prospective retail purchaser for cash the whole or any part of his stock of such item at such price. However, this section shall not be applicable to a purchaser purchasing for resale.

History: 1953 Comp., § 49-1-5, enacted by Laws 1955, ch. 250, § 1; 1957, ch. 30, § 1; 1961, ch. 52, § 1; 1978 Comp., § 57-1-5, recompiled as 1978 Comp., § 57-1-18 by Laws 1979, ch. 374, § 18; 1995, ch. 18, § 1.

57-1-19. [Violation of act; penalty.]

Any person convicted of violating this act [57-1-18, 57-1-19 NMSA 1978] shall be punished by a fine of not more than five hundred dollars ($500) or by imprisonment of not more than ninety days, or by both such fine and imprisonment.

History: 1953 Comp., § 49-1-6, enacted by Laws 1955, ch. 250, § 2; 1978 Comp., § 57-1-6, recompiled as 1978 Comp., § 57-1-19 by Laws 1979, ch. 374, § 18.

ARTICLE 2
Cigarettes

57-2-1 to 57-2-13. Repealed.

57-2-14. Clove cigarettes; prohibit.

No person shall knowingly sell or offer for sale in New Mexico any clove cigarettes.

History: Laws 1985, ch. 136, § 1.

57-2-15. Penalty.

Any person who violates the provisions of Section 1 [57-2-14 NMSA 1978] of this act is guilty of a petty misdemeanor.

History: Laws 1985, ch. 136, § 2.

ARTICLE 2A
Cigarette Enforcement

57-2A-1. Short title.

This act [57-2A-1 to 57-2A-10 NMSA 1978] may be cited as the "Cigarette Enforcement Act".

History: Laws 2000, ch. 77, § 1.

57-2A-2. Definitions.

As used in the Cigarette Enforcement Act:

A. "cigarette" means any roll of tobacco or any substitute therefor wrapped in paper or any substance other than tobacco;

B. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

C. "importer" means "importer" as that term is defined in 26 USCA 5702(1);

D. "package" means "package" as that term is defined in 15 USCA 1332(4); and

E. "secretary" means the secretary of taxation and revenue.

History: Laws 2000, ch. 77, § 2.

57-2A-3. Prohibited conduct.

It is unlawful for a person to:

A. sell or distribute in this state; acquire, hold, own, possess or transport for sale or distribution in this state; or to import, or cause to be imported, into this state for sale or distribution in this state:

(1) cigarettes, the package of which:

(a) bears a statement, label, stamp, sticker or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed or used in the United States, including labels that state: "for export only", "U.S. tax exempt", "for use outside U.S." or similar wording; or

(b) does not comply with: 1) all requirements imposed by or pursuant to federal law regarding warnings and other information on packages of cigarettes manufactured, packaged or imported for sale, distribution or use in the United States, including the precise warning labels specified in 15 USCA 1333; and 2) all federal trademark and copyright laws;

(2) cigarettes imported into the United States on or after January 1, 2000 in violation of 26 USCA 5754, any other federal law or federal implementing regulations;

(3) cigarettes that the person acting in regard thereto otherwise knows or has reason to know the manufacturer did not intend to be sold, distributed or used in the United States; or

(4) cigarettes for which there has not been submitted to the secretary of the United States department of health and human services the list or lists of the ingredients added to tobacco in the manufacture of those cigarettes as required by 15 USCA 1335A;

B. alter the package of any cigarettes prior to sale or distribution to the ultimate consumer by removing, concealing or obscuring:

(1) a statement, label, stamp, sticker or notice described in Subparagraph (a) of Paragraph (1) of Subsection A of this section; or

(2) a health warning that is not specified in, or does not conform with the requirements of, 15 USCA 1333; or

C. affix a stamp required pursuant to the Cigarette Tax Act [7-12-1 NMSA 1978] to a package of cigarettes described in Subsection A of this section or altered in violation of Subsection B of this section.

History: Laws 2000, ch. 77, § 3.

57-2A-4. Documentation.

A. On the first business day of each month, each person licensed or registered to affix a state tax stamp to cigarettes pursuant to Section 7-12-9.1 NMSA 1978 shall file with the department for all cigarettes imported into the United States to which the person has affixed a tax stamp in the preceding month:

(1) copies of:

(a) the permit issued pursuant to 26 USCA 5713 to the person importing the cigarettes into the United States allowing the person to import the cigarettes; and

(b) the customs form containing, with respect to the cigarettes, the internal revenue tax information required by the federal bureau of alcohol, tobacco, firearms and explosives;

(2) a statement signed under penalty of perjury by the person affixing the state tax stamp identifying the brand and brand styles of all the cigarettes, the quantity of each brand style, the supplier of the cigarettes and the person to whom the cigarettes

were conveyed for resale and a separate statement by that person under penalty of perjury, which is not confidential or exempt from public disclosure, identifying only the brands and the brand styles of the cigarettes; and

(3) a statement signed under penalty of perjury by an officer of the manufacturer or importer of the cigarettes certifying that the manufacturer or importer has complied with the package health warning and ingredient reporting requirements of 15 USCA Sections 1333 and 1335a with respect to the cigarettes, including a statement indicating whether the manufacturer is or is not a participating manufacturer within the meaning of that federal law.

B. Prior to making a delivery sale or mailing, shipping or otherwise delivering cigarettes in connection with a delivery sale, each person shall file with the department and with the attorney general a statement setting forth the person's name and trade name and the address of the person's principal place of business and any other place of business.

C. Not later than the tenth day of each month, each person who has made a delivery sale or mailed, shipped or otherwise delivered cigarettes in connection with a delivery sale during the previous calendar month shall file with the department and with the attorney general a report in the format prescribed by the attorney general, which may include an electronic format, that provides for each delivery sale:

(1) the name and address of the customer to whom the delivery sale was made;

(2) the brand or brands of cigarettes that were sold in the delivery sale; and

(3) the quantity of cigarettes that were sold in the delivery sale.

D. Any person who satisfies the requirements of Section 376 of Title 15 of the United States Code shall be deemed to satisfy the requirements of this section.

E. For purposes of any penalty that may be imposed for a violation of Subsection B or C of this section, a failure to file a particular statement or report with both the department and the attorney general shall constitute a single violation.

History: Laws 2000, ch. 77, § 4; 2009, ch. 197, § 23.

57-2A-5. Violation of act constitutes an unfair trade practice.

A violation of Section 3 or 4 [57-2A-3 or 57-2A-4 NMSA 1978] of the Cigarette Enforcement Act constitutes an unfair trade practice pursuant to the Unfair Practices Act [57-12-1 NMSA 1978].

History: Laws 2000, ch. 77, § 5.

57-2A-6. Unfair cigarette sales.

For the purposes of the Cigarette Enforcement Act, cigarettes imported or reimported into the United States for sale or distribution under a trade name, trade dress or trademark that is the same as, or is confusingly similar to, a trade name, trade dress or trademark used for cigarettes manufactured in the United States for sale or distribution in the United States is presumed to have been purchased outside of the ordinary channels of trade.

History: Laws 2000, ch. 77, § 6.

57-2A-7. Criminal penalties for violation.

A. A person who knowingly commits an act prohibited by Section 3 [57-2A-3 NMSA 1978] of the Cigarette Enforcement Act is guilty of a fourth degree felony and upon conviction shall be sentenced in accordance with Section 31-18-15 NMSA 1978.

B. A person who fails to comply with a requirement of Section 4 [57-2A-4 NMSA 1978] of the Cigarette Enforcement Act is guilty of a fourth degree felony and upon conviction shall be sentenced in accordance with Section 31-18-15 NMSA 1978.

History: Laws 2000, ch. 77, § 7.

57-2A-8. Administrative penalties for violation.

A. The secretary may revoke or suspend the registration or license of a person licensed or registered pursuant to Section 7-12-9 NMSA 1978 who violates Section 3 or 4 [57-2A-3 or 57-2A-4 NMSA 1978] of the Cigarette Enforcement Act. The decision to revoke or suspend shall be taken and is subject to review in accordance with the Tax Administration Act [7-1-1 NMSA 1978].

B. Cigarettes acquired, held, owned, possessed, transported in, imported into or sold or distributed in this state in violation of the Cigarette Enforcement Act are contraband and are subject to seizure, forfeiture and destruction by the department or a law enforcement agency.

History: Laws 2000, ch. 77, § 8.

57-2A-9. Applicability.

The provisions of the Cigarette Enforcement Act do not apply to:

A. cigarettes allowed to be imported or brought into the United States for personal use free of federal tax or duty or voluntarily abandoned to the federal secretary of the treasury at the time of entry; and

B. cigarettes sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with the provisions of 19 USCA 1555(b) and implementing regulations, but if the cigarettes are brought back in customs territory for resale within the customs territory, the provisions of that act apply.

History: Laws 2000, ch. 77, § 9.

57-2A-10. General provisions.

A. The Cigarette Enforcement Act shall be enforced by the department and the attorney general; provided that, at the request of the department, the state police and all local police authorities shall enforce the provisions of the Cigarette Enforcement Act.

B. For the purpose of enforcing the Cigarette Enforcement Act, the department or the attorney general may request information from any state or local agency, and may share information with, and request information from, any federal agency and any agency of any other state or any local agency thereof.

C. In addition to any other remedy provided by law, including enforcement as provided in Subsection A of this section, any person may bring an action for appropriate injunctive or other equitable relief for a violation of the Cigarette Enforcement Act; actual damages, if any, sustained by reason of the violation; and, as determined by the court, interest on the damages from the date of the complaint, taxable costs and reasonable attorney fees. If the trier of fact finds that the violation is flagrant, it may increase recovery to an amount not in excess of three times the actual damages sustained by reason of the violation.

History: Laws 2000, ch. 77, § 10; 2009, ch. 197, § 24.

ARTICLE 2B
Fire-Safer Cigarette and Firefighter Protection

57-2B-1. Short title.

This act [57-2B-1 to 57-2B-12 NMSA 1978] may be cited as the "Fire-Safer Cigarette and Firefighter Protection Act".

History: Laws 2009, ch. 265, § 1.

57-2B-2. Definitions.

As used in the Fire-Safer Cigarette and Firefighter Protection Act:

A. "agent" means any person authorized by the taxation and revenue department to purchase and affix stamps on packages of cigarettes;

B. "cigarette" means:

(1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or

(2) any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler or its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette as described in Paragraph (1) of this subsection;

C. "manufacturer" means:

(1) any entity that manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced that are intended to be sold in New Mexico, including cigarettes intended to be sold in New Mexico through an importer; or

(2) any entity that becomes a successor of an entity described in Paragraph (1) of this subsection;

D. "quality control and assurance program" means the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors and equipment-related problems do not affect the results of the testing and that the testing repeatability remains within the required repeatability values in Subsection C of Section 3 [57-2B-3 NMSA 1978] of the Fire-Safer Cigarette and Firefighter Protection Act for all test trials used to certify cigarettes under that act;

E. "repeatability" means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall ninety-five percent of the time;

F. "retail dealer" means any person, other than a manufacturer or wholesale dealer, engaged in selling cigarettes or tobacco products;

G. "sale" or "sell" means a transfer of or an offer or agreement to transfer title or possession by exchange, barter or any other means. In addition to cash and credit sales, giving cigarettes as samples, prizes or gifts and exchanging cigarettes for any consideration other than money is a "sale"; and

H. "wholesale dealer" means any person other than a manufacturer who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale and any person who owns, operates or maintains one or more cigarette or tobacco product vending machines on premises owned or occupied by another person.

History: Laws 2009, ch. 265, § 2.

57-2B-3. Test method and performance standard.

A. Except as provided in Subsection K of this section, cigarettes shall not be sold or offered for sale in New Mexico unless:

(1) the cigarettes have been tested in accordance with the test method and meet the performance standard specified in this section;

(2) a written certification has been filed by the manufacturer with the state fire marshal in accordance with Section 4 [57-2B-4 NMSA 1978] of the Fire-Safer Cigarette and Firefighter Protection Act; and

(3) the cigarettes have been marked in accordance with Section 5 [57-2B-5 NMSA 1978] of that act.

B. Testing of cigarettes shall be conducted in accordance with the American society of testing and materials standard E2187-04 standard test method for measuring the ignition strength of cigarettes and shall be conducted on ten layers of filter paper. No more than twenty-five percent of the cigarettes tested in a test trial in accordance with this section shall exhibit full-length burns. Forty replicate tests shall constitute a complete test trial for each cigarette tested. The performance standard required by this section shall only be applied to a complete test trial. Written certifications shall be based upon testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the international organization for standardization or other comparable accreditation standard required by the state fire marshal.

C. Laboratories conducting testing in accordance with this section shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results. The repeatability value shall be no greater than 0.19.

D. Testing performed or sponsored by the state fire marshal to determine a cigarette's compliance with the performance standard required by this section shall be conducted in accordance with this section.

E. This section does not require additional testing if cigarettes are tested consistent with the Fire-Safer Cigarette and Firefighter Protection Act for any other purpose.

F. Each cigarette listed in a certification submitted pursuant to Section 4 of the Fire-Safer Cigarette and Firefighter Protection Act that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard set forth in this section shall have at least two nominally identical bands on the paper surrounding the tobacco column. At least one complete band shall be located at least fifteen millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least two bands fully located at least fifteen millimeters from the lighting end and ten millimeters from the filter end of the tobacco column or ten millimeters from the labeled end of the tobacco column for non-filtered cigarettes.

G. A manufacturer of a cigarette that the state fire marshal determines cannot be tested in accordance with the test method prescribed in Subsection B of this section shall propose a test method and performance standard for the cigarette to the state fire marshal. Upon approval of the proposed test method and a determination by the state fire marshal that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in Subsection B of this section, the manufacturer may employ that test method and performance standard to certify the cigarette pursuant to Section 4 of the Fire-Safer Cigarette and Firefighter Protection Act. If the state fire marshal determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in the Fire-Safer Cigarette and Firefighter Protection Act, and the state fire marshal finds that the officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under a legal provision comparable to this section, the state fire marshal shall authorize that manufacturer to employ the alternative test method and performance standard to certify that cigarette for sale in New Mexico, unless the state fire marshal demonstrates a reasonable basis why the alternative test should not be accepted under the Fire-Safer Cigarette and Firefighter Protection Act. All other applicable requirements of this section shall apply to the manufacturer.

H. Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of three years and shall make copies of the reports available to the state fire marshal and the attorney general upon written request. Any manufacturer who fails to make copies of the reports available within sixty days of receiving a written request may be assessed a civil penalty not to exceed ten thousand dollars ($10,000) for each day after the sixtieth day that the manufacturer does not make the copies available.

I. The state fire marshal may adopt a subsequent American society of testing and materials standard test method for measuring the ignition strength of cigarettes upon a finding that the subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with the American society of testing and materials standard E2187-04 and the performance standard in Subsection B of this section.

J. The state fire marshal shall review the effectiveness of this section and report findings and make recommendations to the legislature every three years.

K. The requirements of Subsection A of this section shall not prohibit:

(1) wholesale or retail dealers from selling their existing inventory of cigarettes on or after the effective date of this section if the wholesale or retail dealer can establish that state tax stamps were affixed to the cigarettes prior to the effective date and the

wholesale or retail dealer can establish that the inventory was purchased prior to the effective date in comparable quantity to the inventory purchased during the same period of the prior year; or

(2) the sale of cigarettes solely for the purpose of consumer testing. For purposes of this subsection, the term "consumer testing" means an assessment of cigarettes that is conducted by a manufacturer, or under the control and direction of a manufacturer, for the purpose of evaluating consumer acceptance of the cigarettes, utilizing only the quantity of cigarettes that is reasonably necessary for an assessment.

L. The Fire-Safer Cigarette and Firefighter Protection Act shall be interpreted and construed to effectuate its general purpose and to make that act uniform with the laws of those states that have enacted reduced cigarette ignition propensity laws as of the date that the Fire-Safer Cigarette and Firefighter Protection Act is enacted.

History: Laws 2009, ch. 265, § 3.

57-2B-4. Certification and product change.

A. Each manufacturer shall submit to the state fire marshal a written certification attesting that each cigarette listed in the certification has been tested in accordance with the test method and meets the performance standard in Section 3 [57-2B-3 NMSA 1978] of the Fire-Safer Cigarette and Firefighter Protection Act.

B. Each cigarette listed in the certification shall be described with the following information:

(1) the brand or the trade name on the package;

(2) the style, such as light or ultralight;

(3) the length in millimeters;

(4) the circumference in millimeters;

(5) the flavor, such as menthol or chocolate, if applicable;

(6) whether the cigarette has a filter or is a nonfilter cigarette;

(7) the package description, such as soft pack or box;

(8) the marking pursuant to Section 5 [57-2B-5 NMSA 1978] of the Fire-Safer Cigarette and Firefighter Protection Act;

(9) the name, address and telephone number of the laboratory, if different than the manufacturer that conducted the test; and

(10) the date that the testing occurred.

C. The state fire marshal shall verify that the manufacture's certifications have been received by the state fire marshal and shall make the verified certifications available to the attorney general for purposes consistent with the Fire-Safer Cigarette and Firefighter Protection Act and to the taxation and revenue department for the purposes of ensuring compliance with this section.

D. Each cigarette certified under this section shall be recertified every three years.

E. For each cigarette listed in a certification, a manufacturer shall pay to the state fire marshal a fee of two hundred fifty dollars ($250). The state fire marshal may adjust the amount of the fee by rule on an annual basis as necessary to defray the costs of processing, testing, enforcement and oversight activities required by the Fire-Safer Cigarette and Firefighter Protection Act, but in no case shall the fee exceed four hundred dollars ($400). The state fire marshal may establish the amount of the fee by rule on an annual basis.

F. If a manufacturer has certified a cigarette pursuant to this section, and thereafter makes any change to the cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standards required by the Fire-Safer Cigarette and Firefighter Protection Act, that cigarette shall not be sold or offered for sale in New Mexico until the manufacturer retests the cigarette in accordance with the testing standards set forth in Section 3 of that act and maintains records of that retesting as required by Section 3 of that act. Any altered cigarette that does not meet the performance standard set forth in Section 3 of that act shall not be sold in New Mexico.

History: Laws 2009, ch. 265, § 4.

57-2B-5. Marking of cigarette packaging.

A. Cigarettes that are certified by a manufacturer in accordance with the Fire-Safer Cigarette and Firefighter Protection Act shall be marked to indicate compliance with that act. The marking shall be in eight-point type or larger and consist of the letters "FSC", which signifies fire standard compliant, and shall be permanently printed, stamped, engraved or embossed on the package at or near the universal product code.

B. A manufacturer shall use only one marking and shall apply this marking uniformly for all packages, including packs, cartons and cases, and for brands marketed by that manufacturer.

C. A manufacturer certifying cigarettes in accordance with Section 4 [57-2B-4 NMSA 1978] of the Fire-Safer Cigarette and Firefighter Protection Act shall provide a copy of the certifications to all wholesale dealers and agents to which it sells cigarettes. Wholesale dealers, agents and retail dealers shall permit the state fire marshal, the

taxation and revenue department and the attorney general to inspect markings of cigarette packaging marked in accordance with this section.

History: Laws 2009, ch. 265, § 5.

57-2B-6. Penalties.

A. A manufacturer, wholesale dealer, agent or any other person who knowingly sells cigarettes, other than through retail sales, in violation of Section 3 [57-2B-3 NMSA 1978] of the Fire-Safer Cigarette and Firefighter Protection Act may be assessed a civil penalty not to exceed one hundred dollars ($100) for each pack of the cigarettes sold; provided that in no case shall the penalty against any person or entity exceed one hundred thousand dollars ($100,000) for sales during any thirty-day period.

B. A retail dealer who knowingly sells cigarettes in violation of Section 3 of the Fire-Safer Cigarette and Firefighter Protection Act may be assessed a civil penalty not to exceed one hundred dollars ($100) for each pack of the cigarettes sold; provided that in no case shall the penalty against any retail dealer exceed twenty-five thousand dollars ($25,000) for sales during any thirty-day period.

C. In addition to any penalty prescribed by law, any corporation, partnership, sole proprietor, limited partnership or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to Section 4 [57-2B-4 NMSA 1978] of the Fire-Safer Cigarette and Firefighter Protection Act may be assessed a civil penalty of at least seventy-five thousand dollars ($75,000), not to exceed two hundred fifty thousand dollars ($250,000) for each false certification.

D. A person violating any other provision of the Fire-Safer Cigarette and Firefighter Protection Act may be assessed a civil penalty for a first offense not to exceed one thousand dollars ($1,000), and for a subsequent offense subject to a civil penalty not to exceed five thousand dollars ($5,000) for each violation.

E. Whenever a law enforcement agency or duly authorized representative of the state fire marshal discovers any cigarettes for which no certification has been filed as required by Section 4 of the Fire-Safer Cigarette and Firefighter Protection Act or that have not been marked as required by Section 5 [57-2B-5 NMSA 1978] of that act, the state fire marshal or law enforcement agency may seize and take possession of the cigarettes. Cigarettes seized pursuant to this section shall be destroyed; provided, however, that, prior to the destruction of any cigarette seized pursuant to these provisions, the attorney general and the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarettes.

F. In addition to any other remedy provided by law, the attorney general may file an action in district court for a violation of the Fire-Safer Cigarette and Firefighter Protection Act, including petitioning for preliminary or permanent injunctive relief or to recover costs, damages and attorney fees. Each violation of the Fire-Safer Cigarette and

Firefighter Protection Act or of rules or regulations adopted under that act constitutes a separate civil violation for which the state fire marshal or attorney general may obtain relief. Upon obtaining judgment for injunctive relief under this section, the state fire marshal or attorney general shall provide a copy of the judgment to all wholesale dealers and agents to which a cigarette has been sold.

History: Laws 2009, ch. 265, § 6.

57-2B-7. Implementation.

A. The state fire marshal may promulgate rules pursuant to the Administrative Procedures Act [12-8-1 NMSA 1978], necessary to effectuate the purposes of the Fire-Safer Cigarette and Firefighter Protection Act and for inspection, seizure and destruction of cigarettes pursuant to the Forfeiture Act [31-27-1 NMSA 1978].

B. The taxation and revenue department in the regular course of conducting inspections of wholesale dealers, agents and retail dealers, pursuant to the Cigarette Tax Act [7-12-1 NMSA 1978], may inspect cigarettes to determine if the cigarettes are marked as required by Section 5 [57-2B-5 NMSA 1978] of the Fire-Safer Cigarette and Firefighter Protection Act. If the cigarettes are not marked as required, the taxation and revenue department shall notify the state fire marshal.

History: Laws 2009, ch. 265, § 7.

57-2B-8. Inspection.

To enforce the provisions of the Fire-Safer Cigarette and Firefighter Protection Act, the attorney general, the taxation and revenue department and the state fire marshal, their duly authorized representatives and other law enforcement personnel may examine the books, papers, invoices and other records of any person in possession, control or occupancy of premises where cigarettes are placed, stored, sold or offered for sale, as well as the stock of cigarettes on the premises. Every person in the possession, control or occupancy of premises where cigarettes are placed, sold or offered for sale is hereby directed and required to give the attorney general, the taxation and revenue department and the state fire marshal and other law enforcement personnel the means, facilities and opportunity for the examinations authorized by this section.

History: Laws 2009, ch. 265, § 8.

57-2B-9. Fire-Safer Cigarette and Firefighter Protection Act fund.

The "fire-safer cigarette and firefighter protection fund" is created in the state treasury. The fund consists of appropriations, income from investment of the fund, money otherwise accruing to the fund, certification fees paid under Section 4 [57-2B-4 NMSA 1978] of the Fire-Safer Cigarette and Firefighter Protection Act and money recovered as penalties under Section 6 [57-2B-6 NMSA 1978] of that act. Money in the

fund shall not revert to any other fund at the end of a fiscal year. Money in the fund is appropriated to the state fire marshal to enforce the Fire-Safer Cigarette and Firefighter Protection Act and to support fire safety and prevention programs and shall be disbursed on warrants signed by the secretary of finance and administration pursuant to vouchers signed by the state fire marshal or the state fire marshal's authorized representative.

History: Laws 2009, ch. 265, § 9.

57-2B-10. Sale outside of New Mexico.

Nothing in the Fire-Safer Cigarette and Firefighter Protection Act shall be construed to prohibit a person or entity from manufacturing or selling cigarettes that do not meet the requirements of Section 3 [57-2B-3 NMSA 1978] of that act if the cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States and that person or entity has taken reasonable steps to ensure that the cigarettes will not be sold or offered for sale to persons located in New Mexico.

History: Laws 2009, ch. 265, § 10.

57-2B-11. Contingent repeal.

The Fire-Safer Cigarette and Firefighter Protection Act is repealed, effective on the date that the New Mexico compilation commission receives certification from the state fire marshal that the federal government has adopted or enacted a reduced cigarette ignition propensity standard and that the standard is in effect.

History: Laws 2009, ch. 265, § 11.

57-2B-12. State preemption.

Cities, counties, home rule municipalities and other political subdivisions of the state shall not adopt or continue in effect any ordinance, rule, regulation, resolution or statute on cigarette testing and standards. The Fire-Safer Cigarette and Firefighter Protection Act preempts any local law, ordinance or regulation that conflicts with any provision of that act or any policy of the state of New Mexico implemented in accordance with that act, and, notwithstanding any other provision of law, a governmental unit of the state of New Mexico shall not enact or enforce an ordinance, local law or regulation conflicting with or preempted by that act.

History: Laws 2009, ch. 265, § 12.

ARTICLE 2C
Nicotine Liquid

57-2C-1. Child-resistant packaging for nicotine liquid.

A. No person shall sell or offer to sell any nicotine liquid container at retail in this state unless such container is child-resistant.

B. The attorney general may institute a civil action in district court for a violation of the provisions of this section or to prevent a violation of the provisions of this section. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including a civil penalty not to exceed one thousand dollars ($1,000) for each violation.

C. As used in this section:

(1) "child-resistant" means a package or container that is designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and not difficult for normal adults to use properly, but does not mean a package or container that all such children cannot open or obtain a toxic or harmful amount within a reasonable time;

(2) "electronic delivery device" means any electronic device, whether composed of a heating element and battery or an electronic circuit, that provides a vapor of nicotine, the use or inhalation of which simulates smoking; and

(3) "nicotine liquid container":

(a) means a bottle or container of a liquid or other substance containing nicotine where the liquid or substance is sold, marketed or intended for use in an electronic delivery device; but

(b) does not include a liquid or other substance containing nicotine in a cartridge that is sold, marketed or intended for use in a cartridge that is sold, marketed or intended for use in an electronic delivery device; provided that such cartridge is pre-filled and sealed by the manufacturer and is not intended to be opened by the consumer.

History: Laws 2015, ch. 76, § 1.

ARTICLE 3
Trademarks

57-3-1. Repealed.

History: 1953 Comp., § 49-4-6, enacted by Laws 1969, ch. 142, § 1; repealed by Laws 1997, ch. 197, § 17.

57-3-2. Repealed.

History: 1953 Comp., § 49-4-7, enacted by Laws 1959, ch. 345, § 1; 1977, ch. 144, § 1; 1991, ch. 38, § 1; repealed by Laws 1997, ch. 197, § 17.

57-3-3. Repealed.

57-3-4. Repealed.

History: 1953 Comp., § 49-4-8, enacted by Laws 1959, ch. 345, § 2; 1971, ch. 141, § 1; repealed by Laws 1997, ch. 197, § 17.

57-3-5. Repealed.

History: 1953 Comp., § 49-4-8.1, enacted by Laws 1969, ch. 142, § 2; 1971, ch. 141, § 2; repealed by Laws 1997, ch. 197, § 17.

57-3-6. Repealed.

History: 1953 Comp., § 49-4-9, enacted by Laws 1959, ch. 345, § 3; repealed by Laws 1997, ch. 197, § 17.

57-3-7. Repealed.

History: 1953 Comp., § 49-4-10, enacted by Laws 1959, ch. 345, § 4; 1969, ch. 142, § 3; 1971, ch. 141, § 3; 1991, ch. 38, § 2; repealed by Laws 1997, ch. 197, § 17.

57-3-8. Repealed.

History: 1953 Comp., § 49-4-11, enacted by Laws 1969, ch. 142, § 4; repealed by Laws 1997, ch. 197, § 17.

57-3-9. Repealed.

History: 1953 Comp., § 49-4-11.1, enacted by Laws 1969, ch. 142, § 5; repealed by Laws 1997, ch. 197, § 17.

57-3-10. Repealed.

History: 1953 Comp., § 49-4-11.2, enacted by Laws 1969, ch. 142, § 6; repealed by Laws 1997, ch. 197, § 17.

57-3-11. Repealed.

History: 1953 Comp., § 49-4-11.3, enacted by Laws 1969, ch. 142, § 7; repealed by Laws 1997, ch. 197, § 17.

57-3-12. Repealed.

History: 1953 Comp., § 49-4-12, enacted by Laws 1959, ch. 345, § 6; repealed by Laws 1997, ch. 197, § 17.

57-3-13. Laundry service trademarks; registration.

A. Any person or firm supplying clean laundered articles which are the supplier's property, periodically exchanging clean articles for soiled for a fixed compensation, may adopt, register and use a trademark or trade name in accordance with the Trademark Act [57-3B-1 to 57-3B-17 NMSA 1978] and reproduce it as a mark of ownership on the laundered articles.

B. To qualify under this section, any person or firm using or intending to use a trademark or trade name for the purpose described in Subsection A of this section shall so notify the secretary of state. Upon the notification, which may be made at the time of application, the secretary of state or his authorized representative shall note the words "laundry service mark" on the application for initial issuance or renewal of the trademark or trade name registration.

The fee for such endorsement of the application for registration is ten dollars ($10.00) payable to the secretary of state. This fee is in addition to any other trademark or trade name filing fee, and is due at the time of initial endorsement and at each renewal of the registration.

History: 1953 Comp., § 49-4-13, enacted by Laws 1971, ch. 218, § 1.

57-3-14. Laundry service trademarks; penalty.

A. It is a petty misdemeanor for any person or firm, except the registrant, any person or firm having the written consent of the registrant or any person or firm having purchased the articles from the registrant, to:

(1) sell, buy, rent, give, take or otherwise traffic in any articles provided as part of a laundry service bearing a trademark or trade name registered as a laundry service mark; or

(2) obliterate or otherwise conceal or remove from any articles provided as part of a laundry service a trademark or trade name registered as a laundry service mark.

B. The registrant's acceptance of any sum of money as a deposit to secure the safekeeping and return of any articles bearing a trademark or trade name registered as a laundry service mark does not constitute a sale of the articles.

C. The use or possession by any person or firm other than the registrant, without the written consent provided in this section, of any articles bearing a trademark or trade name registered as a laundry service mark is presumptive evidence of unlawful use of, or traffic in, such articles. Any person or any member of a firm, corporation or association which has acquired the articles, by purchase or otherwise, with the registrant's written consent is not required to register the trademark or trade name again, but acquires the same rights and benefits as the vendor.

History: 1953 Comp., § 49-4-14, enacted by Laws 1971, ch. 218, § 2.

ARTICLE 3A
Uniform Trade Secrets

57-3A-1. Short title.

Sections 1 through 7 [57-3A-1 to 57-3A-7 NMSA 1978] of this act may be cited as the "Uniform Trade Secrets Act".

History: Laws 1989, ch. 156, § 1.

57-3A-2. Definitions.

As used in the Uniform Trade Secrets Act:

A. "improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy or espionage through electronic or other means;

B. "misappropriation" means:

(1) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(2) disclosure of use of a trade secret of another without express or implied consent by a person who:

(a) used improper means to acquire knowledge of the trade secret; or

(b) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was: 1) derived from or through a person who had utilized improper means to acquire it; 2) acquired under circumstances giving rise to a duty to

maintain its secrecy or limit its use; or 3) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(c) before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake;

C. "person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency or any other legal or commercial entity; and

D. "trade secret" means information, including a formula, pattern, compilation, program, device, method, technique or process, that:

(1) derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and

(2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

History: Laws 1989, ch. 156, § 2.

57-3A-3. Injunctive relief.

A. Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

B. In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances include, but are not limited to, a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.

C. In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by a court order.

History: Laws 1989, ch. 156, § 3.

57-3A-4. Damages.

A. Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complaintant [complainant] is entitled to recover damages for

misappropriation. Damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

B. If willful and malicious misappropriation exists, the court may award exemplary damages in an amount not to exceed twice any award made under Subsection A of this section.

History: Laws 1989, ch. 156, § 4.

57-3A-5. Attorneys' fees.

A. The court of proper jurisdiction may award reasonable attorneys' fees to the prevailing party if:

(1) a claim of misappropriation is made in bad faith;

(2) a motion to terminate an injunction is made or resisted in bad faith; or

(3) willful and malicious misappropriation exists.

History: Laws 1989, ch. 156, § 5.

57-3A-6. Preservation of secrecy.

In an action under the Uniform Trade Secrets Act, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in camera hearings, sealing the records of the action and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

History: Laws 1989, ch. 156, § 6.

57-3A-7. Statute of limitations.

An action for misappropriation must be brought within three years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purpose of this section, a continuing misappropriation constitutes a single claim.

History: Laws 1989, ch. 156, § 7.

ARTICLE 3B
Trademarks

57-3B-1. Short title.

This act [57-3B-1 to 57-3B-17 NMSA 1978] may be cited as the "Trademark Act".

History: Laws 1997, ch. 197, § 1.

57-3B-2. Purpose and intent of act.

The purpose of the Trademark Act is to provide a system of state trademark registration and protection substantially consistent with the federal system of trademark registration and protection under the Trademark Act of 1946, as amended. It is the intent that the construction given the federal act should be examined as persuasive authority for interpreting and construing the Trademark Act.

History: Laws 1997, ch. 197, § 2.

57-3B-3. Definitions.

As used in the Trademark Act:

A. "applicant" includes the person filing an application for registration of a mark under the Trademark Act as well as the legal representatives, successors or assigns of the person;

B. "dilution" means the lessening of the capacity of the registrant's mark to identify and distinguish goods or services regardless of the presence or absence of:

(1) competition between the parties; or

(2) the likelihood of confusion, mistake or deception;

C. "mark" includes any trademark or service mark entitled to registration under the Trademark Act whether registered or not;

D. "person" and any other word or term used to designate the applicant or other party entitled to a benefit or privilege or rendered liable under the provisions of the Trademark Act, includes a juristic person as well as a natural person; "juristic person" includes a firm, partnership, corporation, union, association or other organization capable of suing and being sued in a court of law;

E. "registrant" includes the person to whom the registration of a mark under the Trademark Act is issued as well as the legal representative, successors or assigns of the person;

F. "secretary" means the secretary of state or the secretary's designee charged with the administration of the Trademark Act;

G. "service mark" means any word, name, symbol, device or any combination of these used by a person to identify and distinguish the services of one person, including a unique service, from the services of other persons and to indicate the source of the services, even if that source is unknown; provided, titles and character names used by a person and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they or the programs may advertise the goods of the sponsor;

H. "trademark" means any word, name, symbol, device or any combination of these used by a person to identify and distinguish the goods of the person, including a unique product, from those manufactured or sold by others, and to indicate the source of the goods, even if that source is unknown;

I. "trade name" means any name used by a person to identify a business or vocation of the person; and

J. "use" means the bona fide use of a mark in the ordinary course of trade and not made merely to reserve a right in the mark. For the purposes of the Trademark Act, a mark is deemed to be in use:

(1) on goods when it is placed in any manner on the goods or on the containers or the displays associated with it or on the tags or labels affixed to them, or if the nature of the goods makes the placement impracticable, then on documents associated with the goods or their sale, and the goods are sold or transported in commerce in this state; and

(2) on services when it is used or displayed in the sale or advertising of services and the services are rendered in this state.

History: Laws 1997, ch. 197, § 3.

57-3B-4. Registrability.

A. A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it:

(1) consists of or comprises immoral, deceptive or scandalous matter;

(2) consists of or comprises matter that may disparage or falsely suggest a connection with persons living or dead, institutions, beliefs or national symbols or that may bring them into contempt or disrepute;

(3) consists of or comprises the flag, coat of arms or other insignia of the United States or of any state, municipality, foreign nation or any simulation of these;

(4) consists of or comprises the name, signature or portrait identifying a particular living individual, except by the individual's written consent;

(5) consists of a mark that:

(a) when used on or in connection with the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them;

(b) when used on or in connection with the goods or services of the applicant, is primarily geographically descriptive or deceptively misdescriptive of them;

(c) is primarily merely a surname; provided, however, nothing in this subsection shall prevent the registration of a mark used by the applicant that has become distinctive of the applicant's goods or services. The secretary may accept as evidence that the mark has become distinctive as used on or in connection with the applicant's goods or services, proof of continuous use of it as a mark by the applicant in this state for the five years before the date on which the claim of distinctiveness is made; or

(d) consists of or comprises a mark that so resembles a mark registered in this state or a mark or trade name previously used by another and not abandoned, as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion or mistake or to deceive.

B. A mark is deemed to be abandoned when either of the following occurs:

(1) when its use has been discontinued with intent not to resume that use. Intent not to resume may be inferred from circumstances; nonuse for two consecutive years shall constitute prima facie evidence of abandonment; or

(2) when any course of conduct of the owner, including acts of omission as well as commission, causes the mark to lose its significance as a mark.

History: Laws 1997, ch. 197, § 4.

57-3B-5. Application of registration.

A. Subject to the limitations set forth in the Trademark Act, any person who uses a mark may file in the office of the secretary on a form prescribed by the secretary an

application for registration of that mark setting forth, but not limited to, the following information:

(1) the name and business address of the person applying for the registration; and if a corporation, the state of incorporation; if a partnership, the state in which the partnership is organized and the names of the general partners, as specified by the secretary;

(2) the goods or services on or in connection with which the mark is used and the mode or manner in which the mark is used on or in connection with the goods or services and the class in which the goods or services fall;

(3) the date when the mark was first used anywhere and the date when it was first used in this state by the applicant or a predecessor in interest;

(4) a written description of the mark; and

(5) a statement that the applicant is the owner of the mark, that the mark is in use and that, to the knowledge of the person verifying the application, no other person has registered, either federally or in this state, or has the right to use the mark either in the identical form of it or in the near resemblance thereto as to be likely, when applied to the goods or services of the other person, to cause confusion, mistake or to deceive.

B. The secretary may also require a statement as to whether an application to register the mark or portions of it or a composite of it, has been filed by the applicant or a predecessor in interest in the United States patent and trademark office; and, if so, the applicant shall provide full particulars with respect to it including the filing date, serial number of each application, its status and, if any application was finally refused registration or has otherwise not resulted in a registration, the reason for the refusal or for not being registered.

C. The secretary may also require that a drawing of the mark or three specimens showing the mark as it is actually used accompany the application and that it complies with the requirements specified by the secretary.

D. The application shall be signed and verified by oath, affirmation or declaration subject to perjury laws by the applicant or by a member of the firm or an officer of the corporation or association applying for registration.

E. The application shall be accompanied by a fee of twenty-five dollars ($25.00) for each application.

History: Laws 1997, ch. 197, § 5.

57-3B-6. Filing of application.

A. Upon the filing of an application for registration and payment of the application fee, the secretary may cause the application to be examined for conformity with the Trademark Act.

B. The applicant shall provide any additional pertinent information requested by the secretary, including a description of a design mark and may make, or authorize the secretary in writing to make, any reasonable amendments to the application as may be requested by the secretary or deemed by the applicant to be advisable to respond to any objection or rejection of the application.

C. The secretary may require the applicant to disclaim an unregistrable component of a mark that would otherwise be registrable, and an applicant may voluntarily disclaim a component of a mark sought to be registered. No disclaimer shall prejudice or affect the applicant's or registrant's rights then existing or thereafter arising in the disclaimed matter or the applicant's or registrant's rights of registration on another application if the disclaimed matter is or becomes distinctive of the applicant's or registrant's goods or services.

D. The secretary may amend the application upon the applicant's written agreement, or the secretary may require a new application to be submitted.

E. If the applicant is found not to be entitled to registration, the secretary shall advise the applicant of the reasons for non-registration. The applicant shall have thirty days from the date of notification of non- registration from the secretary in which to reply or to amend the application for reexamination. This procedure may be repeated until the secretary makes a final refusal of registration of the mark or the applicant fails to reply or amend the application within the period specified by the secretary, in which case the application shall be deemed to have been abandoned.

F. The secretary shall grant priority to the applications in order of filing. In the case of any application rejected because of a prior-filed application of the same or confusingly similar mark for the same or related goods or services, the applicant may bring an action for cancellation of the registration on grounds of prior or superior rights to the mark as provided in Section 11 [57-3B-11 NMSA 1978] of the Trademark Act.

History: Laws 1997, ch. 197, § 6.

57-3B-7. Certificate of registration.

A. Upon compliance by the applicant with the requirements of the Trademark Act, the secretary shall issue and deliver a certificate of registration to the applicant. The certificate of registration shall be issued under the signature of the secretary and the seal of the state, and it shall show:

(1) the name and business address;

(2) if a corporation, limited liability company or partnership, the state of incorporation, or if a partnership, the state in which the partnership is organized;

(3) the date claimed for the first use of the mark anywhere;

(4) the date claimed for the first use of the mark in New Mexico;

(5) the class and description of goods or services on or in connection with which the mark is used; and

(6) the registration date and the term of registration.

B. A certificate of registration issued by the secretary or a copy of the certificate of registration duly certified by the secretary shall be admissible in evidence as competent and sufficient proof of the registration of the mark in any actions or judicial proceedings in this state.

History: Laws 1997, ch. 197, § 7.

57-3B-8. Duration and renewal.

A. A registration of a mark is effective for ten years from the date of registration. An application for renewal shall be filed within six months prior to its expiration in the manner required by the secretary. The renewed registration shall be effective for ten years from the date of expiration of the original registration. The application for renewal shall be accompanied by the renewal fee. A registration of a mark may be renewed for successive periods of ten years as provided in this section.

B. All applications for renewal, whether of registrations made under the Trademark Act or of registrations made under any act prior to the effective date of that act, shall include a verified statement that the mark has been and is still in use and include a specimen showing actual use of the mark on or in connection with the goods or services.

History: Laws 1997, ch. 197, § 8.

57-3B-9. Assignments; changes of name and other instruments.

A. A mark and its representation shall be assignable with the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark. The assignment shall be by instruments in writing duly executed and may be recorded with the secretary upon payment of a twenty-five dollar ($25.00) recording fee. The secretary, upon recording the assignment, shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or the last renewal of the registration. An assignment of a registration shall be void as against any subsequent purchaser for

valuable consideration without notice unless it is recorded with the secretary within three months after its date or unless it is recorded prior to the subsequent purchase.

B. A registrant or applicant effecting a change of the name of the person to whom the mark was issued or for whom an application was filed may record a certificate of change of name of the registrant or applicant with the secretary upon payment of the recording fee specified in Subsection A of this section. The secretary may issue to the owner a certificate of amendment of registration for the remainder of the term of registration or the last renewal of that registration.

C. Other instruments that relate to a mark registered or a pending application include licenses, security interests or mortgages, and they may be recorded in the discretion of the secretary provided the instrument is in writing and has been duly executed.

D. Acknowledgment shall be prima facie evidence of the execution of an assignment or other instrument and, when recorded by the secretary, the record shall be prima facie evidence of execution. A photocopy of an instrument specified in this section shall be accepted for recording if it is certified by any of the parties thereto or their successors.

History: Laws 1997, ch. 197, § 9.

57-3B-10. Records.

The secretary shall keep for public examination a record of all marks registered or renewed under the Trademark Act and a record of all documents recorded pursuant to Section 9 [57-3B-9 NMSA 1978] of the Trademark Act.

History: Laws 1997, ch. 197, § 10.

57-3B-11. Cancellation.

The secretary shall cancel from the register, in whole or in part:

A. a registration where the secretary shall receive a voluntary request for cancellation from the registrant or the assignee of record;

B. a registration granted under the Trademark Act and not renewed in accordance with its provisions;

C. a registration of which a court of competent jurisdiction finds that:

(1) the registered mark has been abandoned;

(2) the registrant is not the owner of the mark;

(3) the registration was granted improperly;

(4) the registration was obtained fraudulently;

(5) the mark is or has become the generic name for the goods or services or a portion of them, for which it has been registered; or

(6) the registered mark is so similar as to likely cause confusion or mistake or to deceive, to a mark registered by another person in the United States patent and trademark office prior to the date of the filing of the application for registration by the registrant and not abandoned; or

D. when a court of competent jurisdiction orders the cancellation of a registration on any ground.

History: Laws 1997, ch. 197, § 11.

57-3B-12. Classification.

The secretary shall by regulation establish a classification of goods and services for convenience of administration of the Trademark Act but not to limit or extend the applicant's or registrant's rights. A single application for registration of a mark may include any or all goods upon which, or services with which, the mark is actually being used indicating the appropriate class or classes of goods or services. When a single application includes goods or services that fall within multiple classes, the secretary shall require payment of twenty-five dollars ($25.00) for each class. As far as practical the classification of goods and services should conform to the classification adopted by the United States patent and trademark office.

History: Laws 1997, ch. 197, § 12.

57-3B-13. Fraudulent registration.

A person who, for himself on or [or on] behalf of any other person, procures the filing or registration of any mark in the office of the secretary by knowingly making any false or fraudulent representation or declaration, orally or in writing or by any other fraudulent means, shall be liable to pay all damages sustained as a consequence of that filing or registration recoverable by or on behalf of the injured party in any court of competent jurisdiction.

History: Laws 1997, ch. 197, § 13.

57-3B-14. Infringement.

Any person shall be liable in a civil action by the registrant for any and all of the remedies provided in Section 16 [57-3B-16 NMSA 1978] of the Trademark Act, who shall:

A. use, without the consent of the registrant, any reproduction, counterfeit, copy or colorable imitation of a mark registered under the Trademark Act in connection with the sale, distribution, offering for sale or advertising of any goods or services on or in connection with which the use is likely to cause confusion or mistake or to deceive as to the source of origin of the goods or services; or

B. reproduce, counterfeit, copy or colorably imitate any such mark and apply the reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with the sale or other distribution in this state of these goods or services.

The registrant shall not be entitled to recover profits or damages under Subsection B of this section unless the acts have been committed with the intent to cause confusion or mistake or to deceive.

History: Laws 1997, ch. 197, § 14.

57-3B-15. Injury to business reputation; dilution.

A. The owner of a mark that is famous in this state shall be entitled, subject to the principles of equity, to an injunction against another's use of a mark, commencing after the owner's mark becomes famous, that causes dilution of the distinctive quality of the owner's mark and to obtain other relief as is provided in this section. In determining whether a mark is famous a court may consider factors such as, but not limited to:

(1) the degree of inherent or acquired distinctiveness of the mark in this state;

(2) the duration and extent of use of the mark in connection with the goods and services;

(3) the duration and extent of advertising and publicity of the mark in this state;

(4) the geographical extent of the trading area in which the mark is used;

(5) the channels of trade for the goods or services with which the owner's mark is used;

(6) the degree of recognition of the owner's mark in its trading area and in the other's trading area, and in the channels of trade in this state; and

(7) the nature and extent of use of the same or similar mark by third parties.

B. The owner shall be entitled only to injunctive relief in this state in an action brought under this section, unless the subsequent user willfully intended to trade on the owner's reputation or to cause dilution of the owner's mark. If willful intent is proven, the owner shall also be entitled to the remedies set forth in the Trademark Act, subject to the discretion of the court and the principles of equity.

History: Laws 1997, ch. 197, § 15.

57-3B-16. Remedies.

Any owner of a mark registered under the Trademark Act may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeits or imitations of that mark and any court of competent jurisdiction may grant injunctions to restrain the manufacture, use, display or sale as may be deemed just and reasonable by the court. The court may require the defendants to pay to the owner all profits derived from or all damages suffered by reason of the wrongful manufacture, use, display or sale, or by both payment of all profits derived and damages suffered. The court may also order that any counterfeits or imitations in the possession or under the control of any defendant in the case be delivered to an officer of the court or to the complainant and that the counterfeits or imitations be destroyed. The court, in its discretion, may enter judgment for an amount not to exceed three times the profits and damages and for reasonable attorney fees of the prevailing party in those cases where the court finds the other party committed the wrongful acts with knowledge or in bad faith or as otherwise the circumstances of the case may warrant. The enumeration of any right or remedy in this section shall not affect a registrant's right to prosecute under any criminal law of this state.

History: Laws 1997, ch. 197, § 16.

57-3B-17. Applicability.

Any registration of a mark in force upon the effective date of the Trademark Act shall continue in effect for the remainder of its unexpired term and may be renewed under the provisions of that act within six months prior to the expiration specified in its registration. The provisions of the Trademark Act shall not affect any application, suit, proceeding or appeal pending on the effective date of the Trademark Act.

History: Laws 1997, ch. 197, § 19.

ARTICLE 3C
Patents and Copyrights

57-3C-1. Short title.

This act [57-3C-1 to 57-3C-5 NMSA 1978] may be cited as the "Patent and Copyright Act".

History: Laws 2001, ch. 346, § 1.

57-3C-2. Definitions.

As used in the Patent and Copyright Act:

A. "department" means the economic development department;

B. "patent" means the grant of certain property rights in an invention, as defined in federal patent laws, to an inventor that includes the right to exclude others from making, using, offering for sale, selling or importing the invention; and

C. "copyright" means the property rights, as defined in federal copyright laws, in original works of authorship.

History: Laws 2001, ch. 346, § 2.

57-3C-3. Patents and copyrights as state property exception.

A. Inventions, innovations, works of authorship and their associated materials that are developed by a state employee, except an employee of a state educational institution, within the scope of his employment or when using state-owned or state-controlled facilities or equipment are the property of the state.

B. The provisions of Subsection A of this section do not apply to a state employee employed by a state educational institution designated in Article 12, Section 11 of the constitution of New Mexico.

History: Laws 2001, ch. 346, § 3.

57-3C-4. Administration of act.

The department shall:

A. be responsible for the administration of the Patent and Copyright Act;

B. promulgate rules pursuant to the Patent and Copyright Act;

C. apply, on behalf of the state, for the patent protection or registration of copyright and pay the associated expenses;

D. share with the inventor, after expenses, fifty percent of the income collected on the invention or work; and

E. determine, after a cost-benefit analysis, whether to retain the patent or copyright for the state.

History: Laws 2001, ch. 346, § 4.

57-3C-5. Fund created.

The "patent and copyright fund" is created in the state treasury. Income received by the state pursuant to the Patent and Copyright Act shall be deposited in the patent and copyright fund. Money in the patent and copyright fund is appropriated to the economic development department to carry out the provisions of the Patent and Copyright Act. Any unexpended or unencumbered balance remaining in the fund at the end of a fiscal year shall not revert to the general fund.

History: Laws 2001, ch. 346, § 5.

ARTICLE 4
Protection of Copyrights (Repealed.)

(Repealed by Laws 1987, ch. 41, § 1.)

57-4-1 to 57-4-7. Repealed.

ARTICLE 5
Motion Pictures

57-5-1. Definitions.

As used in Chapter 57, Article 5 NMSA 1978:

A. "corporation" means any subsidiary holding company, joint purchasing or selling association, business trust, joint stock association and officers and agents or employees serving in any capacity;

B. "person" means a natural person, partnership, firm of two or more persons having a joint or common interest or a corporation, association or business trust;

C. "producer" means all persons or their distributors or agents who make, manufacture, lease, license or sell motion pictures of any kind;

D. "distributor" means all persons or their agents who make, manufacture, buy, act as lessor, sell or traffic in motion pictures in any way;

E. "product" means any stated number of motion pictures, group, series or the annual output of motion pictures of any producer, manufacturer or distributor of motion pictures;

F. "theatre" means any auditorium, room, hall or place where motion pictures are exhibited, played or shown;

G. "exhibitor" means any person engaged in the showing and exhibition of motion pictures;

H. "competitive situation" means any municipality in which there are two or more persons engaged in the business of exhibiting motion pictures and each is a competitor of the other;

I. "competitive exhibitor" means any person owning or operating any motion picture show or theatre or who is in any way interested in the exhibition of motion pictures in any municipality where there are two or more competitive exhibitors engaged in the business;

J. "box office value" means the potential power of a motion picture to draw patronage;

K. "franchise" means any contract, agreement or understanding whereby a producer or distributor either grants or gives the exclusive right to use of its product to another producer, distributor, exhibitor or other person for a period of more than one year;

L. "first run pictures" means any motion picture that has not been previously exhibited or shown in a certain municipality;

M. "second run pictures" means any motion picture that has been previously exhibited or shown in one or more consecutive days in a certain municipality;

N. "first run theatre" means any theatre that exhibits first run pictures, and not more than two second run pictures in each calendar month, throughout the year;

O. "second run theatre" means any theatre that exhibits more than two second run pictures in any calendar month throughout the year;

P. "playing arrangement" means the number of days a motion picture is to be played, the admission price to be charged and the specific conditions governing the playing of a motion picture when any of these arrangements are specified in the contracts or leasing, licensing or renting arrangements between exhibitor and distributor;

Q. "play" means the exhibition, presentation or showing of motion pictures or productions in motion picture theaters; and

R. "state corporation commission" or "corporation commission" means the secretary of state.

History: Laws 1933, ch. 177, § 1; 1941 Comp., § 51-2701; 1953 Comp., § 49-5-1; 2013, ch. 75, § 15.

57-5-2. [Purpose of act; violations; penalty.]

The intent and purpose of this act [57-5-1 to 57-5-22 NMSA 1978] is to eliminate and prevent monopolies, restraint of trade, unfair combinations, favoritism, discrimination, overbuying or preference of any kind on the part of producers, distributors or any other person or persons, in favor of any person, corporation, firm or association owning or operating any motion picture theater or theaters, to the detriment of competitive owned and/or operated picture theater or theaters, or for any competitive exhibitor being discriminated against in favor of another competitive exhibitor or exhibitors; also, to prevent any person, firm or corporation operating any motion picture theater or theaters from acquiring, overbuying or having a monopoly or the pick of the product of any producer or distributor or any other person. Any person, firm or corporation conspiring or entering into a conspiracy to in any way defeat, violate or avoid the purpose of this act, or any of the provisions hereof, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than twenty thousand dollars ($20,000), and by imprisonment at hard labor of not less than or more than twelve months. It shall be the duty of the district attorney of the several judicial districts to enforce the collection of this and all other fines provided for in this act and otherwise prosecute those who violate the same.

History: Laws 1933, ch. 177, § 2; 1941 Comp., § 51-2702; 1953 Comp., § 49-5-2.

57-5-3. [Restrictive contracts, combinations or monopolies illegal; penalty.]

Every contract, combination or monopoly of any kind which in any way prevents, restricts, prohibits or interferes with any competitive exhibitor or exhibitors from acquiring his or their proportionate share of any product or products of any producer and/or distributor, or any other person, as in this act [57-5-1 to 57-5-22 NMSA 1978] provided, is hereby declared to be illegal. Every person, firm or corporation violating any of the provisions of this section shall, upon conviction thereof, be punished by a fine of not less than one thousand dollars ($1,000) or more than twenty thousand dollars ($20,000) and by imprisonment at hard labor for not less than twelve months nor more than twelve months.

History: Laws 1933, ch. 177, § 3; 1941 Comp., § 51-2703; 1953 Comp., § 49-5-3.

57-5-4. [Contracts for excessive number of pictures unlawful; form of contracts of sale, license or lease; power of public regulation commission; penalty for violations.]

It shall be unlawful for any person, or persons, firm or corporation, who owns, operates or controls, either directly or indirectly, any motion picture theater, or room, hall, auditorium or place where motion pictures of any kind are exhibited in one or more towns or cities in this state, where competition exists, to contract for, lease, license, rent, buy or acquire more motion pictures or films than can and will be exhibited in their theater or theaters in such town or city within the twelve months next following the date of the purchase, rental or license contract for such motion pictures.

And it shall be unlawful for any exhibitor to buy, lease or otherwise acquire, or for any distributor, or any other person, to sell, lease or supply any picture or pictures in or for a competitive situation with the intention or knowledge that each or any of the picture or pictures will not be exhibited or used, and every exhibitor in a competitive situation shall exhibit all pictures under contract within six months after the producer and/or distributor announces such picture or pictures, ready for exhibition or showing. All contracts or agreements for the sale, license or rental of motion pictures shall be in writing, and shall be signed and either attested by two witnesses or sworn to by the parties thereto before some person authorized to administer an oath, and a copy thereof shall be filed by the producer and/or distributor in the office of the state corporation commission [public regulation commission] within ten days after the approval thereof, which said contracts or agreements shall contain a list of all pictures covered thereby; that the said corporation commission [public regulation commission] shall have the right to demand of any exhibitor a copy of his or its contract or contracts for the purchase, license or lease of any picture or pictures, which said copy shall be furnished by the exhibitor within fifteen days after the receipt of such notice; that said copy shall be identical with the original, together with the consideration paid or to be paid for each picture covered thereby. Any person, firm or corporation, who violates or fails to comply with any of the provisions of this section, shall be punished by a fine of not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000).

History: Laws 1933, ch. 177, § 4; 1941 Comp., § 51-2704; 1953 Comp., § 49-5-4.

57-5-5. [Division of products among exhibitors.]

Producers and/or distributors, or any person or corporation selling, leasing or supplying in any way motion pictures to exhibitors in any competitive situation, shall allot, divide or distribute their product in proportion to the kind and number of theaters in that town or city; first run pictures among exhibitors operating first run theaters and second run pictures to exhibitors operating second run theaters. In all towns and cities, where a competitive situation exists, each competitive exhibitor shall have the right to purchase, rent or acquire his or their proportionate part of any announced group, series or annual product of any producer, distributor, or owner or lessee of motion pictures; that in the event two or more competitive exhibitors desire to rent, lease or acquire their

proportionate share of the product of any producer or distributor, the division or allotment shall be made by permitting each competitive exhibitor to select a picture alternately from the product of the said distributor in proportion to the number of theaters owned by them. Should one exhibitor own or operate more than one theater in a competitive situation, the theater in which each picture or production is to be played or exhibited must be specified in separate applications for contracts for each theater at the time the apportionment or allotment of the picture or product is made, and the pictures must be exhibited or played in the theater so specified.

In the event an exhibitor in a competitive situation does not elect to purchase or contract for his proportionate part of the product of a producer or distributor, the producer and/or distributor shall procure from the exhibitor a written waiver of his or their right to purchase or rent his or their proportionate share of said product, and said proportionate share shall be allotted or divided among the remaining competitive exhibitors in the competitive situation. All waivers must be filed with the corporation commission [public regulation commission]. Provided, however, that if one or more of the competitive exhibitors refuse to rent or purchase his or their proportionate share of the product at a fair and reasonable rental price, and refuse to sign a waiver for his or their proportionate part of such product, then, and in that event, the distributor and/or other competitive exhibitor may appeal to the corporation commission [public regulation commission] for permission to allot or acquire the proportionate part, or parts, of the product in question to the other or appealing competitive exhibitor or exhibitors. All such appeals shall be determined by the corporation commission [public regulation commission], with right of appeal to the district court.

Any exhibitor, producer and/or distributor violating any of the provisions of this section shall, upon conviction thereof, be punished as provided in Section twelve [57-5-12 NMSA 1978] of this act.

History: Laws 1933, ch. 177, § 5; 1941 Comp., § 51-2705; 1953 Comp., § 49-5-5.

57-5-6. [Announcement of pictures to be produced; contents of announcement; filing with public regulation commission; sale to competitor at less price unlawful; sale or lease to be by contract; penalty for violation.]

Whenever a producer and/or distributor announces a group or series of pictures or annual product to exhibitors, either made or to be made, it shall be filed immediately with the corporation commission [public regulation commission] and announced directly and simultaneously to all exhibitors in competitive situations. All pictures or productions shall be announced by either name, title, star, star series, series or by number and shall be classified in groups as to the price and/or box office value. Each group so classified shall be identified by letters A, B, C, D, etc.; Group "A" being the highest priced or best box office pictures or productions; Group "B" being the next highest priced or next best box office pictures or productions, and so on, and the number of pictures in each group shall be specified. In the event of any change or changes in the product made, or to be

made, making it different from that in the announcement filed with the corporation commission [public regulation commission], notice of the nature of such change or changes made or to be made shall be filed with the corporation commission [public regulation commission] within ten days after such change or changes are made. After one competitive exhibitor has purchased, rented or contracted for his proportionate part of a product, it shall be unlawful for the producer and/or distributor to sell or lease the remainder of said product to the other competitive exhibitor or exhibitors, on a different playing arrangement or for a less price, for a period of six months. And all pictures sold or leased by producers and/or distributors shall be by written contract, in which the price paid or to be paid, and playing arrangement for each picture sold or leased shall be stated. Any producer or exhibitor violating any of the provisions of this section shall, upon conviction thereof, be punished by a fine of not less than one thousand dollars ($1,000) and not more than twenty thousand dollars ($20,000).

History: Laws 1933, ch. 177, § 6; 1941 Comp., § 51-2706; 1953 Comp., § 49-5-6.

57-5-7. [Contracts for sale, lease or license; revocation or disapproval; binding when not disapproved.]

In any competitive situation where there has been an executory contract entered into for the sale, lease or license of any product, or part thereof, the same shall be subject to revocation by the exhibitor signing said contract at any time prior to the acceptance of the same by the producer and/or distributor, or within a period of twenty days from the date of such contract. If not revoked by the exhibitor or disapproved by the producer and/or distributor within the period of twenty days from the date thereof, said contract shall, for all purposes, become valid and binding on the parties thereto. In case of revocation or disapproval on the part of any of the parties, the other party shall be given telegraphic notice thereof within twenty-four hours after such revocation or disapproval, and such revocation on the part of the exhibitor shall constitute a waiver as provided in Section five [57-5-5 NMSA 1978] of this act. The action of one competitive exhibitor shall in no way affect the rights of the other competitive exhibitors in, to or regarding any product.

History: Laws 1933, ch. 177, § 7; 1941 Comp., § 51-2707; 1953 Comp., § 49-5-7.

57-5-8. [Secret rebates or arrangements unlawful; penalty.]

It shall be unlawful for any producer and/or distributor or any other person, either directly or indirectly, to give any secret refund, rebate or reward of any kind to any competitive exhibitor, or for any competitive exhibitor to receive, either directly or indirectly, any secret refund, rebate or reward of any character from any producer, distributor or any other person, or for any producer, distributor or any other person to sell, lease, license or supply any motion picture or pictures, or permit same to be done to any competitive exhibitor by or through any secret or undisclosed manner, method, contract, combination or arrangement of any kind, or for any competitive exhibitor to so receive or acquire same in such a manner, or to exhibit any such motion picture or

pictures so received or acquired. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof, punished by a fine of not less than one thousand dollars ($1,000) nor more than twenty thousand dollars ($20,000) for each offense and by imprisonment at hard labor of not less than one year or more than one year for each offense. Each and every picture furnished, received or exhibited in violation of any of the provisions of this act [57-5-1 to 57-5-22 NMSA 1978] shall be deemed a separate offense.

History: Laws 1933, ch. 177, § 8; 1941 Comp., § 51-2708; 1953 Comp., § 49-5-8.

57-5-9. [Contracts for more than one year unlawful; rights under former contracts; penalty for violation; invalidity of contract.]

It shall be unlawful from and after the passage of this act for any person, or corporation, to contract for, license, buy, own or control a franchise in or for a town or city, where competition exists, for the product of any producer, distributor or from any other person, for a period of time greater than one year, and it shall be unlawful for any producer, distributor or person to sell, rent or otherwise dispose of any picture to any competitive exhibitor for a period of time greater than one year. Provided that all the parties to any contract or contracts now in force for franchises for periods greater than one year between any producer and/or distributor, exhibitor or owner of any moving picture show or shows, or theaters, shall, within thirty days after this act becomes effective, file a copy of such franchise or franchises in the office of the state corporation commission [public regulation commission]; that there shall be attached to said contracts an affidavit, duly sworn to by the parties thereto, setting forth that said franchise was executed prior to the time that this act became effective, and that said franchise or contract, so filed or to be filed, has in no way been altered since this act became effective, and shall state the consideration paid and to be paid for each and every picture mentioned therein or to be furnished thereunder during the remainder of its life. Any person making any false statement in any such affidavit shall be deemed guilty of perjury, and upon conviction thereof, punished as provided by law. Provided, further, all contracts in force with competitive exhibitors in this state at the time of the passage of this act for franchises, for a period of time greater than one year, shall, if otherwise legal, not be interfered with, and shall remain in full force and effect and lived up to during the life thereof. Any person or corporation who violates the provisions of this section shall, upon conviction, be punished by a fine of not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000). All contracts made in violation of any of the provisions of this act shall be void.

History: Laws 1933, ch. 177, § 9; 1941 Comp., § 51-2709; 1953 Comp., § 49-5-9.

57-5-10. [Exhibitor having contract running longer than year; rights in selection of pictures.]

Any competitive exhibitor or exhibitors having contracts or franchise, with any producer and/or distributor continuing for a period of more than one year, at the time of

the passage of this act, such competitive exhibitor, or exhibitors, shall not participate in the alternative drawing or selection of pictures with the other competitive exhibitors, as provided in Section five [57-5-5 NMSA 1978] of this act, until such competitive exhibitor or exhibitors not having any such contract or franchise have acquired a number of pictures equal to that covered by said contract or franchise for a period of more than one year. In the acquiring of such pictures, same shall be done by taking the annual product of any one producer and/or distributor upon reasonable terms, and, if necessary, a sufficient number from another producer and/or distributor, upon reasonable terms each year during the remaining life of said contract or franchise, as to equal the number of pictures to be supplied under said contract or franchise for more than one year.

History: Laws 1933, ch. 177, § 10; 1941 Comp., § 51-2710; 1953 Comp., § 49-5-10.

57-5-11. [Producer- or distributor-controlled theaters; rights in choosing pictures; selling or leasing to competitors; penalty for violation.]

Producers and/or distributors or affiliated companies, owning and/or operating either directly or indirectly, any picture show or shows, theater or theaters, and exhibiting their own product therein, in one or more competitive situations, shall not participate in the alternative drawing or selection of pictures as provided in Section five [57-5-5 NMSA 1978] of this act, or in any way acquire pictures until their competitor or competitors have each acquired a number of pictures equal to the total products of each producer and/or distributor, affiliated company or other person, and it shall be unlawful for any producer and/or exhibitor to either refuse, sell or license their product or any part thereof upon reasonable terms to such competitive exhibitor so as to place them on an equal basis with such exhibitor, producer and/or distributor or affiliated company. Any person, firm or corporation, either seller or sellee, lessor or lessee, violating any of the provisions of this act [57-5-1 to 57-5-22 NMSA 1978] shall, upon conviction thereof, be punished by a fine of not less than one thousand dollars ($1,000) nor more than twenty thousand dollars ($20,000).

History: Laws 1933, ch. 177, § 11; 1941 Comp., § 51-2711; 1953 Comp., § 49-5-11.

57-5-12. [Refusing alternative selections; prima facie evidence of intent to violate act; penalty.]

The fact that any producer, distributor, owner or lessee of motion pictures fails, or refuses to permit exhibitors in competitive situations to make alternative selections in the presence of each other, each to either purchase or rent his proportionate share of a product, upon the same terms and conditions and as in this act [57-5-1 to 57-5-22 NMSA 1978] provided, shall be prima facie evidence of the intent of such producer, distributor, owner or lessee to violate or defeat the purposes, intent and provisions of this act, and such producer, distributor, owner or lessee shall be deemed guilty of a

misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than ten thousand dollars ($10,000) nor more than twenty thousand dollars ($20,000) and by imprisonment at hard labor of not less than nor more than twelve months.

History: Laws 1933, ch. 177, § 12; 1941 Comp., § 51-2712; 1953 Comp., § 49-5-12.

57-5-13. [Date and place of alternative selections; contracts made outside state unlawful; exception.]

In all competitive situations where there is to be an alternative selection of motion pictures by competitive exhibitors, the producer and/or distributor shall set the date for such alternative selection in each competitive situation, and each exhibitor shall be notified simultaneously in writing, by registered mail by the producer and/or distributor. The selection shall take place in the town or city where such competition exists, and it shall be unlawful for any producer, exhibitor or any other person having traveling or district agents, to make or close in any place, other than in New Mexico, any contract for the sale or lease of any motion picture or pictures for any competitive situation in New Mexico, unless all competitive exhibitors mutually agree otherwise in writing.

History: Laws 1933, ch. 177, § 13; 1941 Comp., § 51-2713; 1953 Comp., § 49-5-13.

57-5-14. [Civil liability for violation.]

Any person, or persons, or corporation, who shall violate any of the provisions of this act [57-5-1 to 57-5-22 NMSA 1978], shall be civilly liable in both actual and punitive damages to the person or persons injured, damaged or discriminated against for any and all damages occasioned thereby, either directly or indirectly, and including all costs and attorney's fees.

History: Laws 1933, ch. 177, § 14; 1941 Comp., § 51-2714; 1953 Comp., § 49-5-14.

57-5-15. [Misrepresentation of box office value; civil liability.]

Any producer and/or distributor, who misrepresents, either orally or otherwise, the merit or box office value of any motion picture or pictures, at the time of sale or lease of any product, or part thereof, shall be held accountable therefor and if such producer and/or distributor shall refuse or fail to make adjustment, the producer and/or distributor shall be civilly liable in damages, both actual and punitive, to the person or persons damaged, including all costs and attorneys' fees.

History: Laws 1933, ch. 177, § 15; 1941 Comp., § 51-2715; 1953 Comp., § 49-5-15.

57-5-16. [Fair and equitable adjustments of contracts permitted.]

The provisions of this act [57-5-1 to 57-5-22 NMSA 1978] shall not prohibit fair and equitable adjustments or changes in any contract for pictures in any competitive situation between producers, distributors and exhibitors, provided the same is openly arrived at, and each exhibitor in a competitive situation is accorded the same treatment under like or similar conditions. The provisions of this section shall not apply to franchises in force at the time of the passage of this act.

History: Laws 1933, ch. 177, § 16; 1941 Comp., § 51-2716; 1953 Comp., § 49-5-16.

57-5-17. [Existing contracts to be filed with public regulation commission.]

Attested copies of all contracts for motion pictures now in force in competitive situations shall be filed with the corporation commission [public regulation commission] within thirty days after this act becomes effective, and hereafter when competition begins in any town or city all existing contracts for motion pictures shall be immediately filed with the corporation commission [public regulation commission] by the exhibitors, and the provisions of this act [57-5-1 to 57-5-22 NMSA 1978] shall apply to the new competitors as of the day he or they begin to function or acquire motion pictures in or for the new competitive situation.

History: Laws 1933, ch. 177, § 17; 1941 Comp., § 51-2717; 1953 Comp., § 49-5-17.

57-5-18. [Public regulation commission as agent for service of process.]

Every producer and/or distributor, manufacturer or seller of motion pictures in the state of New Mexico, and of leases, rights and contracts and agreements of every kind and nature by which motion pictures are exhibited in the state of New Mexico, shall appoint the chairman of the corporation commission [public regulation commission] and his successors in office, his, its or their true and lawful attorney upon whom may be served all lawful process in any action or legal process against it, in favor of a resident of the state of New Mexico, and therein shall agree that any such lawful process against it so served shall be of the same force and validity as if served on the company, person or firm personally in the state of New Mexico, and the authority thereof shall continue in force irrevocably so long as any contract, lease, agreement or liability of such person, firm or corporation remains outstanding in the state of New Mexico. Such process shall be served by leaving the same in duplicate with the chairman of the state corporation commission [public regulation commission] and depositing with him a fee of $2.00, and the service thereof on such attorney shall be deemed service on the principal. The chairman of the state corporation commission [public regulation commission] shall forthwith forward such process by registered mail, prepaid, to the person, firm or corporation at the address given by such person, firm or corporation in the appointment required to be filed hereby, and such service of process shall not be complete until the same has been so mailed, and the registry receipt shall be prima facie evidence of the completion of such service.

History: Laws 1933, ch. 177, § 18; 1941 Comp., § 51-2718; 1953 Comp., § 49-5-18.

57-5-19. [Failure to designate agent for service of process; penalty; pictures barred.]

The requirements in Section eighteen [57-5-18 NMSA 1978] are hereby made a prerequisite to the right of any person, firm or corporation to sell, lease or otherwise distribute motion pictures within the state of New Mexico. Any person, firm or corporation selling, distributing or exhibiting pictures in the state of New Mexico without first designating the chairman of the state corporation commission [public regulation commission] as its true and lawful attorney for the purpose of service of process as hereinbefore required, shall be subject to a fine of not more than one thousand dollars ($1,000) and all pictures, produced, manufactured or distributed by such person, firm or corporation shall be barred and excluded from exhibiting [exhibition] within the state of New Mexico until the provisions of this act [57-5-1 to 57-5-22 NMSA 1978] have been complied with by such person, firm or corporation.

History: Laws 1933, ch. 177, § 19; 1941 Comp., § 51-2719; 1953 Comp., § 49-5-19.

57-5-20. [Venue of prosecutions.]

The venue in an indictment or information for conspiracy in violation of the provisions of this act [57-5-1 to 57-5-22 NMSA 1978], may be laid in the county in which the agreement was entered into, or in any county in which any overt act was done by any of the conspirators in furtherance of the common design or conspiracy. If the conspiracy is entered into within the jurisdiction of any court of this state, the parties thereto are triable in that jurisdiction, notwithstanding that the offense is to be committed outside the jurisdiction, or in another state. And if the conspiracy is formed outside the jurisdiction of any court of this state, and an overt act is performed in the furtherance of said conspiracy in the jurisdiction of any such court, the conspirators shall be tried and punished in the court wherein the overt act was committed.

History: Laws 1933, ch. 177, § 20; 1941 Comp., § 51-2720; 1953 Comp., § 49-5-20.

57-5-21. [Contracts filed with public regulation commission; fees; filing copies of blank forms; penalty for violation.]

All contracts for the purchase, leasing or acquirement of motion pictures by producers and/or distributors, in competitive situations, from producers and/or exhibitors or anyone else, shall be filed as in this act [57-5-1 to 57-5-22 NMSA 1978] provided with the state corporation commission [public regulation commission] at Santa Fe, New Mexico, within ten days after same have been approved or become operative; and all adjustments, modifications or changes in contracts shall be in writing and shall be executed as in this act provided for original contracts, and shall be filed likewise and within ten days thereafter; all instruments so filed shall be sworn to by the parties

thereto. The corporation commission [public regulation commission] shall receive a fee of two dollars ($2.00) for every instrument filed under the provisions of this act, and shall charge a fee of two dollars ($2.00) for all copies of instruments furnished upon request. When forms are used by producers and exhibitors in sales and lease contracts, blank copies thereof shall be furnished to the corporation commission [public regulation commission] by producers and/or exhibitors. Any person, firm or corporation who fails or refuses, after notice, to comply with any of the provisions of this section shall be punished by a fine as provided in Section four [57-5-4 NMSA 1978] of this act.

History: Laws 1933, ch. 177, § 21; 1941 Comp., § 51-2721; 1953 Comp., § 49-5-21.

57-5-22. [Determination of first and second run theaters by public regulation commission.]

All matters requiring a decision as to whether a theater should be classified as a "first" or "second" run theater or a picture show shall be determined by the corporation commission [public regulation commission].

History: Laws 1933, ch. 177, § 22; 1941 Comp., § 51-2722; 1953 Comp., § 49-5-22.

ARTICLE 5A
Motion Picture Fair Competition

57-5A-1. Short title.

This act [57-5A-1 to 57-5A-5 NMSA 1978] may be cited as the "Motion Picture Fair Competition Act".

History: Laws 1979, ch. 189, § 1.

57-5A-2. Purposes.

The purpose of the Motion Picture Fair Competition Act is to establish fair and open procedures for the bidding and negotiation of motion pictures within New Mexico in order to prevent unfair and deceptive acts or practices and unreasonable restraints of trade in the business of motion picture distribution within the state, to promote fair and effective competition in that business and to benefit the movie-going public by holding down admission prices to motion picture theaters, thereby expanding the choice of motion pictures available to the public and preventing exposure of the public to objectionable or unsuitable pictures by ensuring that exhibitors have the opportunity to view a picture before committing themselves to exhibiting it.

History: Laws 1979, ch. 189, § 2.

57-5A-3. Definitions.

As used in the Motion Picture Fair Competition Act:

A. "theater" means any establishment in which motion pictures are regularly exhibited to the public for a charge;

B. "distributor" means any person engaged in the business of distributing or supplying motion pictures to exhibitors by rental, sale or licensing;

C. "exhibitor" means any person engaged in the business of operating one or more theaters;

D. "exhibit" or "exhibition" means showing a motion picture to the public for a charge;

E. "invitation to bid" means a written or oral solicitation or invitation by a distributor to one or more exhibitors to bid or negotiate for the right to exhibit a motion picture;

F. "bid" means a written or oral offer or proposal by an exhibitor to a distributor, in response to an invitation to bid or otherwise, stating the terms under which the exhibitor will agree to exhibit a motion picture;

G. "license agreement" means any contract, agreement, understanding or condition between a distributor and an exhibitor relating to the licensing or exhibition of a motion picture by the exhibitor;

H. "trade screening" means the showing of a motion picture by a distributor in the exchange center serving New Mexico which is open to any exhibitor interested in exhibiting the motion picture;

I. "blind bidding" means the bidding for, negotiating for or offering or agreeing to terms for the licensing or exhibition of a motion picture, if the motion picture has not been trade screened in the exchange center before any such event has occurred; and

J. "run" means the continuous exhibition of a motion picture in a defined geographical area for a specified period of time. A "first run" is the first exhibition of a motion picture in the designated area, a "second run" is the second exhibition and "subsequent runs" are subsequent exhibitions after the second run.

History: Laws 1979, ch. 189, § 3; 1980, ch. 49, § 1.

57-5A-4. Blind bidding.

A. Blind bidding shall not be required of exhibitions in New Mexico. No bids shall be returnable, no negotiations for the exhibition or licensing of a motion picture shall take

place and no license agreement or any of its terms shall be agreed to for the exhibition of any motion picture within the state before the motion picture has been offered for trade screening in the exchange center.

B. A distributor shall include in each invitation to bid for a motion picture for exhibition within New Mexico, if such motion picture has not already been trade screened in the exchange center, the date, time and place of the proposed trade screening of the motion picture in the exchange center.

C. A distributor shall provide reasonable and uniform notice to exhibitors within New Mexico of motion pictures he is distributing.

D. If, within fifteen days of the date of transmission of the invitation to bid, no exhibitor has notified the distributor that it will attend the proposed trade screening, then no trade screening shall be required prior to the acceptance of bids.

E. Any purported waiver of the requirements of this section shall be void and unenforceable.

History: Laws 1979, ch. 189, § 4; 1980, ch. 49, § 2.

57-5A-5. Bidding procedures.

If bids are solicited from exhibitors for the licensing of a motion picture within New Mexico, then:

A. the invitation to bid shall specify:

(1) the number and length of runs for which the bid is being solicited, whether it is a first, second or subsequent run and the geographic area for each run;

(2) the names of all exhibitors or their designated agents who are being solicited;

(3) the date and hour the invitation to bid expires; and

(4) the location, including the address, where the bids will be opened, which shall be in the exchange center;

B. all bids shall be submitted in writing and shall be opened at the same time and in the presence of exhibitors, or their agents, who submitted bids and are present at such time;

C. after being opened, bids shall be subject to examination by exhibitors, or their agents, who submitted bids. Within ten business days after a bid is accepted, the

distributor shall notify in writing each exhibitor who submitted a bid of the name of the winning bidder; and

D. once bids are solicited, the distributor shall have the option to license the motion picture by competitive negotiation if he does not accept any of the submitted bids.

History: Laws 1979, ch. 189, § 5; 1980, ch. 49, § 3.

ARTICLE 6
Hotels

57-6-1. [Liability of hotelkeeper; limitation.]

Hotelkeepers shall be liable to their guests for loss of property brought by such guests into the hotel when such loss is caused by the theft or negligence of a hotelkeeper or his servants, not to exceed the sum of one thousand dollars [($1,000)]; provided, however, that any hotelkeeper who shall provide a suitable safe in his hotel for safekeeping of any money, jewels, ornaments or other valuables belonging to his guests and shall notify them thereof by posting a printed notice conspicuously in the rooms of such hotel that such safe has been provided for said purpose, shall not be liable for the loss of any money, jewels, ornaments or other valuables by theft or otherwise which any guest who has neglected to deposit same in such safe, may sustain.

History: Laws 1921, ch. 104, § 1; C.S. 1929, § 67-101; 1941 Comp., § 51-2501; 1953 Comp., § 49-6-1.

ARTICLE 7
Junk Dealers

57-7-1. ["Junk dealers" defined.]

That all persons, firms or corporations engaged in the business of purchasing or selling secondhand or castoff material of any kind, which is commonly known and is hereinafter designated and referred to as "junk" - such as old iron, copper, brass, lead, zinc, tin, steel and other metals, metallic cables, wires, ropes, cordage, bottles, bagging, rags, rubber, paper and other like materials, shall be and hereby are defined, and held to be junk dealers within the meaning of this act [57-7-1 to 57-7-7 NMSA 1978].

History: Laws 1921, ch. 25, § 1; C.S. 1929, § 77-101; 1941 Comp., § 51-2601; 1953 Comp., § 49-7-1.

57-7-2. [Records of purchases.]

Every junk dealer shall keep a book in which shall be written in ink at the time of their purchase a full and accurate description of each and every article purchased, together with the full name, residence and general description of the person or persons selling the same, and said book shall at all times be open to inspection by the sheriff of the county, or any of his deputies and any member of the police force in the city or town, and any constable or other municipal or county official in the county, in which said junk dealer does business. No entry in said book shall be erased, mutilated or changed.

History: Laws 1921, ch. 25, § 2; C.S. 1929, § 77-102; 1941 Comp., § 51-2602; 1953 Comp., § 49-7-2.

57-7-3. [Report concerning lost or stolen articles; inspection of articles.]

If any material, goods, articles or thing whatsoever shall be advertised as having been lost or stolen, and the same, or any material, goods, articles or things answering to the description advertised, or any part or portion thereof, shall then be in, or subsequently come into, the possession of any junk dealer, he shall immediately give information thereof in writing to the sheriff of the county, or the chief of police or constable, of the city, town or village in which the junk dealer does business, and state when and from whom the same was received. Any junk dealer who shall receive, or shall have in his possession any goods, article or thing that has been lost, or shall be alleged or supposed to have been lost or stolen from the owner thereof, shall exhibit the same on demand to the sheriff of the county, or any of his deputies, or to any member of the police force or constable, or other municipal or county official, of the city, town or village, or county in which said junk dealer does business, or to any person duly authorized in writing by any magistrate to inspect property in the possession of said junk dealer, who shall exhibit such authorization to said dealer.

History: Laws 1921, ch. 25, § 3; C.S. 1929, § 77-103; 1941 Comp., § 51-2603; 1953 Comp., § 49-7-3.

57-7-4. [Lost or stolen property returned without payment.]

When any person, firm or corporation is found to be the owner of lost or stolen property, which has been purchased by, or is in the possession of any junk dealer, the said property shall be returned to the owner thereof by said junk dealer without the payment of any money by the owner to said junk dealer, or any other person, firm or corporation.

History: Laws 1921, ch. 25, § 4; C.S. 1929, § 77-104; 1941 Comp., § 51-2604; 1953 Comp., § 49-7-4.

57-7-5. [Dealer to obtain statement from vendor; filing.]

At the time of purchase by any junk dealer of any pig or pigs of metal, copper wire or brass car jurnals [journals] or of any junk said junk dealer shall cause to be subscribed by the person or persons vending the same a statement as to when, where and from whom the vendor or vendors obtained such property; also a statement as to the vendor's or vendors' age or ages, residence or residences: i.e., the city, village or town, and the street and number, if any, of said residence or residences, and such other information as is reasonably necessary to enable said residence or residences to be located, also the name of the employer or employers, if any, of said vendor or vendors, and the place of business or employment of said employer or employers, and the junk dealer shall forthwith file the original of said statement subscribed by said vendor or vendors in the office of the chief of police or marshal, in the city, town or village in which the purchase was made, if made in a city or incorporated village; otherwise said statement shall forthwith be filed by the junk dealer in the office of the sheriff of the county in which said purchase was made.

History: Laws 1921, ch. 25, § 5; C.S. 1929, § 77-105; 1941 Comp., § 51-2605; 1953 Comp., § 49-7-5.

57-7-6. [Violation of act; penalties.]

Any junk dealer who shall be found guilty of a violation of any of the provisions of this act [57-7-1 to 57-7-7 NMSA 1978], shall be guilty of a misdemeanor, and shall be fined or [and] imprisoned, either or both, in the discretion of the court, provided, however, that for the first offense the fine shall be not less than fifty dollars ($50.00) or more than two hundred dollars ($200), and the imprisonment shall be for not more than sixty (60) days; and further provided, that for the second, and for each subsequent conviction or violation of any of the provisions of this act, the fines shall be not less than one hundred dollars ($100) or more than three hundred dollars ($300) and the imprisonment not less than thirty (30) days or more than ninety (90) days.

History: Laws 1921, ch. 25, § 6; C.S. 1929, § 77-106; 1941 Comp., § 51-2606; 1953 Comp., § 49-7-6.

57-7-7. [Statements by vendor; penalty.]

Any vendor who in making his statement as contemplated by this act [57-7-1 to 57-7-7 NMSA 1978] or in making any other written statement relative to junk which he either has sold or is trying to sell shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten dollars [($10.00)] and costs nor more than one hundred dollars [($100)] and costs, or by imprisonment in the county jail for not less than ten nor more than ninety days, or by both such fine and imprisonment in the discretion of the court.

This act shall not be construed as impairing in anywise the power of cities or incorporated towns in this state to license, tax and to regulate any person, firm or

corporation now engaged in, or hereafter engaged in the buying and selling of junk, provided, that such regulations are not inconsistent herewith.

History: Laws 1921, ch. 25, § 7; C.S. 1929, § 77-107; 1941 Comp., § 51-2607; 1953 Comp., § 49-7-7.

ARTICLE 8
Trading Stamps

57-8-1. [Definitions.]

As used in this act [57-8-1 to 57-8-6 NMSA 1978]:

A. the term "trading stamp" means any stamp or similar device issued in connection with the retail sale of merchandise or service, as a cash discount or for any other marketing purpose, which entitles the rightful holder, on its due presentation for redemption, to receive merchandise, service or cash. This term, however, shall not mean any redeemable device used by the manufacturer or packer of an article, in advertising or selling it, or any redeemable device issued and redeemed by a newspaper, magazine or other publication;

B. the term "trading stamp company" means any person engaged in distributing trading stamps for retail issuance by others, or in redeeming trading stamps for retailers in any way or under any guise;

C. the term "person" means any individual, partnership, corporation, association or other organization.

History: 1953 Comp., § 49-9-1, enacted by Laws 1959, ch. 79, § 1.

57-8-2. [Fraud, false representation and lottery prohibited.]

No trading stamp company shall commit any fraud or shall make any false representation or shall resort to any lottery in distributing or redeeming trading stamps in this state.

History: 1953 Comp., § 49-9-2, enacted by Laws 1959, ch. 79, § 2.

57-8-3. [Redemption value in cents to be shown.]

No trading stamp company shall distribute trading stamps in this state or shall redeem trading stamps hereafter issued therein unless:

A. each stamp has legibly printed upon its face in cents or any fraction thereof a cash value determined by the company; and

B. the rightful holders may, at their option, redeem the stamps in cash when duly presented to the company for redemption in a number having an aggregate cash value of not less than twenty-five cents [($.25)].

History: 1953 Comp., § 49-9-3, enacted by Laws 1959, ch. 79, § 3.

57-8-4. [Conditions of issue; registration statement; bond; claims of holders; filing of claims; determination of validity; distribution of proceeds; amount of bond; new bond; registration fee.]

No trading stamp company shall distribute trading stamps in this state or shall redeem trading stamps hereafter issued therein until it has filed with the secretary of state:

A. a statement of registration accompanied by representative samples of its stamps, stamp collection books, stamp redemption catalogues and stamp distribution and redemption agreement forms currently used in this state. Each such statement shall provide the following information:

(1) the name and principal address of the company;

(2) the state of its incorporation or origin;

(3) the names and addresses of its principal officers, partners or proprietors;

(4) the address of its principal office in this state;

(5) the name and address of its principal officer, employee or agent therein;

(6) the addresses of the places where its stamps are redeemable within the state;

(7) a short form of its balance sheet, as at the end of its last fiscal year prior to such filing, certified by an independent public accountant; and

(8) unless the principal sum of the bond hereinafter required to be fied [filed] by the company is the maximum amount hereinafter required, a statement of the gross income from its business in this state as a trading stamp company during such last fiscal year, certified by an independent public accountant; and, simultaneously therewith;

B. a bond payable to this state and duly executed by the company and a corporate surety qualified to do business therein, which is conditioned upon the performance by the company of the obligation to redeem trading stamps issued by the retailers in this state, when they are duly presented for redemption by the rightful owners and holders.

In the event the trading stamp company defaults in performing such obligation, all rightful holders of trading stamps of such company shall be entitled to make claim against said bond. Retailers in possession of trading stamps for issuance to their customers shall also be deemed rightful holders entitled to make such claim.

In the event the trading stamp company defaults in the performance of its obligation to redeem trading stamps, any rightful holder may file within three months after such default a complaint with the secretary of state. Upon the filing of any such compaint [complaint] the secretary of state shall forthwith make a determination whether there has been a default. If the secretary of state shall determine that there has been such a default he shall give notice of such determination to the trading stamp company and if such default is not corrected within 10 days he shall publish notice of such default in three consecutive publications of one or more newspapers having general circulation throughout this state and therein require that proof of all claims for redemption of the trading stamps of the company shall be filed with him, together with the trading stamps upon which the claim is based, within three months after the date of the first such publication. The secretary of state promptly after the expiration of such period shall determine the validity of all claims so filed. Thereupon the secretary of state shall be paid by the surety such amount as shall be necessary to satisfy all valid claims so filed, together with reasonable administrative costs incident to the determination and payment of said claims, not exceeding the aggregate, however, of the principal sum of the bond. The secretary of state shall promptly thereafter make an equitable distribution of the proceeds of the bond, less such reasonable administrative costs, to such claimants and shall destroy the trading stamps so surrendered.

The principal sum of the bond shall be as follows:

If the issuer has not previously done business as a trading stamp company in this state, or if the company's gross income from such business in this state during its last fiscal year was not in excess of one hundred thousand dollars ($100,000): ten thousand dollars ($10,000); if such gross income exceeded one hundred thousand dollars ($100,000) but was not in excess of two hundred and fifty thousand dollars ($250,000): twenty-five thousand dollars ($25,000); if such gross income exceeded two hundred and fifty thousand dollars ($250,000) but was not in excess of five hundred thousand dollars ($500,000): fifty thousand dollars ($50,000); if such gross income exceeded five hundred thousand dollars ($500,000) but was not in excess of seven hundred fifty thousand dollars ($750,000): seventy-five thousand dollars ($75,000); and if such gross income exceeded seven hundred and fifty thousand dollars ($750,000): one hundred thousand dollars ($100,000).

On the effective date of each such new bond any and all liability on all bonds previously filed hereunder shall terminate and all rightful holders of trading stamps who shall prosecute their claims hereunder shall prosecute such claims solely against the new bond and only by filing proofs of claim with the secretary of state in the manner hereinbefore provided.

The statement of registration and the bond shall be filed with the secretary of state on or before the effective date of this act and annually thereafter on or before July 1 of each year. The trading stamp company shall pay a registration fee as follows: if the issuer has not previously done business as a trading stamp company in this state or if the company's gross income from such business in this state during its last fiscal year was not in excess of one hundred thousand dollars ($100,000): one hundred dollars ($100); if such gross income exceeded one hundred thousand dollars ($100,000) but was not in excess of two hundred and fifty thousand dollars ($250,000): two hundred and fifty dollars ($250); if such gross income exceeded two hundred and fifty thousand dollars ($250,000) but was not in excess of five hundred thousand dollars ($500,000): five hundred dollars ($500); if such gross income exceeded five hundred thousand dollars ($500,000): one thousand dollars ($1,000) to the secretary of state at the time of filing such registration statement.

History: 1953 Comp., § 49-9-4, enacted by Laws 1959, ch. 79, § 4.

57-8-5. [Ceasing or suspending redemption; notice of intention.]

No trading stamp company shall cease or suspend the redemption of trading stamps in this state without filing with the secretary of state at least ninety days' prior written notice of its intention so to do and concurrently mailing a copy of such notice to each retailer within this state which has at any time theretofore within one year issued trading stamps which the company is obligated to redeem.

History: 1953 Comp., § 49-9-5, enacted by Laws 1959, ch. 79, § 5.

57-8-6. [Violation of act; penalty; injunction.]

Any person violating any provision of this act [57-8-1 to 57-8-6 NMSA 1978] shall be punished by a fine of not more than five thousand dollars ($5,000), and the district court shall have jurisdiction in equity on the complaint of the secretary of state, the attorney general or any rightful holder of stamps of the offering company to restrain the violation of any of said provisions.

History: 1953 Comp., § 49-9-6, enacted by Laws 1959, ch. 79, § 6.

ARTICLE 9
Used Merchandise

57-9-1. Short title.

This act [57-9-1 to 57-9-3, 57-9-4, 57-9-5 NMSA 1978] may be cited as the "Used Merchandise Act".

History: 1953 Comp., § 49-13-1, enacted by Laws 1967, ch. 155, § 1.

57-9-2. Definitions.

As used in the Used Merchandise Act:

A. "store" means any pawnshop, second hand store, junkshop, automobile salvage or wreckage establishment or any place of operation for dealing in or purchasing gold, silver or platinum, but does not include any shop or establishment insofar as it purchases or deals in paper products or used beverage containers, other than those made of gold, silver or platinum; and

B. "identification" means a valid New Mexico driver's license, a federal social security card, a valid armed forces identification card, a federal census number, a valid medicare identification card, a valid passport or any valid juvenile identification card issued by a municipality of this state.

History: 1953 Comp., § 49-13-2, enacted by Laws 1967, ch. 155, § 2; 1981, ch. 323, § 1.

57-9-3. Prohibited acts.

It is unlawful for the owner of any store, or the manager or employee thereof, to purchase or to loan money secured by any used merchandise, article or thing without first requiring identification from the seller or borrower and recording the name of the seller or borrower, his address and date of birth or social security number, a complete description of the merchandise, article or thing sold or loaned on the date of such transaction and the identification number and type of identification shown.

History: 1953 Comp., § 49-13-3, enacted by Laws 1967, ch. 155, § 3; 1981, ch. 323, § 2.

57-9-3.1. Weighing devices.

All devices used to weigh precious metals by an owner of a store shall have been inspected and approved for use by a weights and measures officer of this state within a period of twelve months immediately preceding the date of the weighing.

History: 1978 Comp., § 57-9-3.1, enacted by Laws 1981, ch. 323, § 3.

57-9-3.2. Records.

An owner of a store shall:

A. keep a record in which he shall note the time of each transaction, a description of the goods purchased, the name and address of the person selling the goods and the date and hour the goods were received; and

B. retain all gold, silver and platinum in the form in which purchased in his possession for a period of not less than five days.

History: 1978 Comp., § 57-9-3.2, enacted by Laws 1981, ch. 323, § 4.

57-9-3.3. Receipts.

The owner of a store shall issue a serialized receipt for each purchase or statement of appraisal of gold, silver or platinum which shall contain the following:

A. the legal name and address of the store or appraiser;

B. the name and address of the seller;

C. the date of the transaction;

D. the net weight in terms of pounds troy or avoirdupois, ounces troy or avoirdupois, pennyweight troy or avoirdupois or kilograms or grams; and

E. the fineness of the precious metal in terms of karat for gold and sterling or coin for silver.

The merchant shall retain copies of each receipt or statement of appraisal for not less than one year.

History: 1978 Comp., § 57-9-3.3, enacted by Laws 1981, ch. 323, § 5.

57-9-4. Inspection of record.

The record as provided in Section 3 [57-9-3 NMSA 1978] of the Used Merchandise Act shall be open to inspection of law enforcement officers of the county, municipality and state at all times.

History: 1953 Comp., § 49-13-4, enacted by Laws 1967, ch. 155, § 4.

57-9-5. Penalty.

A. The first violation of the Used Merchandise Act is a misdemeanor.

B. Second and all subsequent violations of the Used Merchandise Act which occur after the date of conviction for the first offense are fourth degree felonies.

History: 1953 Comp., § 49-13-5, enacted by Laws 1967, ch. 155, § 5; 1981, ch. 323, § 6.

ARTICLE 9A
Unused Merchandise Ownership Protection

57-9A-1. Short title.

This act [57-9A-1 to 57-9A-6 NMSA 1978] may be cited as the "Unused Merchandise Ownership Protection Act".

History: Laws 1999, ch. 247, § 1.

57-9A-2. Definitions.

As used in the Unused Merchandise Ownership Protection Act:

A. "open market" may include a "swap meet", an "indoor swap meet" or a "flea market" and means an event at which two or more persons offer personal property for sale or exchange and either:

(1) a fee is charged for those persons selling or exchanging personal property or a fee is charged to the public for admission to the event; or

(2) the event is held more than six times in a twelve-month period;

B. "unused merchandise" means tangible personal property that, since its original production or manufacturing, has never been used or consumed and, if placed in a package or container, is still in its original and unopened package or container; and

C. "vendor of unused merchandise" means a person who offers unused merchandise for sale or exchange at an open market, except a person who offers five or less items of the same unused merchandise for sale or exchange at an open market.

History: Laws 1999, ch. 247, § 2.

57-9A-3. Prohibited sales; certain merchandise.

A. It is a violation of the Unused Merchandise Ownership Protection Act for a vendor of unused merchandise to sell or offer for sale any baby food or infant formula, cosmetic, drug or medical device at an open market without displaying a written valid authorization from the manufacturer or distributor of the merchandise. The authorization shall identify the vendor of unused merchandise and shall specify the merchandise and expiration date of the merchandise that the vendor is authorized to sell.

B. As used in this section:

(1) "baby food or infant formula" means unused merchandise consisting of a food product manufactured, packaged and labeled specifically for consumption by a child less than two years of age;

(2) "cosmetic" means unused merchandise, other than soap, that is:

(a) intended to be rubbed, poured, sprinkled or sprayed on, introduced into or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness or altering the appearance; or

(b) intended for use as a component of any articles enumerated in Subparagraph (a) of this paragraph;

(3) "drug" means unused merchandise, other than food, that:

(a) is recognized in an official compendium;

(b) affects the structure or any function of the body of man or other animals; or

(c) is intended for use as a component of Subparagraph (a) or (b) of this paragraph, but does not include medical devices or their component parts or accessories;

(4) "medical device" means unused merchandise that is an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component, part or accessory, and that is:

(a) recognized in an official compendium;

(b) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment or prevention of disease, in man or other animals; or

(c) intended to affect the structure or function of the body of man or other animals and which does not achieve its principal intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for achievement of its principal intended purposes; and

(5) "official compendium" means the official United States pharmacopoeia national formulary or the official homeopathic pharmacopoeia of the United States or any supplement to either of them.

History: Laws 1999, ch. 247, § 3.

57-9A-4. Recordkeeping requirements; violations.

A. A vendor of unused merchandise shall maintain receipts for the vendor's purchase of any unused merchandise sold or offered for sale by the vendor at an open market. The receipts shall be kept at the open market in which the unused merchandise is offered for sale and at the vendor's residence or principal place of business for two years after the merchandise is sold. Each receipt shall specify:

(1) the date of the purchase;

(2) the name and address of the person from whom the unused merchandise was acquired;

(3) a description of the unused merchandise purchased, including any specific lot numbers or other identifying characteristics;

(4) the amount paid for the unused merchandise; and

(5) the signature of the buyer and the seller of the unused merchandise.

B. It is a violation of the Unused Merchandise Ownership Protection Act for a person to knowingly:

(1) falsify, obliterate or destroy any receipt required to be kept pursuant to this section;

(2) at the request of a police officer, as defined in Section 29-7-7 NMSA 1978, fail or refuse to produce any receipt required to be kept pursuant to this section; and

(3) fail to maintain any receipt as required by this section.

History: Laws 1999, ch. 247, § 4.

57-9A-5. Exemptions.

A. The following persons are exempt from the provisions of the Unused Merchandise Ownership Protection Act:

(1) a vendor at an event organized or operated for religious, educational, charitable or other nonprofit purposes if no part of any admission fee or parking fee charged vendors or prospective purchasers and no part of the gross receipts or net earnings from the sale of merchandise at the event is paid to a private person for participating in the organization or operation of the event;

(2) a vendor at an industry or association trade show;

(3) a vendor at an event at which all of the merchandise offered for sale is new and at which all vendors are manufacturers or authorized representatives of manufacturers or distributors; and

(4) a vendor selling by sample, catalog or brochure for future delivery.

B. The requirements of the Unused Merchandise Ownership Protection Act do not apply to sales or offers for sale of the following unused merchandise:

(1) firewood, sand, gravel, flagstone, building stone or other natural product;

(2) live animals;

(3) vehicles subject to registration pursuant to Section 66-3-1 NMSA 1978;

(4) food intended for human consumption at the open market immediately after sale;

(5) merchandise offered for sale as an antique or otherwise historical item and, although never used, the style, packaging, material or appearance of which clearly indicates that the merchandise was not produced or manufactured within recent times;

(6) food offered for sale that was grown, harvested or processed by the vendor or the grower;

(7) art, crafts or handicrafts that were produced by the vendor or the grower; and

(8) fresh produce.

History: Laws 1999, ch. 247, § 5.

57-9A-6. Penalties.

A person who violates any provision of the Unused Merchandise Ownership Protection Act is guilty of a misdemeanor and shall be sentenced in accordance with Section 31-19-1 NMSA 1978.

History: Laws 1999, ch. 247, § 6.

ARTICLE 10
Distress Sales

57-10-1. Short title.

This act [57-10-1 to 57-10-12 NMSA 1978] may be cited as the "Distress Sales Act".

History: 1953 Comp., § 49-14-1, enacted by Laws 1967, ch. 205, § 1.

57-10-2. Definitions.

As used in the Distress Sales Act:

A. "distress merchandise sale" shall mean any offer to sell to the public, or sale to the public, of goods, wares or merchandise on the implied or direct representation that such sale is in anticipation of the termination of a business at its present location or that the sale is being held other than in the ordinary course of business. Distress merchandise sales shall include but are not limited to any sale advertised either specifically or in substance as a "fire sale," "smoke and water damage sale," "adjustment sale," "liquidation sale," "creditor's sale," "insolvent sale," "trustee's sale," "bankrupt sale," "save us from bankruptcy sale," "insurance salvage sale," "mortgage sale," "assignee's sale," "adjuster's sale," "must vacate sale," "quitting business sale," "receiver's sale," "loss of lease sale," "forced out of business sale," "removal sale," "change of ownership sale" or "new location sale."

B. "person" means any individual, estate, trust, receiver, cooperative association, association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity.

History: 1953 Comp., § 49-14-2, enacted by Laws 1967, ch. 205, § 2.

57-10-3. Licenses.

It shall be unlawful for any person to advertise or conduct a distress merchandise sale without having first obtained a license to do so in accordance with the provisions of the Distress Sales Act.

History: 1953 Comp., § 49-14-3, enacted by Laws 1967, ch. 205, § 3.

57-10-4. Application for license.

Any person desiring to conduct a distress merchandise sale shall make a written application verified under oath to the municipal governing body if the sale is to be held within the boundaries of an incorporated municipality or to the county governing body if the sale is to be held outside the boundaries of an incorporated municipality, at least fifteen days prior to the date on which the sale is to commence unless the merchandise to be sold consists of perishable goods, or goods damaged by smoke, fire or water in which case the fifteen-day time period will not be applicable. Each application shall contain the following information and such other information as the municipal or county governing body shall require:

A. the name and address of the owner of the goods, wares or merchandise to be sold;

B. a description of the place where such sale is to be held;

C. the nature of the occupancy of the place where such sale is to be held, whether by lease or otherwise, and the effective date of the termination of the occupancy of the premises;

D. the commencement and termination dates of the distress merchandise sale;

E. a full and complete statement of the facts regarding the reasons why the distress merchandise sale is being conducted, the manner in which the sale is to be conducted, the means to be employed in advertising the sale, together with the content of any proposed advertisement or advertising themes, or copies thereof;

F. if a defunct business is involved, the name and address of the defunct business, and the owner or former owner thereof;

G. a complete and detailed inventory of the goods, wares and merchandise including goods received on consignment to be offered at the distress merchandise sale, the terms and conditions of the acquisition of the property, the amount and description of the goods, wares or merchandise to be sold and the location of the goods, wares and merchandise at the time of the filing of the application;

H. a statement that the applicant has not in contemplation of the distress merchandise sale ordered, purchased or received on consignment any goods, wares or merchandise for the purpose of selling them at the sale within ninety days prior to the filing of the application;

I. a statement that no goods will be added to the inventory after the application is made or during the sale;

J. a statement that the applicant or its principal officers or agents have not been convicted of a violation of the Distress Sales Act or had a license issued under this act revoked within five years of the filing of this application.

History: 1953 Comp., § 49-14-4, enacted by Laws 1967, ch. 205, § 4.

57-10-5. Examination and investigation; grounds for denial of license.

The municipal or county governing body may upon the filing of an application investigate the applicant and examine his affairs in relation to the proposed sale and may examine the inventory and records of the applicant. No license shall be issued if it is found that:

A. the applicant has held a sale subject to regulation under the Distress Sales Act at the location described in the application, within three years from the date of the application; or

B. the application states that the applicant or any of its principal officers or agents have been convicted of a violation of the Distress Sales Act or has had a license issued under this act revoked within five years of the filing of this application; or

C. the inventory submitted with the application includes goods, wares or merchandise purchased or held on consignment by the applicant or added to his stock in contemplation of such sale and for the purpose of selling the stock at the distress sale. Any unusual addition to the stock of goods, wares or merchandise which is made within ninety days prior to the filing of the application shall be prima facie evidence that the addition was made in contemplation of the sale and for the purpose of selling the goods at the sale; or

D. the applicant, in ticketing the goods, wares or merchandise for sale has misrepresented the original retail price or value thereof; or

E. the advertisement or advertising themes are false, fraudulent, deceptive or misleading in any respect; or

F. the sales methods to be used by the applicant in conducting the sale will work a fraud upon the purchasers; or

G. the information set forth in the application is insufficient; or

H. representations made in the application are false; or

I. the applicant has acquired bankrupt stock or other distress sale merchandise from another area within six months of the application.

History: 1953 Comp., § 49-14-5, enacted by Laws 1967, ch. 205, § 5.

57-10-6. Issuance of license; conditions.

If the application which has been submitted complies with the provisions of the Distress Sales Act and if the required license fee has been paid, the municipal or county governing body shall issue the applicant a license to advertise and conduct the sale described in the application subject to the following conditions:

A. the sale shall be held at the place named in the application;

B. the sale shall be held by the licensee for a period of not more than ninety days following the date set forth in the license;

C. only goods, wares and merchandise included in the inventory attached to the application shall be displayed on the premises and sold at the sale;

D. the license shall be prominently displayed at the location of the sale at all times;

E. the licensee shall keep suitable books at the sale location which shall be open for inspection by the municipal or county governing body during normal business hours.

History: 1953 Comp., § 49-14-6, enacted by Laws 1967, ch. 205, § 6.

57-10-7. License fee; renewal.

A. The fee for any license issued pursuant to the Distress Sales Act shall be fifty dollars ($50.00) or 1/4 of 1% of the inventory cost value of the goods, wares or merchandise to be sold at the sale, whichever is more. In no case, however, shall the license fee exceed two hundred dollars ($200).

B. If during the period that the license is in effect it appears to the municipal or county governing body that all of the goods in the original inventory have not been sold, the municipal or county governing body may upon application and for good cause shown extend the license for a period not to exceed thirty days.

History: 1953 Comp., § 49-14-7, enacted by Laws 1967, ch. 205, § 7.

57-10-8. Revocation of license.

The municipal or county governing body shall revoke any license issued pursuant to the Distress Sales Act if he finds that the license has:

A. violated any provision of the Distress Sales Act; or

B. violated any condition of the license; or

C. made any material misstatement in the application for the license; or

D. failed to include in the inventory required by the Distress Sales Act all the goods, wares or merchandise being offered for sale; or

E. offered or permitted to be offered at the sale any goods, wares or merchandise not included in the inventory attached to the application; or

F. failed to keep suitable records of the sale; or

G. made or permitted to be made any false or misleading statements or representations in advertising the sale or in displaying, ticketing or pricing goods, wares or merchandise offered for sale; or

H. been guilty of any fraudulent practice in the conduct of the sale authorized by the license.

History: 1953 Comp., § 49-14-8, enacted by Laws 1967, ch. 205, § 8.

57-10-9. Confidentiality requirements.

The filing of an application for a license, the contents of the application and the issuance of the license shall be confidential information and no disclosure thereof shall be made except that which is necessary in the administration of this act [57-10-1 to 57-10-12 NMSA 1978]. However, disclosure of the above-mentioned information may be made with the consent of the applicant. The filing of the application and the issuance of the license shall not be confidential after public notice of the proposed sale has been given by the applicant.

History: 1953 Comp., § 49-14-9, enacted by Laws 1967, ch. 205, § 9.

57-10-10. Applicability of Distress Sales Act.

A. The Distress Sales Act shall not apply to any sale conducted by a public officer as a part of his official duties, to any sale for which an accounting must be made to a court of law or to any sale conducted pursuant to an order of a court of law.

B. The Distress Sales Act does not apply to seasonal sales, clearance sales or similar special sales of nondistress merchandise.

History: 1953 Comp., § 49-14-10, enacted by Laws 1967, ch. 205, § 10.

57-10-11. Penalty.

Any person violating any provision of the Distress Sales Act shall upon conviction be punished by a fine not to exceed three hundred dollars ($300) or by imprisonment not to exceed ninety days or both.

History: 1953 Comp., § 49-14-11, enacted by Laws 1967, ch. 205, § 11.

57-10-12. Distribution of fees.

The license fees collected under the Distress Sales Act, shall be deposited in the general fund of the county, city, town or village which has issued the license for the distress sale.

History: 1953 Comp., § 49-14-12, enacted by Laws 1967, ch. 205, § 14.

ARTICLE 11
Financing of Automobile Sales

57-11-1. [Agreements restricting financing of sales to certain persons prohibited.]

It shall be unlawful for any person who is engaged, either directly or indirectly, in the manufacture or distribution of motor vehicles, to sell or enter into a contract to sell motor vehicles, whether patented or unpatented, to any person who is engaged or intends to engage in the business of selling such motor vehicles at retail in this state, on the condition or with an agreement or understanding, either express or implied, that such person so engaged in selling motor vehicles at retail shall in any manner finance the purchase or sale of any one or number of motor vehicles only with or through a designated person or class of persons or shall sell and assign the conditional sales contracts, chattel mortgages or leases arising from the sale of motor vehicles or any one or number thereof only to a designated person or class of persons, when the effect of the condition, agreement or understanding so entered into may be to lessen or eliminate competition, or create or tend to create a monopoly in the person or class of persons who are designated, by virtue of such condition, agreement or understanding to finance the purchase or sale of motor vehicles or to purchase such conditional sales contracts, chattel mortgages or leases, and any such condition, agreement or understanding is hereby declared to be void and against the public policy of this state.

History: Laws 1937, ch. 75, § 1; 1941 Comp., § 68-1601; 1953 Comp., § 64-31-1.

57-11-2. [Threat of refusal to sell unless sales financed by certain persons; prima facie evidence of violation.]

Any threat, expressed or implied, made directly or indirectly to any person engaged in the business of selling motor vehicles at retail in this state by any person engaged, either directly or indirectly, in the manufacture or distribution of motor vehicles, that such person will discontinue or cease to sell, or refuse to enter into a contract to sell, or will terminate a contract to sell motor vehicles, whether patented or unpatented, to such person who is so engaged in the business of selling motor vehicles at retail, unless such person finances the purchase or sale of any one or number of motor vehicles only with or through a designated person or class of persons or sells and assigns the conditional sales contracts, chattel mortgages or leases arising from his retail sales of motor vehicles or any one or number thereof only to a designated motor vehicles or any one or any number thereof [sic] only to such person or class of persons shall be prima facie evidence of the fact that such person so engaged in the manufacture or distribution of motor vehicles has sold or intends to sell the same on condition or with the agreement or understanding prohibited in Section 1 [57-11-1 NMSA 1978] of this act.

History: Laws 1937, ch. 75, § 2; 1941 Comp., § 68-1602; 1953 Comp., § 64-31-2.

57-11-3. [Threat to terminate contract unless sales financed by certain persons; prima facie evidence of violation.]

Any threat, expressed or implied, made directly or indirectly, to any person engaged in the business of selling motor vehicles at retail in this state by any person, or any agent of any person, who is engaged in the business of financing the purchase or sale of motor vehicles or of buying conditional sales contracts, chattel mortgages or leases on motor vehicles in this state and is affiliated with or controlled by any person engaged, directly or indirectly, in the manufacture or distribution of motor vehicles, that such person so engaged in the manufacture or distribution shall terminate his contract with or cease to sell motor vehicles to such person engaged in the sale of motor vehicles at retail in this state unless such person finances the purchase or sale of any one or number of motor vehicles only or through a designated person or class of persons or sells and assigns the conditional sales contracts, chattel mortgages or leases arising from his retail sale of [motor vehicles or any one or any number thereof only to such per]son so engaged in financing the purchase or sale of motor vehicles or in buying conditional sales contracts, chattel mortgages or leases on motor vehicles, shall be presumed to be made at the direction of and with the authority of such person so engaged in such manufacture or distribution of motor vehicles, and shall be prima facie evidence of the fact that such person so engaged in the manufacture or distribution of motor vehicles has sold or intends to sell the same on the condition or with the agreement or understanding prohibited in Section 1 [57-11-1 NMSA 1978] of this act.

History: Laws 1937, ch. 75, § 3; 1941 Comp., § 68-1603; 1953 Comp., § 64-31-3.

57-11-4. [Payments to eliminate competition or create monopoly in financing sales prohibited.]

It shall be unlawful for any person who is engaged, directly or indirectly, in the manufacture or wholesale distribution only of motor vehicles, whether patented or unpatented, to pay or give, or contract to pay or give anything or service of value to any person who is engaged in the business of financing the purchase or sale of motor vehicles or of buying conditional sales contracts, chattel mortgages or leases on motor vehicles sold at retail within this state if the effect of any such payment or the giving of any such thing or service of value may be to lessen or eliminate competition, or tend to create or create a monopoly in the person or class of persons who receive or accept such thing or service of value.

History: Laws 1937, ch. 75, § 4; 1941 Comp., § 68-1604; 1953 Comp., § 64-31-4.

57-11-5. [Acceptance by persons engaged in financing sales of payments tending to eliminate competition prohibited.]

It shall be unlawful for any person who is engaged in the business of financing the purchase or sale of motor vehicles or of buying conditional sales contracts, chattel

mortgages or leases on motor vehicles sold at retail within this state to accept or receive, or contract or agree to accept or receive, either directly or indirectly, any payment, thing or service of value from any person who is engaged, either directly or indirectly, in the manufacture or wholesale distribution only of motor vehicles, whether patented or unpatented, if the effect of the acceptance or receipt of any such payment, thing or service of value may be to lessen or eliminate competition, or to create or tend to create a monopoly in the person who accepts or receives such payment, thing or service of value, or contracts or agrees to accept or receive the same.

History: Laws 1937, ch. 75, § 5; 1941 Comp., § 68-1605; 1953 Comp., § 64-31-5.

57-11-6. [Violators of 57-11-5 NMSA 1978 forbidden to carry on business.]

It shall be unlawful for any person who hereafter so accepts or receives, either directly or indirectly, any payment, thing or service of value, as set forth in Section 5 [57-11-5 NMSA 1978] of this act, or hereafter so contracts, either directly or indirectly, to receive any such payment or thing or service of value to thereafter finance or attempt to finance the purchase or sale of any motor vehicle or buy or attempt to buy any conditional sales contracts, chattel mortgages or leases on motor vehicles sold at retail in this state.

History: Laws 1937, ch. 75, § 6; 1941 Comp., § 68-1606; 1953 Comp., § 64-31-6.

57-11-7. [Suits or proceedings against violators of act.]

For a violation of any of the provisions of this act [57-11-1 to 57-11-13 NMSA 1978] by any corporation or association mentioned herein, it shall be the duty of the attorney general or the district attorney of the proper county, to institute proper suits or quo warranto proceedings in any court of competent jurisdiction for the forfeiture of its charter rights, franchises or privileges and powers exercised by such corporation or association, and for the dissolution of the same under the general statutes of the state.

History: Laws 1937, ch. 75, § 7; 1941 Comp., § 68-1607; 1953 Comp., § 64-31-7.

57-11-8. [Foreign corporations as violators of act; revocation of license to do business in state.]

Every foreign corporation, as well as every foreign association, exercising any of the powers, franchises or functions of a corporation in this state, violating any of the provisions of this act [57-11-1 to 57-11-13 NMSA 1978], is hereby denied the right [of] and prohibited from doing any business in this state, and it shall be the duty of the attorney general to enforce this provision by bringing proper proceedings by injunction or otherwise. The secretary of the state shall be authorized to revoke the license of any

such corporation or association heretofore authorized by him to do business in this state.

History: Laws 1937, ch. 75, § 8; 1941 Comp., § 68-1608; 1953 Comp., § 64-31-8.

57-11-9. [Penalties.]

Any person who violates any of the provisions of this act [57-11-1 to 57-11-13 NMSA 1978], any person who is a party to any agreement or understanding, or to any contract prescribing any condition prohibited by this act, and any employee, agent or officer of any such person who shall participate, in any manner, in making, executing, enforcing, performing or in urging, aiding or abetting in the performance of any such contract, condition, agreement or understanding and any person who pays or gives or contracts to pay or give anything or service of value prohibited by this act, and any person who receives or accepts or contracts to receive or accept anything or service of value prohibited by this act, shall be deemed guilty of a felony and upon conviction thereof shall be punished by a fine of not less than $50 [fifty dollars ($50.00)] nor more than $5,000 [five thousand dollars ($5,000)] or be imprisoned not less than six months nor more than one year, or by both such fine and imprisonment. Each day's violation of this provision shall constitute a separate offense.

History: Laws 1937, ch. 75, § 9; 1941 Comp., § 68-1609; 1953 Comp., § 64-31-9.

57-11-10. [Contract in violation of act void.]

Any contract or agreement in violation of the provisions of this act [57-11-1 to 57-11-13 NMSA 1978] shall be absolutely void and shall not be enforceable either in law or equity.

History: Laws 1937, ch. 75, § 10; 1941 Comp., § 68-1610; 1953 Comp., § 64-31-10.

57-11-11. [Provisions of act cumulative.]

The provisions hereof shall be held cumulative of each other and of all other laws in any way affecting them now in force in this state.

History: Laws 1937, ch. 75, § 11; 1941 Comp., § 68-1611; 1953 Comp., § 64-31-11.

57-11-12. [Action for damages by violation of act.]

In addition to the criminal and civil penalties herein provided, any person who is injured in his business or property by any other person or corporation or association or partnership, by reason of anything forbidden or declared to be unlawful by this act [57-11-1 to 57-11-13 NMSA 1978], may sue therefor in any court having jurisdiction thereof in the county where the defendant resides or is found, or any agent resides or is found,

or where service may be obtained, without respect to the amount in controversy, and to recover twofold the damages by him sustained, and the costs of suit. Whenever it shall appear to the court before which any proceedings under this act is [are] pending, that the ends of justice require that other parties shall be brought before the court, the court may cause them to be made parties defendant and summoned, whether they reside in the county where such action is pending, or not.

History: Laws 1937, ch. 75, § 12; 1941 Comp., § 68-1612; 1953 Comp., § 64-31-12.

57-11-13. [Definitions.]

A. The term "person," as used in this act [57-11-1 to 57-11-13 NMSA 1978], means any individual, firm, corporation, partnership, association, trustee, receiver or assignee for the benefit of creditors.

B. The terms "sell," "sold," "buy" and "purchase," as used in this act, include exchange, barter, gift and offer or contract to sell or buy.

History: Laws 1937, ch. 75, § 13; 1941 Comp., § 68-1613; 1953 Comp., § 64-31-13.

ARTICLE 12
Unfair Trade Practices

57-12-1. Short title.

Chapter 57, Article 12 NMSA 1978 may be cited as the "Unfair Practices Act".

History: 1953 Comp., § 49-15-1, enacted by Laws 1967, ch. 268, § 1; 2003, ch. 167, § 8; 2003, ch. 168, § 1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(18) violating the Tobacco Escrow Fund Act [6-4-14 to 6-4-24 NMSA 1978]; or

(19) offering or providing unposted or unadvertised pricing or service based on the buyer's gender or perceived gender identity; provided, however, that this provision does not apply to persons regulated by the office of superintendent of insurance pursuant to the New Mexico Insurance Code [Chapter 59A, except for Articles 30A and 42A NMSA 1978]; and

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

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

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

History: 1953 Comp., § 49-15-2, enacted by Laws 1967, ch. 268, § 2; 1969, ch. 208, § 1; 1971, ch. 240, § 1; 1987, ch. 187, § 1; 1989, ch. 309, § 1; 1995, ch. 18, § 2; 1999, ch. 171, § 1; 2003, ch. 167, § 9; 2009, ch. 197, § 25; 2019, ch. 214, § 1.

57-12-3. Unfair or deceptive and unconscionable trade practices prohibited.

Unfair or deceptive trade practices and unconscionable trade practices in the conduct of any trade or commerce are unlawful.

History: 1953 Comp., § 49-15-3, enacted by Laws 1967, ch. 268, § 3; 1971, ch. 240, § 2.

57-12-3.1. Unauthorized use of delivery container prohibited.

A. It shall be an unlawful practice within the meaning of the Unfair Practices Act for any person to:

(1) remove the owner's container from the owner's or a recipient's premises or parking area without the permission of the owner or recipient;

(2) possess or use the owner's container if it has been removed from the owner's or recipient's premises or parking area without the permission of the owner or recipient;

(3) alter, convert, destroy or tamper with the owner's container without permission of the owner or recipient; or

(4) sell the owner's container to or purchase the owner's container from someone other than the owner without the permission of the owner.

B. As used in this section:

(1) "bakery rack" means a metal frame that holds bakery trays or other bakery products and that is used by a bakery, distributor or retailer or its agent as a means to transport, store or carry bakery products;

(2) "bakery tray" means a wire or plastic receptacle that holds bread, buns or other baked goods and that is used by a bakery, distributor or retailer or its agent as a means to transport, store or carry bakery products;

(3) "container" means a bakery rack, bakery tray, dairy case, egg basket, poultry box, shopping cart or pallet;

(4) "dairy case" means a plastic receptacle that holds sixteen quarts or more of beverage and that is used by a dairy, distributor or retailer or its agent as a means to transport, store or carry dairy products;

(5) "pallet" means a wooden or plastic base that allows stacks of merchandise to be placed upon it and that provides a space and support beneath the stack for forklift handling;

(6) "parking area" means a lot or other property provided by a recipient for the use of its customers to park vehicles while at the recipient's establishment;

(7) "poultry box" means a permanent type of container that is used by a processor, distributor, retailer or food service establishment or an agent of one of those persons to transport, store or carry poultry;

(8) "recipient" means a person, firm, corporation or association that is authorized by the owner to use an owner's container; and

(9) "shopping cart" means a basket that is mounted on wheels, or a similar device, that is generally used in a retail establishment by a customer to transport goods of any kind.

C. No civil action shall be maintained pursuant to this section against any person who returns to its owner within sixty days after the effective date of this section a container that was unlawfully obtained.

History: Laws 1991, ch. 28, § 1.

57-12-4. Interpretation.

It is the intent of the legislature that in construing Section 3 [57-12-3 NMSA 1978] of the Unfair Practices Act the courts to the extent possible will be guided by the interpretations given by the federal trade commission and the federal courts.

History: 1953 Comp., § 49-15-4, enacted by Laws 1967, ch. 268, § 4.

57-12-5. Chain referral sales technique; prohibited.

The use or employment of any chain referral sales technique, plan, arrangement or agreement whereby the buyer is induced to purchase merchandise or services upon the seller's representation or promise that if the buyer will furnish the seller names of other prospective buyers of like or identical merchandise that the seller will contact the named prospective buyers and the buyer will receive a reduction in the purchase price by means of a cash rebate, commission, credit toward balance due or any other consideration, is declared to be an unlawful practice within the meaning of the Unfair Practices Act.

History: 1953 Comp., § 49-15-5, enacted by Laws 1967, ch. 268, § 5.

57-12-6. Misrepresentation of motor vehicles; penalty.

A. The willful misrepresentation of the age or condition of a motor vehicle by any person, including regrooving tires or performing chassis repair, without informing the purchaser of the vehicle that the regrooving or chassis repair has been performed, is an unlawful practice within the meaning of the Unfair Practices Act, unless the alleged misrepresentation is based wholly on repair of damage, the disclosure of which was not required pursuant to Subsection C of this section. The failure to provide an affidavit pursuant to Subsection B of this section when there has been repair for which disclosure is required shall constitute prima facie evidence of willful misrepresentation.

B. Except as provided in Subsections C and D of this section, a seller of a motor vehicle shall furnish at the time of sale of a motor vehicle an affidavit that:

(1) describes the vehicle; and

(2) states to the best of the seller's knowledge whether there has been an alteration or chassis repair due to wreck damage.

C. No affidavit shall be required pursuant to this section if the flat rate manual cost of the alteration or chassis repair is less than six percent of the sales price of the vehicle.

D. In the case of a private-party sale of a vehicle, an affidavit shall be furnished only upon the request of the purchasing party.

E. Notwithstanding the provisions of Subsection D of Section 57-12-10 NMSA 1978, the award of three times actual damages as provided for in that section shall be in lieu of any award of punitive damages based only on those facts constituting the unfair or deceptive trade practice or unconscionable trade practice.

F. Any person who violates this section is guilty of a misdemeanor.

History: 1953 Comp., § 49-15-5.1(B), enacted by Laws 1971, ch. 274, § 1, and recompiled as 1953 Comp., § 49-15-5.1 by Laws 1977, ch. 181, § 4; 1981, ch. 361, § 1; 1991, ch. 232, § 1; 1995, ch. 10, § 1.

57-12-7. Exemptions.

Nothing in the Unfair Practices Act shall apply to actions or transactions expressly permitted under laws administered by a regulatory body of New Mexico or the United States, but all actions or transactions forbidden by the regulatory body, and about which the regulatory body remains silent, are subject to the Unfair Practices Act.

History: 1953 Comp., § 49-15-6, enacted by Laws 1967, ch. 268, § 6; 1999, ch. 171, § 2.

57-12-8. Restraint of prohibited acts; remedies for violations.

A. Whenever the attorney general has reasonable belief that any person is using, has used or is about to use any method, act or practice which is declared by the Unfair Practices Act to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the state alleging violations of the Unfair Practices Act. The action may be brought in the district court of the county in which the person resides or has his principal place of business or in the district court in any county in which the person is using, has used or is about to use the practice which has been alleged to be unlawful under the Unfair Practices Act. The attorney general acting on behalf of the state of New Mexico shall not be required to post bond when seeking a temporary or permanent injunction in such action.

B. In any action filed pursuant to the Unfair Practices Act, including an action with respect to unimproved real property, the attorney general may petition the district court for temporary or permanent injunctive relief and restitution.

History: 1953 Comp., § 49-15-7, enacted by Laws 1967, ch. 268, § 7; 1970, ch. 38, § 1; 1977, ch. 181, § 1.

57-12-9. Settlements.

A. In lieu of beginning or continuing an action pursuant to the Unfair Practices Act, the attorney general may accept a written assurance of discontinuance of any practice in violation of the Unfair Practices Act from the person who has engaged in the unlawful practice. The attorney general may require an agreement by the person engaged in the unlawful practice that, by a date set by the attorney general and stated in the assurance, he will make restitution to all persons of money, property or other things received from them in any transaction related to the unlawful practice. All settlements are a matter of public record but are not admissible against any defendant in any action brought by any other person or public body against such defendant under the Unfair Practices Act and do not constitute a basis for the introduction of the assurance of discontinuance as prima facie evidence against such defendant in any action or proceeding.

B. A person need not accept restitution pursuant to an assurance. His acceptance of restitution bars recovery of any damages in any action by him or on his behalf against the same defendant on account of the same unlawful practice.

C. A violation of an assurance entered into pursuant to this section is a violation of the Unfair Practices Act.

History: 1953 Comp., § 49-15-7.1, enacted by Laws 1971, ch. 240, § 3; 1977, ch. 181, § 2.

57-12-10. Private remedies.

A. A person likely to be damaged by an unfair or deceptive trade practice or by an unconscionable trade practice of another may be granted an injunction against it under the principles of equity and on terms that the court considers reasonable. Proof of monetary damage, loss of profits or intent to deceive or take unfair advantage of any person is not required. Relief granted for the copying of an article shall be limited as to the prevention of confusion or misunderstanding as to source.

B. Any person who suffers any loss of money or property, real or personal, as a result of any employment by another person of a method, act or practice declared unlawful by the Unfair Practices Act may bring an action to recover actual damages or the sum of one hundred dollars ($100), whichever is greater. Where the trier of fact finds that the party charged with an unfair or deceptive trade practice or an unconscionable trade practice has willfully engaged in the trade practice, the court may award up to three times actual damages or three hundred dollars ($300), whichever is greater, to the party complaining of the practice.

C. The court shall award attorney fees and costs to the party complaining of an unfair or deceptive trade practice or unconscionable trade practice if the party prevails. The court shall award attorney fees and costs to the party charged with an unfair or deceptive trade practice or an unconscionable trade practice if it finds that the party complaining of such trade practice brought an action that was groundless.

D. The relief provided in this section is in addition to remedies otherwise available against the same conduct under the common law or other statutes of this state.

E. In any class action filed under this section, the court may award damages to the named plaintiffs as provided in Subsection B of this section and may award members of the class such actual damages as were suffered by each member of the class as a result of the unlawful method, act or practice.

F. A party to a court action for a private remedy pursuant to this section may request in writing during the thirty-day period following service of the summons and complaint on all parties named in the action that the parties attempt to settle the claim in early mediation. If a request for mediation is made, the parties shall choose a mutually acceptable mediator and enter into mediation within sixty days of the appointment of an acceptable mediator unless otherwise agreed by the parties. A request for mediation may be rescinded at any time if agreed to by all parties.

G. If the parties do not agree on a mutually acceptable mediator, the court shall appoint the mediator. If the early mediation pursuant to this section is entered into within sixty days following the appointment of the mediator, the parties suing on the basis of

unfair, deceptive or unconscionable trade practices or acts under the Unfair Practices Act shall be required to pay no more than fifty dollars ($50.00) toward the cost of the mediation and the other party shall pay the remainder of such cost, unless otherwise agreed by the parties. If a person is seeking injunctive relief in accordance with Subsection A of this section, the person may pursue the claim for injunctive relief without following the mediation requirements of this subsection and Subsection F of this section.

History: 1953 Comp., § 49-15-8, enacted by Laws 1967, ch. 268, § 8; 1971, ch. 240, § 4; 1977, ch. 181, § 3; 1987, ch. 187, § 2; 2005, ch. 187, § 1.

57-12-11. Civil penalty.

In any action brought under Section 57-12-8 NMSA 1978, if the court finds that a person is willfully using or has willfully used a method, act or practice declared unlawful by the Unfair Practices Act, the attorney general, upon petition to the court, may recover, on behalf of the state of New Mexico, a civil penalty of not exceeding five thousand dollars ($5,000) per violation.

History: 1953 Comp., § 49-15-9, enacted by Laws 1970, ch. 38, § 2.

57-12-12. Civil investigative demand.

A. Whenever the attorney general has reason to believe that any person may be in possession, custody or control of an original or copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription or other tangible document or recording which he believes to be relevant to the subject matter of an investigation of a probable violation of the Unfair Practices Act, he may, prior to the institution of a civil proceeding, execute in writing and cause to be served upon the person a civil investigative demand requiring such person to produce documentary material and permit the inspection and copying of the material. The demand of the attorney general shall not be a matter of public record and shall not be published by him except by order of the court.

B. Each demand shall:

(1) state the general subject matter of the investigation;

(2) describe the classes of documentary material to be produced with reasonable certainty;

(3) prescribe the return date within which the documentary material is to be produced, which in no case shall be less than ten days after the date of service; and

(4) identify the members of the attorney general's staff to whom such documentary material is to be made available for inspection and copying.

C. No demand shall:

(1) contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of this state; or

(2) require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of this state;

(3) require the removal of any documentary material from the custody of the person upon whom the demand is served except in accordance with the provisions of Subsection E.

D. Service of the demand may be made by:

(1) delivering a duly executed copy thereof to the person to be served, or if the person is not a natural person, to the statutory agent for the person or to any officer of the person to be served; or

(2) delivering a duly executed copy thereof to the principal place of business in this state of the person to be served; or

(3) mailing by registered or certified mail a duly executed copy of the demand addressed to the person to be served at his principal place of business in this state, or, if the person has no place of business in this state, to his principal office or place of business.

E. Documentary material demanded pursuant to the provisions of this section shall be produced for inspection and copying during normal business hours at the principal office or place of business of the person served or may be inspected and copied at such other times and places as may be agreed upon by the person served and the attorney general.

F. No documentary material produced pursuant to a demand, or copies thereof, shall, unless otherwise ordered by the district court in the county in which the person resides or has his principal place of business, or is about to [perform] or is performing the practice which is alleged to be unlawful under the Unfair Practices Act, for good cause shown, be produced for inspection or copying by anyone other than an authorized employee of the attorney general, nor shall the contents thereof be disclosed to anyone other than an authorized employee of the attorney general, or in court in an action relating to a violation of the Unfair Practices Act.

G. At any time before the return date of the demand, a petition to set aside the demand, modify the demand or extend the return date thereon may be filed in the district court in the county in which the person resides or has his principal place of business, or is about to [perform] or is performing the practice which is alleged to be

unlawful under the Unfair Practices Act, and the court upon a showing of good cause may set aside the demand, modify it or extend the return date of the demand.

H. After service of the investigative demand upon him, if any person neglects or refuses to comply with the demand, the attorney general may invoke the aid of the court in the enforcement of the demand. In appropriate cases the court shall issue its order requiring the person to appear and produce the documentary material required in the demand and may upon failure of the person to comply with the order punish the person for contempt.

I. This section shall not be applicable to criminal prosecutions.

History: 1953 Comp., § 49-15-10, enacted by Laws 1967, ch. 268, § 10.

57-12-13. Regulations.

The attorney general is empowered to issue and file as required by law all regulations necessary to implement and enforce any provision of the Unfair Practices Act.

History: 1953 Comp., § 49-15-11, enacted by Laws 1967, ch. 268, § 10 [10A].

57-12-14. Construction.

The Unfair Practices Act neither enlarges nor diminishes the rights of parties in private litigation.

History: 1953 Comp., § 49-15-12, enacted by Laws 1967, ch. 268, § 11.

57-12-15. Enforcement.

In order to promote the uniform administration of the Unfair Practices Act in New Mexico, the attorney general is to be responsible for its enforcement, but he may in appropriate cases delegate this authority to the district attorneys of the state and when this is done, the district attorneys shall have every power conferred upon the attorney general by the Unfair Practices Act.

History: 1953 Comp., § 49-15-13, enacted by Laws 1967, ch. 268, § 12.

57-12-16. Advertising media excluded.

The Unfair Practices Act does not apply to publishers, broadcasters, printers or other persons engaged in the dissemination of information or reproduction of printed or pictorial matters who publish, broadcast or reproduce material without knowledge of its deceptive or unconscionable character.

History: 1953 Comp., § 49-15-14, enacted by Laws 1967, ch. 268, § 13; 1971, ch. 240, § 5.

57-12-17. Issuance of ne exeat.

Whenever the attorney general has reasonable belief that any person is using or is about to use any method, act or practice which is declared by the Unfair Practices Act to be unlawful, and whenever the attorney general has reasonable belief that any such person is about to remove himself from the state of New Mexico, or is about to remove his property or assets from the state of New Mexico, the attorney general may petition the appropriate district court for a writ of ne exeat and the court may forbid any such person from leaving the state of New Mexico, or removing his property or assets from the state of New Mexico until a determination of the issues has been made.

History: 1953 Comp., § 49-15-15, enacted by Laws 1971, ch. 164, § 1.

57-12-18. Posting of bond.

The court may require any such person to post a ne exeat bond conditioned on such persons [person's] appearance at all hearings on the matter at issue.

History: 1953 Comp., § 49-15-16, enacted by Laws 1971, ch. 164, § 2.

57-12-19. [Hearing after incarceration.]

No such person shall be incarcerated for failure to post said ne exeat bond for longer than 72 hours, Sundays excepted, without the benefit of a hearing before the court setting said bond. Such hearing shall be held as soon as possible after incarceration.

History: 1953 Comp., § 49-15-17, enacted by Laws 1971, ch. 164, § 3.

57-12-20. Sureties on bond.

The sureties upon any bond, shall in all cases justify as to their sufficiency; and the clerk of the district court taking such bond shall certify his approval of the same, as to form and the manner of its execution and to the sufficiency of the sureties thereon.

History: 1953 Comp., § 49-15-18, enacted by Laws 1971, ch. 164, § 4.

57-12-21. Door-to-door sales; contracts; requirements; prohibitions.

A. In connection with a door-to-door sale, it constitutes an unfair or deceptive trade practice for a seller to:

(1) fail to furnish the buyer with a fully completed receipt or copy of a contract pertaining to the sale at the time of its execution that is in the same language as that principally used in the oral sales presentation and that shows the date of the transaction and contains the name and address of the seller and, in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of ten points, a statement in substantially the following form:

"You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.";

(2) fail to furnish each buyer, at the time the buyer signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION", that shall be attached to the contract or receipt and easily detachable and that shall contain in ten-point bold face type the following information and statements in the same language as that used in the contract:

"NOTICE OF CANCELLATION

_____
date

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale and any negotiable instrument executed by you will be returned within ten business days following receipt by the seller of your cancellation notice and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within twenty days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice or send a telegram to:

_____
(name of seller)

at _____
(address of seller's place of business)

not later than midnight of _____
(date)

I hereby cancel this transaction.

_____
(date)

_____
(buyer's signature)";

(3) fail, before furnishing copies of the notice of cancellation to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation;

(4) include in a door-to-door contract or receipt a confession of judgment or a waiver of any of the rights to which the buyer is entitled under this section, including specifically the buyer's right to cancel the sale in accordance with the provisions of this section;

(5) fail to inform each buyer orally, at the time the buyer signs the contract or purchases the goods or services, of the right to cancel;

(6) misrepresent in any manner the buyer's right to cancel;

(7) fail or refuse to honor a valid notice of cancellation by a buyer and, within ten business days after the receipt of the notice, fail to:

(a) refund all payments made under the contract or sale;

(b) return in substantially as good condition as when received by the seller any goods or property traded in; and

(c) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly a security interest created in the transaction;

(8) negotiate, transfer, sell or assign any notice or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased; and

(9) fail to notify the buyer, within ten business days of receipt of the notice of cancellation, whether the seller intends to repossess or to abandon any shipped or delivered goods.

B. The cancellation period provided for in this section as applied to telephone initiated sales shall not begin until the buyer has been informed of the right to cancel and has been provided with copies of the notice of cancellation.

C. For the purposes of this section:

(1) "business day" means any calendar day except Sunday or the following business holidays: New Year's day; President's day; Memorial day; Independence day; Labor day; Indigenous Peoples' day; Armistice day and Veterans' day; Thanksgiving day; Christmas day; Martin Luther King, Jr.'s birthday; and any other legal public holiday of the state of New Mexico or the United States;

(2) "consumer goods or services" means goods or services other than perishable goods or agricultural products purchased, leased or rented primarily for personal, family or household purposes, including courses of instruction or training, regardless of the purpose for which they are taken;

(3) "door-to-door sale" means a sale, lease or rental of consumer goods or services with a purchase price of twenty-five dollars ($25.00) or more, whether under single or multiple contracts, in which the seller or the seller's representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller. A door-to-door sale includes seller initiated telephone sales. A door-to-door sale does not include a transaction:

(a) made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis;

(b) in which the consumer is accorded the right of rescission by the provisions of the Consumer Credit Protection Act, 15 U.S.C. 1635, or regulations issued pursuant thereto;

(c) in which the buyer has initiated the contract and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's

handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three business days;

(d) in which the buyer has initiated the contract and specifically requested the seller to visit the buyer's home for the purpose of repairing or performing maintenance upon the buyer's personal property. If in the course of such a visit the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this exclusion;

(e) pertaining to the sale or rental of real property, to the sale of insurance or to the sale of securities or commodities by a broker-dealer registered with the securities and exchange commission; or

(f) in which a consumer acquires the use of goods under the terms of a rental-purchase agreement made pursuant to the provisions of the Rental-Purchase Agreement Act, with an initial rental period of one week or less, by placing a telephone call to a lessor and by requesting that specific goods be delivered to the consumer's residence or such other place as the consumer directs and consummation of the rental-purchase agreement occurs after the goods are delivered;

(4) "place of business" means the main or permanent branch office or local address of a seller;

(5) "purchase price" means the total price paid or to be paid for the consumer goods or services, including all interest and service charges; and

(6) "seller" means any person, partnership, corporation or association engaged in the door-to-door sale of consumer goods or services.

History: 1978 Comp., § 57-12-21, enacted by Laws 1987, ch. 212, § 1; 1995, ch. 38, § 13; 2019, ch. 123, § 2.

57-12-22. Telephone solicitation sales; automated telephone dialing systems for sales restricted; disclosure and other requirements established for authorized telephone solicitation sales; prohibited telephone solicitation.

A. A person shall not utilize an automated telephone dialing or push-button or tone-activated address signaling system with a prerecorded message to solicit persons to purchase goods or services unless there is an established business relationship between the persons and the person being called consents to hear the prerecorded message.

B. It is unlawful under the Unfair Practices Act for a person to make a telephone solicitation for a purchase of goods or services:

(1) without disclosing within fifteen seconds of the time the person being called answers the name of the sponsor and the primary purpose of the contact;

(2) that misrepresents the primary purpose of a telephone solicitation of a residential subscriber as a "courtesy call", a "public service information call" or some other euphemism;

(3) under the guise of research or a survey when the real intent is to sell goods or services;

(4) without disclosing, prior to commitments by customers, the cost of the goods or services, all terms, conditions, payment plans and the amount or existence of any extra charges such as shipping and handling;

(5) that are received before 9:00 a.m. or after 9:00 p.m.;

(6) using automatic dialing equipment unless the telephone immediately releases the line when the called party disconnects;

(7) using automatic dialing equipment that dials and engages the telephone numbers of more than one person at a time but allows the possibility of a called person not being connected to the calling person for some period not exceeding that established by the federal trade commission at 16 C.F.R. Sections 310(b)(1)(iv) and 310.4(b)(4); and

(8) in which credit card numbers are requested before the prospective purchaser expresses a desire to use a credit card to pay for the purchase.

C. It is unlawful for a person to:

(1) make a telephone solicitation of a residential subscriber whose telephone number has been on the national do-not-call registry, established by the federal trade commission, for at least three months prior to the date the call is made; or

(2) use a method to block or otherwise intentionally circumvent a residential subscriber's use of a caller identification service pursuant to the Consumer No-Call Act [repealed].

D. As used in this section:

(1) "established business relationship" means a relationship that:

(a) was formed, prior to a telephone solicitation, through a voluntary, two-way communication between a seller or telephone solicitor and a residential subscriber, with or without consideration, on the basis of an application, purchase, ongoing contractual agreement or commercial transaction between the parties regarding products or services offered by the seller or telephone solicitor; and

(b) currently exists or has existed within the immediately preceding twelve months;

(2) "local exchange company" means a telecommunications company that provides the transmission of two-way interactive switched voice communications within a local exchange area;

(3) "residential subscriber" means a person who has subscribed to residential telephone service from a local exchange company or the other persons living or residing with such person; and

(4) "telephone solicitation" means a voice or telefacsimile communication over a telephone line for the purpose of encouraging the purchase or rental of or investment in property, goods or services and includes a communication described in this subsection through the use of automatic dialing and recorded message equipment or by other means, but "telephone solicitation" does not include a communication:

(a) to a residential subscriber with that subscriber's prior express invitation or permission;

(b) by or on behalf of a person with whom a residential subscriber has an established business relationship;

(c) made for the sole purpose of urging support for or opposition to a political candidate or ballot issue;

(d) made for the sole purpose of conducting political polls or soliciting the expression of opinions, ideas or votes; or

(e) by a person who is a duly licensed real estate broker pursuant to Section 61-29-11 NMSA 1978, who is a resident of the state and whose telephone call to the consumer is for the sole purpose of selling, exchanging, purchasing, renting, listing for sale or rent or leasing real estate in accordance with the provisions for which he or she is licensed and not in conjunction with any other offer.

History: Laws 1989, ch. 309, § 2; 2003, ch. 167, § 10.

57-12-23. Unsolicited facsimiles or email; prohibition.

A. No person conducting business in this state shall transmit by facsimile or cause to be transmitted by facsimile an unsolicited advertisement unless:

(1) the person establishes a toll-free telephone number that a recipient of the unsolicited advertisement may call to notify the person not to send the recipient any additional unsolicited advertisement; and

(2) the unsolicited advertisement includes a statement, in at least nine-point type, informing the recipient of the toll-free telephone number that the recipient may call to notify the sender not to send the recipient any additional unsolicited information.

B. No person conducting business in this state shall email or cause to be emailed an unsolicited advertisement unless:

(1) the person establishes a toll-free telephone number or a valid sender-operated return email address that a recipient of the unsolicited advertisement may call or email to notify the person not to send the recipient any additional unsolicited advertisement;

(2) the unsolicited advertisement includes a statement, in the first text of the body of the message and in the same size as the majority of the text of the message, informing the recipient of the toll-free telephone number or the email address that the recipient may call or email to notify the sender not to send the recipient any additional unsolicited advertisement;

(3) the subject line of the email includes "ADV:" as the first four characters; and

(4) if the unsolicited advertisement advertises realty, goods, services, intangibles or the extension of credit that may only be viewed, purchased, licensed, rented, leased or held in the possession by an individual eighteen years of age or older, the subject line of the email includes "ADV:ADLT" as the first eight characters.

C. After notification by a recipient of the recipient's request not to receive any further unsolicited advertisement, no person conducting business in this state shall transmit by facsimile, cause to be transmitted by facsimile, email or cause to be emailed any unsolicited advertisement to that recipient.

D. In the case of an employer who is the registered owner of more than one email address, the notification required by Subsection C of this section may be given by the employer on behalf of all of the employees who may use email addresses provided and controlled by the employer.

E. No person shall knowingly or intentionally assist in the transmission of an unsolicited advertisement by facsimile or email if the person knows, or consciously

avoids knowing, that the initiator of the advertisement is engaged, or intends to engage, in a violation of this section.

F. A violation of a provision of this section constitutes an unfair or deceptive trade practice.

G. As used in this section and Section 57-12-24 NMSA 1978:

(1) "transmit by facsimile", "cause to be transmitted by facsimile", "email", "cause to be emailed" or "assist in the transmission" does not include the transmission of an unsolicited advertisement by a telecommunications utility or an internet service provider that merely carries the transmission over its network or who acts or fails to act as allowed by contract or other law, including but not limited to 47 USCA 230(c); and

(2) "unsolicited advertisement" means information transmitted by facsimile or email that:

(a) advertises the lease, sale, license, rental, gift offer or other disposition of any realty, goods, services, intangibles or the extension of credit; and

(b) is addressed to a recipient with whom the sender does not have an existing business or personal relationship; or

(c) is not sent at the request of, or with the express consent of, the recipient.

History: Laws 2003, ch. 168, § 2.

57-12-24. Unsolicited facsimiles or email; private remedy.

A. Any person who receives an unsolicited advertisement by facsimile or email may bring an action against the sender of the unsolicited advertisement to recover actual damages, including loss of profits, or statutory damages equal to the greater of twenty-five dollars ($25.00) for each email or facsimile received or five thousand dollars ($5,000) for each day of violation, plus reasonable attorney fees and costs if, prior to receiving the unsolicited advertisement:

(1) the person who received the unsolicited advertisement has notified the sender, pursuant to the provisions of Section 57-12-23 NMSA 1978, of the person's request not to receive unsolicited advertisements; or

(2) the sender of the unsolicited advertisement has entered into a written assurance of discontinuance pursuant to Section 57-12-9 NMSA 1978.

B. A telecommunications utility or internet service provider, injured by a violation of a provision of Section 57-12-23 NMSA 1978 or this section, may recover actual damages, including loss of profits, or statutory damages equal to the greater of ten

dollars ($10.00) for each facsimile or email transmitted or five thousand dollars ($5,000) for each day of violation plus reasonable attorney fees and costs.

C. The remedies provided in this section are in addition to any available remedies otherwise provided by law.

History: Laws 2003, ch. 168, § 3.

57-12-25. Solicitations using loan information; restriction; cause of action.

A. A person shall not reference the trade name or trademark of a lender or a trade name or trademark confusingly similar to that of a lender in a solicitation offering services or products without the consent of the lender, unless the solicitation clearly and conspicuously states the following in close proximity to and in the same or larger point type as the first and the most prominent use of a lender's trade name or trademark:

(1) the name, address and telephone number of the person making the solicitation;

(2) that the person making the solicitation is not affiliated with the lender;

(3) that the solicitation is not authorized or sponsored by the lender; and

(4) that the loan information referenced was not provided by the lender.

B. A person shall not reference a loan number, loan amount or other specific loan information that is not publicly available in a solicitation offering services or products, unless the information is included in a communication from a lender or an affiliate of a lender to a current customer of the lender or a person who was a customer of the lender during the eighteen months immediately preceding the solicitation.

C. Except as provided in Subsection D of this section, a person shall not reference a loan number, loan amount or other specific loan information that is publicly available in a solicitation offering services or products, unless the solicitation clearly and conspicuously states the following in close proximity to and in the same or larger point type as the first and the most prominent use of the loan number, loan amount or other specific loan information:

(1) the name, address and telephone number of the person making the solicitation;

(2) that the person making the solicitation is not affiliated with the lender;

(3) that the solicitation is not authorized or sponsored by the lender; and

(4) that the loan information referenced was not provided by the lender.

D. Subsection C of this section does not apply to a communication by a lender or an affiliate of a lender with a current customer of the lender or with a person who was a customer of the lender during the eighteen months immediately preceding the communication.

E. A person shall not use the name of a lender or a name similar to that of a lender in a solicitation directed to consumers if that use could cause a reasonable person to be confused, mistaken or deceived as to:

(1) the lender's sponsorship, affiliation, connection or association with the person using the name; or

(2) the lender's approval or endorsement of the person using the name or the person's services or products.

F. Any reference to an outstanding loan, including the name of the lender, the loan number, the loan amount or other specific information about the loan that appears on the outside of an envelope, that is visible through the envelope window or that appears on a postcard in connection with any written communication that includes or contains a solicitation for goods or services, is prohibited without the consent of the lender.

G. The prohibitions of this section do not apply to the use by a person of the trade name of another lender in an advertisement for services or products that compares the services or products offered by the other lender.

H. A lender or owner of a trade name or trademark may seek an injunction in a state district court against a person who violates this section to stop the unlawful use of the trade name, trademark or loan information. In such an action:

(1) the person seeking the injunction shall not have to prove actual damage as a result of the violation; and

(2) irreparable harm and interim harm to the lender or owner shall be presumed.

I. A lender or owner seeking an injunction under Subsection H of this section may, in the same action, seek to recover actual damages and any profits the defendant has accrued as a result of a violation of this section. The prevailing party in an action brought pursuant to this section may recover costs associated with the action and reasonable attorney fees from the other party.

J. As used in this section:

(1) "affiliate" means a business entity that, directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with another business entity; and

(2) "lender" means an insured state or national bank, a state or federal savings and loan association or savings bank, a state or federal credit union, a mortgage loan company, an escrow company or any other person who makes loans in this state or a holder of a loan and any affiliate, or any third party operating with the consent of the lender.

History: Laws 2007, ch. 225, § 1.

57-12-26. Gift certificates; expiration; fees; penalties.

A. As used in this section, "gift certificate" means a writing identified as a gift certificate that is not redeemable in cash and is usable in its face amount in lieu of cash in exchange for goods or services supplied by a seller, but does not include a gift certificate useable with multiple unaffiliated sellers or goods or services. "Gift certificate" includes an electronic card with a banked dollar value, a merchandise credit, a certificate where the issuer has received payment for the full face value for the future purchase or delivery of goods or services and any other medium that evidences the giving of consideration in exchange for the right to redeem the certificate, electronic card or other medium for goods or services of at least an equal value. "Gift certificate" does not include:

(1) gift certificates, store gift cards or general use prepaid cards distributed to a consumer for promotional, award, incentive, rebate or other similar purposes without any money or other tangible thing of value being given by the consumer in exchange for the gift certificate, store gift card or general use prepaid card;

(2) gift certificates, store gift cards or general use prepaid cards that are sold below face value or at a volume discount to employers or to nonprofit and charitable organizations for fund-raising purposes;

(3) written promises, plastic cards or other electronic devices that are:

(a) used solely for telephone services; or

(b) are associated with a deposit, checking, savings or similar account at a banking or other similarly regulated financial institution and that provide payments solely by debiting such account; and

(4) gift certificates issued by banks, savings and loan associations and their affiliates and subsidiaries, licensed money transmitters or credit unions operating pursuant to the laws of the United States or New Mexico.

B. A gift certificate shall not have an expiration date less than sixty months after the date upon which the gift certificate was issued. If an expiration date is not conspicuously stated on a gift certificate, that gift certificate shall be presumed to have no expiration date and shall be valid until redeemed or replaced.

C. An issuer of a gift certificate shall not charge a fee of any kind in relation to the sale, redemption or replacement of a gift certificate other than an initial charge not exceeding the face value of the gift certificate, nor may a gift certificate be reduced in value by any fee, including a service or dormancy fee.

D. A violation of this section shall constitute an unfair or deceptive trade practice and shall be subject to the penalties set forth in the Unfair Practices Act.

History: Laws 2007, ch. 125, § 1.

ARTICLE 12A
Consumer No-Call (Repealed.)

57-12A-1. Repealed.

History: Laws 2003, ch. 167, § 1; repealed by Laws 2003, ch. 167, § 11.

57-12A-2. Repealed.

History: Laws 2003, ch. 167, § 2; repealed by Laws 2003, ch. 167, § 11.

57-12A-3. Repealed.

History: Laws 2003, ch. 167, § 3; repealed by Laws 2003, ch. 167, § 11.

57-12A-4. Repealed.

History: Laws 2003, ch. 167, § 4; repealed by Laws 2003, ch. 167, § 11.

57-12A-5. Repealed.

History: Laws 2003, ch. 167, § 5; repealed by Laws 2003, ch. 167, § 11.

57-12A-6. Repealed.

History: Laws 2003, ch. 167, § 6; repealed by Laws 2003, ch. 167, § 11.

57-12A-7. Repealed.

History: Laws 2003, ch. 167, § 7; repealed by Laws 2003, ch. 167, § 11.

ARTICLE 12B
Privacy Protection

57-12B-1. Short title.

Chapter 57, Article 12B NMSA 1978 may be cited as the "Privacy Protection Act".

History: Laws 2003, ch. 169, § 1; 2005, ch. 127, § 1.

57-12B-2. Definitions.

As used in the Privacy Protection Act:

A. "business" means a commercial enterprise that:

(1) sells or leases or intends to sell or lease products, goods or services to consumers;

(2) is an agent of a business described in Paragraph (1) of this subsection; or

(3) is an agent of a nonprofit organization selling marketing services to that organization; and

B. "consumer" means a natural person, who is a resident of New Mexico, and who purchases, leases or otherwise contracts for products, goods or services within New Mexico that are primarily used for personal, family or household purposes.

History: Laws 2003, ch. 169, § 2.

57-12B-3. Disclosure of social security number.

A. Except as provided in Subsection B of this section, no business shall require a consumer's social security number as a condition for the consumer to lease or purchase products, goods or services from the business.

B. Nothing in this section prohibits a business from requiring or requesting a consumer's social security number if the number will be used in a manner consistent with state or federal law or as part of an application for credit or in connection with annuity or insurance transactions.

C. Nothing in this section prohibits a business from acquiring or using a consumer's social security number if the consumer consents to the acquisition or use.

D. A company acquiring or using social security numbers of consumers shall adopt internal policies that:

(1) limit access to the social security numbers to those employees authorized to have access to that information to perform their duties; and

(2) hold employees responsible if the social security numbers are released to unauthorized persons.

History: Laws 2003, ch. 169, § 3.

57-12B-4. Use of social security numbers restricted; exceptions.

A. Except as provided in Subsection B of this section, a business shall not:

(1) make the entirety of a social security number available to the general public. This prohibition includes:

(a) intentionally communicating a social security number to the general public; and

(b) printing a social security number on a receipt issued for the purchase of products or services, including a receipt for the purchase of services from the state or its political subdivisions;

(2) require the use of a social security number:

(a) over the internet without a secure connection or encryption security; or

(b) to access an internet account unless a password or unique personal identification number or other personal authentication device is also required to access the account;

(3) print a social security number on materials mailed to a consumer unless authorized or required by federal or state law; provided that nothing in this paragraph prohibits a business from requiring a consumer, as part of an application or enrollment process, or to establish, amend or terminate an account, contract or policy, or to confirm the accuracy of the social security number, to enter a social security number on material to be mailed by the consumer as long as it is not required to be entered, in whole or in part:

(a) on a postcard or other mailer not requiring an envelope;

(b) on the envelope; or

(c) in any other manner in which the number may be visible without the envelope being opened;

(4) transmit material that associates a social security number with an account number for a bank, savings and loan association or credit union, unless both numbers are required as part of an application or enrollment process or to establish, amend or terminate an account, contract or policy or to confirm the accuracy of the social security, bank, savings and loan association or credit union account number; or

(5) refuse to transact business because of a refusal to provide the social security number for use of that number in a manner prohibited by Paragraphs (1) through (4) of this subsection.

B. The provisions of Subsection A of this section do not apply to:

(1) the use of a social security number by a business if the social security number:

(a) was furnished for a document generated prior to January 1, 2006 and the business is copying or reproducing that document; or

(b) exists on an original document generated prior to January 1, 2006;

(2) the collection, use or release of a social security number by a business if the business complies with Subsection D of Section 57-12B-3 NMSA 1978 and if the collection, use or release:

(a) is part of an application or enrollment process or is used to establish, amend or terminate an account, contract or policy;

(b) is required or authorized by federal or state law or is required for the business to comply with federal or state law; or

(c) is for internal verification or administrative purposes; or

(3) documents that are filed in court or public records or documents recorded in public records or required to be open to the public under federal law, state law, applicable case law, supreme court rule or the constitution of New Mexico.

History: Laws 2005, ch. 127, § 2.

ARTICLE 12C
Data Breach Notification

57-12C-1. Short title.

This act [57-12C-1 to 57-12C-12 NMSA 1978] may be cited as the "Data Breach Notification Act".

History: Laws 2017, ch. 36, § 1.

57-12C-2. Definitions.

As used in the Data Breach Notification Act:

A. "biometric data" means a record generated by automatic measurements of an identified individual's fingerprints, voice print, iris or retina patterns, facial characteristics or hand geometry that is used to uniquely and durably authenticate an individual's identity when the individual accesses a physical location, device, system or account;

B. "encrypted" means rendered unusable, unreadable or indecipherable to an unauthorized person through a security technology or methodology generally accepted in the field of information security;

C. "personal identifying information":

(1) means an individual's first name or first initial and last name in combination with one or more of the following data elements that relate to the individual, when the data elements are not protected through encryption or redaction or otherwise rendered unreadable or unusable:

(a) social security number;

(b) driver's license number;

(c) government-issued identification number;

(d) account number, credit card number or debit card number in combination with any required security code, access code or password that would permit access to a person's financial account; or

(e) biometric data; and

(2) does not mean information that is lawfully obtained from publicly available sources or from federal, state or local government records lawfully made available to the general public;

D. "security breach" means the unauthorized acquisition of unencrypted computerized data, or of encrypted computerized data and the confidential process or key used to decrypt the encrypted computerized data, that compromises the security, confidentiality or integrity of personal identifying information maintained by a person. "Security breach" does not include the good-faith acquisition of personal identifying

information by an employee or agent of a person for a legitimate business purpose of the person; provided that the personal identifying information is not subject to further unauthorized disclosure; and

E. "service provider" means any person that receives, stores, maintains, licenses, processes or otherwise is permitted access to personal identifying information through its provision of services directly to a person that is subject to regulation.

History: Laws 2017, ch. 36, § 2.

57-12C-3. Disposal of personal identifying information.

A person that owns or licenses records containing personal identifying information of a New Mexico resident shall arrange for proper disposal of the records when they are no longer reasonably needed for business purposes. As used in this section, "proper disposal" means shredding, erasing or otherwise modifying the personal identifying information contained in the records to make the personal identifying information unreadable or undecipherable.

History: Laws 2017, ch. 36, § 3.

57-12C-4. Security measures for storage of personal identifying information.

A person that owns or licenses personal identifying information of a New Mexico resident shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information to protect the personal identifying information from unauthorized access, destruction, use, modification or disclosure.

History: Laws 2017, ch. 36, § 4.

57-12C-5. Service provider use of personal identifying information; implementation of security measures.

A person that discloses personal identifying information of a New Mexico resident pursuant to a contract with a service provider shall require by contract that the service provider implement and maintain reasonable security procedures and practices appropriate to the nature of the personal identifying information and to protect it from unauthorized access, destruction, use, modification or disclosure.

History: Laws 2017, ch. 36, § 5.

57-12C-6. Notification of security breach.

A. Except as provided in Subsection C of this section, a person that owns or licenses elements that include personal identifying information of a New Mexico resident shall provide notification to each New Mexico resident whose personal identifying information is reasonably believed to have been subject to a security breach. Notification shall be made in the most expedient time possible, but not later than forty-five calendar days following discovery of the security breach, except as provided in Section 9 [57-12C-9 NMSA 1978] of the Data Breach Notification Act.

B. Notwithstanding Subsection A of this section, notification to affected New Mexico residents is not required if, after an appropriate investigation, the person determines that the security breach does not give rise to a significant risk of identity theft or fraud.

C. Any person that is licensed to maintain or possess computerized data containing personal identifying information of a New Mexico resident that the person does not own or license shall notify the owner or licensee of the information of any security breach in the most expedient time possible, but not later than forty-five calendar days following discovery of the breach, except as provided in Section 9 of the Data Breach Notification Act; provided that notification to the owner or licensee of the information is not required if, after an appropriate investigation, the person determines that the security breach does not give rise to a significant risk of identity theft or fraud.

D. A person required to provide notification of a security breach pursuant to Subsection A of this section shall provide that notification by:

(1) United States mail;

(2) electronic notification, if the person required to make the notification primarily communicates with the New Mexico resident by electronic means or if the notice provided is consistent with the requirements of 15 U.S.C. Section 7001; or

(3) a substitute notification, if the person demonstrates that:

(a) the cost of providing notification would exceed one hundred thousand dollars ($100,000);

(b) the number of residents to be notified exceeds fifty thousand; or

(c) the person does not have on record a physical address or sufficient contact information for the residents that the person or business is required to notify.

E. Substitute notification pursuant to Paragraph (3) of Subsection D of this section shall consist of:

(1) sending electronic notification to the email address of those residents for whom the person has a valid email address;

(2) posting notification of the security breach in a conspicuous location on the website of the person required to provide notification if the person maintains a website; and

(3) sending written notification to the office of the attorney general and major media outlets in New Mexico.

F. A person that maintains its own notice procedures as part of an information security policy for the treatment of personal identifying information, and whose procedures are otherwise consistent with the timing requirements of this section, is deemed to be in compliance with the notice requirements of this section if the person notifies affected consumers in accordance with its policies in the event of a security breach.

History: Laws 2017, ch. 36, § 6.

57-12C-7. Notification; required content.

Notification required pursuant to Subsection A of Section 6 [57-12C-6 NMSA 1978] of the Data Breach Notification Act shall contain:

A. the name and contact information of the notifying person;

B. a list of the types of personal identifying information that are reasonably believed to have been the subject of a security breach, if known;

C. the date of the security breach, the estimated date of the breach or the range of dates within which the security breach occurred, if known;

D. a general description of the security breach incident;

E. the toll-free telephone numbers and addresses of the major consumer reporting agencies;

F. advice that directs the recipient to review personal account statements and credit reports, as applicable, to detect errors resulting from the security breach; and

G. advice that informs the recipient of the notification of the recipient's rights pursuant to the federal Fair Credit Reporting.

History: Laws 2017, ch. 36, § 7.

57-12C-8. Exemptions.

The provisions of the Data Breach Notification Act shall not apply to a person subject to the federal Gramm-Leach-Bliley Act or the federal Health Insurance Portability and Accountability Act of 1996.

History: Laws 2017, ch. 36, § 8.

57-12C-9. Delayed notification.

The notification required by the Data Breach Notification Act may be delayed:

A. if a law enforcement agency determines that the notification will impede a criminal investigation; or

B. as necessary to determine the scope of the security breach and restore the integrity, security and confidentiality of the data system.

History: Laws 2017, ch. 36, § 9.

57-12C-10. Notification to attorney general and credit reporting agencies.

A person that is required to issue notification of a security breach pursuant to the Data Breach Notification Act to more than one thousand New Mexico residents as a result of a single security breach shall notify the office of the attorney general and major consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, as defined in 15 U.S.C. Section 1681a(p), of the security breach in the most expedient time possible, and no later than forty-five calendar days, except as provided in Section 9 [57-12C-9 NMSA 1978] of the Data Breach Notification Act. A person required to notify the attorney general and consumer reporting agencies pursuant to this section shall notify the attorney general of the number of New Mexico residents that received notification pursuant to Section 6 of that act [57-12C-6 NMSA 1978] and shall provide a copy of the notification that was sent to affected residents within forty-five calendar days following discovery of the security breach, except as provided in Section 9 of the Data Breach Notification Act.

History: Laws 2017, ch. 36, § 10.

57-12C-11. Attorney general enforcement; civil penalty.

A. When the attorney general has a reasonable belief that a violation of the Data Breach Notification Act has occurred, the attorney general may bring an action on the behalf of individuals and in the name of the state alleging a violation of that act.

B. In any action filed by the attorney general pursuant to the Data Breach Notification Act, the court may:

(1) issue an injunction; and

(2) award damages for actual costs or losses, including consequential financial losses.

C. If the court determines that a person violated the Data Breach Notification Act knowingly or recklessly, the court may impose a civil penalty of the greater of twenty-five thousand dollars ($25,000) or, in the case of failed notification, ten dollars ($10.00) per instance of failed notification up to a maximum of one hundred fifty thousand dollars ($150,000).

History: Laws 2017, ch. 36, § 11.

57-12C-12. State of New Mexico and political subdivisions exempted.

Nothing in the Data Breach Notification Act shall be interpreted to apply to the state of New Mexico or any of its political subdivisions.

History: Laws 2017, ch. 36, § 12.

ARTICLE 13
Pyramid or Multilevel Sales

57-13-1. Short title.

Chapter 57, Article 13 NMSA 1978 may be cited as the "Pyramid Promotional Schemes Act".

History: 1953 Comp., § 50-20-1, enacted by Laws 1973, ch. 377, § 1; 1987, ch. 100, § 1.

57-13-2. Definitions.

As used in the Pyramid Promotional Schemes Act:

A. "compensation" includes a payment based on a sale or distribution made to a person who either is a participant in a pyramid promotional scheme or has the right to become a participant upon payment;

B. "consideration" means the payment of cash or the purchase of goods, services or intangible property but does not include:

(1) the purchase of goods or services furnished at cost to be used in making sales and not for resale; or

(2) time and effort spent in pursuit of sales or recruiting activities; and

C. "pyramid promotional scheme" means any plan or operation by which a participant gives consideration for the opportunity to receive compensation which is derived primarily from any person's introduction of other persons into participation in the plan or operation rather than from the sale of goods, services or intangible property by the participant or other persons introduced into the plan or operation.

History: 1978 Comp., § 57-13-2, enacted by Laws 1987, ch. 100, § 2.

57-13-3. Prohibition; defenses excluded.

A. A person shall not establish, operate, advertise or promote a pyramid promotional scheme.

B. A limitation as to the number of persons who may participate or the presence of additional conditions affecting eligibility for the opportunity to receive compensation under the plan or operation does not change the identity of the scheme as a pyramid promotional scheme nor is it a defense under this article that a participant, on giving consideration, obtains any goods, services or intangible property in addition to the right to receive compensation.

History: 1978 Comp., § 57-13-3, enacted by Laws 1987, ch. 100, § 3.

57-13-4. Restraint of prohibited acts; restitution; penalties.

A. Whenever the attorney general has reasonable belief that any person is using, has used or is about to use any method, act or practice which is declared by the Pyramid Promotional Schemes Act to be unlawful and that proceedings would be in the public interest, he may bring an action in the name of the state against that person to restrain, by temporary or permanent injunction, the use of such method, act or practice. The action may be brought in the district court of the county in which the person resides or has his principal place of business or in the district court in the county in which the person is using, has used or is about to use the practice which has been alleged to be unlawful under the Pyramid Promotional Schemes Act. The attorney general acting on behalf of the state shall not be required to post bond when seeking a temporary or permanent injunction.

B. In any action brought under Subsection A of this section, the court may, upon petition of the attorney general, require that the person engaged in the unlawful practice make restitution to all persons of money, property or other things received from them in any transaction related to the unlawful practice; and it is further provided that if the court finds that a person is willfully using or has willfully used a method, act or practice

declared unlawful by the Pyramid Promotional Schemes Act, the attorney general, upon petition to the court, may recover on behalf of the state a civil penalty not exceeding ten thousand dollars ($10,000) per violation.

History: 1953 Comp., § 50-20-4, enacted by Laws 1973, ch. 377, § 4; 1987, ch. 100, § 4.

57-13-5. Settlements.

A. In lieu of beginning or continuing an action pursuant to the Pyramid Promotional Schemes Act, the attorney general may accept a written assurance of discontinuance of any practice in violation of that act from the person who has engaged in the unlawful practice. The attorney general may require an agreement by the person engaged in the unlawful practice that by a date set by the attorney general and stated in the assurance, he will make restitution to all persons of money, property or other things received from them in any transaction related to the unlawful practice. All settlements are a matter of public record.

B. A person need not accept restitution pursuant to an assurance. His acceptance of restitution bars recovery of any damages in any action by him or on his behalf against the same defendant on account of the same unlawful practice.

C. A violation of an assurance entered into pursuant to this section is a violation of the Pyramid Promotional Schemes Act.

History: 1953 Comp., § 50-20-5, enacted by Laws 1973, ch. 377, § 5; 1987, ch. 100, § 5.

57-13-6. Private remedies.

A. A person likely to be damaged by any method, act or practice which is declared by the Pyramid Promotional Schemes Act to be unlawful may be granted an injunction against it under the principles of equity and on terms that the court considers reasonable. Proof of monetary damage, loss of profits or intent to deceive or take unfair advantage of any person is not required.

B. Costs shall be allowed to the prevailing party unless the court otherwise directs. The court may award attorneys' fees to the prevailing party if:

(1) the party complaining of an unlawful practice has brought an action which he knew to be groundless; or

(2) the party charged with an unlawful practice has willfully engaged in the practice knowing it to be unlawful.

C. The relief provided in this section is in addition to remedies otherwise available against the same conduct under the common law or other statutes of this state.

History: 1953 Comp., § 50-20-6, enacted by Laws 1973, ch. 377, § 6; 1987, ch. 100, § 6.

57-13-7. Penalties.

Any person violating the Pyramid Promotional Schemes Act shall be deemed guilty of a fourth degree felony and shall be sentenced to a term of imprisonment pursuant to the provisions of Subsections A through C of Section 31-18-15 NMSA 1978 or fined not less than one thousand dollars ($1,000) or more than ten thousand dollars ($10,000), or both.

History: 1953 Comp., § 50-20-7, enacted by Laws 1973, ch. 377, § 7; 1987, ch. 100, § 7.

57-13-8. Pyramid Promotional Schemes Act restitution fund.

A. All civil penalties collected under Section 57-13-4 NMSA 1978 shall be deposited in the state treasury in a fund to be designated as the "Pyramid Promotional Schemes Act restitution fund", which fund is hereby established and which shall be administered by the attorney general. All expenditures from this fund shall be paid upon petition to the attorney general to those persons adequately establishing injury in money, property or other things in a transaction related to a practice declared unlawful under the Pyramid Promotional Schemes Act and who were unknown to the court at the time judgment was rendered.

B. Excepting any amount then being considered as an expenditure pursuant to a petition under Subsection A of this section, the balance of a civil penalty collected shall be transferred to the state general fund eighteen months after collection.

History: 1953 Comp., § 50-20-8, enacted by Laws 1973, ch. 377, § 8; 1987, ch. 100, § 8.

57-13-9. Civil investigative demand.

A. Whenever the attorney general has reason to believe that any person may be in possession, custody or control of an original or copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription or other tangible document or recording which he believes to be relevant to the subject matter of an investigation of a probable violation of the Pyramid Promotional Schemes Act, he may, prior to the institution of a civil proceeding, execute in writing and cause to be served upon the person a civil investigative demand requiring the person to produce documentary material and permit the inspection and copying of the material.

The demand of the attorney general shall not be a matter of public record and shall not be published by him except by order of the court.

B. Each demand shall:

(1) state the general subject matter of the investigation;

(2) describe the classes of documentary material to be produced with reasonable certainty;

(3) prescribe the return date within which the documentary material is to be produced, which in no case shall be less than ten days after the date of service; and

(4) identify the members of the attorney general's staff to whom such documentary material is to be made available for inspection and copying.

C. No demand shall:

(1) contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of this state;

(2) require the disclosure of any documentary material which would be privileged or which for any other reason would not be required by a subpoena duces tecum issued by a court of this state; or

(3) require the removal of any documentary material from the custody of the person upon whom the demand is served, except in accordance with the provisions of Subsection E of this section.

D. Service of the demand may be made by:

(1) delivering a duly executed copy thereof to the person to be served or, if the person is not a natural person, to the statutory agent for the person or to any officer of the person to be served; or

(2) delivering a duly executed copy thereof to the principal place of business in this state of the person to be served; or

(3) mailing by registered or certified mail a duly executed copy of the demand addressed to the person to be served at his principal place of business in this state or, if the person has no place of business in this state, to his principal office or place of business.

E. Documentary material demanded pursuant to the provisions of this section shall be produced for inspection and copying during normal business hours at the principal office or place of business of the person served or may be inspected and copied at such

other times and places as may be agreed upon by the person served and the attorney general.

F. No documentary material produced pursuant to a demand, or copies thereof, shall, unless otherwise ordered by the district court in the county in which the person resides or has his principal place of business or the person is about to perform or is performing the practice which is alleged to be unlawful under the Pyramid Promotional Schemes Act, for good cause shown, be produced for inspection or copying by anyone other than an authorized employee of the attorney general, nor shall the contents be disclosed to anyone other than an authorized employee of the attorney general or in court in an action relating to a violation of that act.

G. At any time before the return date of the demand, a petition to set aside the demand, modify the demand or extend the return date of the demand may be filed in the district court in the county in which the person resides or has his principal place of business or is about to perform or is performing the practice which is alleged to be unlawful under the Pyramid Promotional Schemes Act, and the court upon a showing of good cause may set aside the demand, modify it or extend the return date of the demand.

H. After service of the investigative demand upon him, if any person neglects or refuses to comply with the demand, the attorney general may invoke the aid of the court in the enforcement of the demand. In appropriate cases, the court shall issue its order requiring the person to appear and produce the documentary material required in the demand and may, upon failure of the person to comply with the order, punish the person for contempt.

I. This section shall not be applicable to criminal prosecutions.

History: 1953 Comp., § 50-20-9, enacted by Laws 1973, ch. 377, § 9; 1987, ch. 100, § 9.

57-13-10. Repealed.

57-13-11. Regulations.

The attorney general is empowered to issue and file as required by law all regulations necessary to implement and enforce any provision of the Pyramid Promotional Schemes Act. A violation of these regulations shall be unlawful.

History: 1953 Comp., § 50-20-11, enacted by Laws 1973, ch. 377, § 11; 1987, ch. 100, § 10.

57-13-12. Construction.

The Pyramid Promotional Schemes Act neither enlarges nor diminishes the rights of parties in private litigation.

History: 1953 Comp., § 50-20-12, enacted by Laws 1973, ch. 377, § 12; 1987, ch. 100, § 11.

57-13-13. Enforcement.

In order to promote the uniform administration of the Pyramid Promotional Schemes Act in New Mexico, the attorney general is to be responsible for its enforcement, but he may in appropriate cases delegate this authority to the district attorneys of the state, and, when this is done, the district attorneys shall have every power conferred upon the attorney general by that act.

History: 1953 Comp., § 50-20-13, enacted by Laws 1973, ch. 377, § 13; 1987, ch. 100, § 12.

57-13-14. Advertising media excluded.

The Pyramid Promotional Schemes Act does not apply to publishers, broadcasters, printers or other persons engaged in the dissemination of information or reproduction of printed or pictorial matters who publish, broadcast or reproduce material without actual knowledge of its being in violation of that act.

History: 1953 Comp., § 50-20-14, enacted by Laws 1973, ch. 377, § 14; 1987, ch. 100, § 13.

57-13-15. Issuance of ne exeat.

Whenever the attorney general has reasonable belief that any person is using or is about to use any method, act or practice which is declared by the Pyramid Promotional Schemes Act to be unlawful, and whenever the attorney general has reasonable belief that any such person is about to remove himself from New Mexico, or is about to remove his property or assets from New Mexico, the attorney general may petition the appropriate district court for a writ of ne exeat, and the court may forbid any such person from leaving New Mexico or removing his property or assets from New Mexico until a determination of the issues has been made.

History: 1953 Comp., § 50-20-15, enacted by Laws 1973, ch. 377, § 15; 1987, ch. 100, § 14.

57-13-16. Posting of bond.

The court may require any such person to post a ne exeat bond conditioned on such person's appearance at all hearings on the matter at issue.

History: 1953 Comp., § 50-20-16, enacted by Laws 1973, ch. 377, § 16.

57-13-17. Hearing after incarceration.

No such person shall be incarcerated for failure to post said ne exeat bond for longer than seventy-two hours, Sundays excepted, without the benefit of a hearing before the court setting said bond. Such hearing shall be held as soon as possible after incarceration.

History: 1953 Comp., § 50-20-17, enacted by Laws 1973, ch. 377, § 17.

57-13-18. Sureties on bond.

The sureties upon any bond, shall in all cases justify as to their sufficiency; and the clerk of the district court taking such bond shall certify his approval of the same, as to form and the manner of its execution and to the sufficiency of the sureties thereon.

History: 1953 Comp., § 50-20-18, enacted by Laws 1973, ch. 377, § 18.

ARTICLE 14
Price Discrimination

57-14-1. Short title.

This act [57-14-1 to 57-14-9 NMSA 1978] may be cited as the "Price Discrimination Act".

History: 1953 Comp., § 49-11-1, enacted by Laws 1961, ch. 229, § 1.

57-14-2. Definitions.

As used in the Price Discrimination Act:

A. "person" means an individual, partnership, association, corporation, joint-stock company or business trust;

B. "price" means the net price to the buyer after deduction of all discounts, rebates or other price concessions paid or allowed by the seller;

C. "commerce" means trade within this state; and

D. "commodity" means any movable article or any commercial service sold in commerce.

History: 1953 Comp., § 49-11-2, enacted by Laws 1961, ch. 229, § 2; 1965, ch. 301, § 1.

57-14-3. Discrimination unlawful.

A. It is unlawful for any person engaged in commerce, either directly or indirectly, intentionally, for the purpose of destroying competition or eliminating a competitor, to:

(1) discriminate in price between different purchasers of commodities of like grade and quality; or

(2) discriminate in price between different sections, communities or cities in this state where the effect is to lessen competition substantially, to create a monopoly in any line of commerce or to injure, destroy or prevent competition with any person who grants or knowingly receives the benefit of the discrimination, or with customers of either.

B. This section does not prevent:

(1) allowance for differences in cost of manufacture, sale or delivery resulting from differing methods or quantities in which commodities are sold or delivered;

(2) persons engaged in selling goods, wares or merchandise in commerce from selecting their own customers in bona fide transactions not in restraint of trade; or

(3) price changes in response to changing conditions affecting the market or marketability of goods.

History: 1953 Comp., § 49-11-3, enacted by Laws 1961, ch. 229, § 3.

57-14-4. Meeting competitive price a defense.

It is a defense to any action under this act [57-14-1 to 57-14-9 NMSA 1978] to show that the seller's lower price, payment or furnishing of services or facilities to any purchaser, was made in good faith to meet equally low prices of a competitor or the services or facilities furnished by a competitor.

History: 1953 Comp., § 49-11-4, enacted by Laws 1961, ch. 229, § 4.

57-14-5. Commissions and brokerages unlawful.

It is unlawful for any person engaged in commerce to pay, grant, receive or accept anything of value as a commission, brokerage or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares or merchandise. It is unlawful for either party to the transaction to pay or grant anything of value as a commission, brokerage or other

compensation, or any allowance or discount to the other party to the transaction or to any agent, representative or other intermediary acting for, on behalf of or subject to direct or indirect control of the other party to the transaction.

History: 1953 Comp., § 49-11-5, enacted by Laws 1961, ch. 229, § 5.

57-14-6. Customer discrimination.

It is unlawful for any person engaged in commerce:

A. to pay or contract for payment of anything of value to or for the benefit of a customer as compensation for any services or facilities furnished by or through the customer in connection with the processing, handling, sale or offering for sale of any products or commodities manufactured, sold or offered for sale unless the payment or compensation is available on proportionally equal terms to all other customers competing in the distribution of the products or commodities;

B. to discriminate in favor of one purchaser against another purchaser of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of any services or facilities connected with the processing, handling, sale or offering for sale of the commodity purchased on terms not accorded to all purchasers on proportionally equal terms; or

C. knowingly to induce or receive a discrimination in price which is prohibited by the Price Discrimination Act.

History: 1953 Comp., § 49-11-6, enacted by Laws 1961, ch. 229, § 6.

57-14-7. Cooperatives exempt.

Nothing in the Price Discrimination Act prevents a cooperative association from returning to its members, producers or consumers the whole or any part of the net earnings or surplus resulting from its trading operations, in proportion to their purchases or sales from, to or through the cooperative.

History: 1953 Comp., § 49-11-7, enacted by Laws 1961, ch. 229, § 7.

57-14-8. Injunctive relief; damages.

A. Any person injured by any violation, or who will be injured from any threatened violation of the Price Discrimination Act may maintain an action in the district court to enjoin the violation or threatened violation. If a violation or threatened violation is established, the court shall enjoin it and the plaintiff may recover threefold, the amount of damages sustained, costs of suit and a reasonable attorney fee.

B. Any person injured by any violation of the Price Discrimination Act may maintain an action in the district court for damages alone and the measure of damages is the same as that prescribed in Subsection A of this section.

C. In any action under this section, upon proof that he has been unlawfully discriminated against by the defendant, the plaintiff shall be presumed to have sustained damages equal to the monetary amount or equivalent of the unlawful discrimination and in addition, he may establish further damages sustained as a result of the discrimination.

D. Where a defendant's trade or industry has an established cost survey for the localities in which the offense was committed, it is competent evidence to prove the costs of the defendant in an action under the Price Discrimination Act.

History: 1953 Comp., § 49-11-8, enacted by Laws 1961, ch. 229, § 8; 1965, ch. 301, § 2.

57-14-9. Illegal contracts.

Any express or implied contract made by any person in violation of the Price Discrimination Act is an illegal contract and no action for enforcement shall be maintained in any court in this state.

History: 1953 Comp., § 49-11-9, enacted by Laws 1961, ch. 229, § 9.

ARTICLE 15
False Advertising

57-15-1. False advertising unlawful.

False advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state is hereby declared unlawful.

History: 1953 Comp., § 49-12-1, enacted by Laws 1965, ch. 79, § 1.

57-15-2. False advertising defined.

The term false advertising means advertising, including labeling, which is misleading in any material respect; and in determining whether any advertising is misleading, there shall be taken into account (among other things) not only representations made by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertising fails to reveal facts material in the light of such representations with respect to the commodity to which the advertising relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual.

History: 1953 Comp., § 49-12-2, enacted by Laws 1965, ch. 79, § 2; 1967, ch. 270, § 1.

57-15-3. Notice of proposed action.

Before the attorney general commences an action pursuant to Section 4 [57-15-4 NMSA 1978] of this article he shall be required to give the person against whom such action is contemplated appropriate notice by certified mail and an opportunity to show either orally or in writing why such action should not be commenced. In such showing, said person may present, among other things, that the advertisement is subject to and complies with the rules and regulations of, and the statutes administered by the federal trade commission or any official department, division, commission or agency of this state.

History: 1953 Comp., § 49-12-3, enacted by Laws 1965, ch. 79, § 3.

57-15-4. Civil penalty.

Any person, firm, corporation or association or agent or employee thereof who engages in any of the acts or practices made unlawful by this act [57-15-1 to 57-15-5, 57-15-9, 57-15-10 NMSA 1978] shall be liable to a civil penalty of not more than five hundred dollars ($500) for each violation, which shall inure to this state and may be recovered in a civil action brought by the attorney general or, with his consent, the district attorney of the district where the act is committed. In any such action it shall be a complete defense that the advertisement is subject to and complies with the rules and regulations of, and the statutes administered by the federal trade commission.

History: 1953 Comp., § 49-12-4, enacted by Laws 1965, ch. 79, § 4.

57-15-5. Injunctions to prevent violation.

A. The attorney general of the state of New Mexico or the district attorney of the district in which the violation occurs or a private citizen may bring an action in the name of the state against any person to restrain and prevent any violation of this act [57-15-1 to 57-15-5, 57-15-9, 57-15-10 NMSA 1978]. Any proceeding initiated under this section by a private citizen shall be initiated on his behalf and all others similarly situated.

B. The court in exceptional cases brought by private citizens may award reasonable attorneys' fees to the prevailing party. Costs or attorneys' fees may be assessed against a defendant only if the court finds that he has willfully engaged in false advertising.

History: 1953 Comp., § 49-12-5, enacted by Laws 1965, ch. 79, § 5.

57-15-6. Civil investigative demand.

A. Whenever the attorney general has reason to believe that any person may be in possession, custody or control of an original or copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription or other tangible document or recording which he believes to be relevant to the subject matter of an investigation of a probable violation of Section 57-15-1 NMSA 1978, he may prior to the institution of a civil proceeding, execute in writing and cause to be served upon the person, a civil investigative demand requiring such person to produce documentary material and permit the inspection and copying of the material. The demand of the attorney general shall not be a matter of public record and shall not be published by him except by order of the court.

B. Each demand shall:

(1) state the general subject matter of the investigation;

(2) describe the classes of documentary material to be produced with reasonable specificity;

(3) prescribe the return date within which the documentary material is to be produced, which in no case shall be less than ten days after the date of service; and

(4) identify the members of the attorney general's staff to whom such documentary material is to be made available for inspection and copying.

C. No demand shall:

(1) contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of this state; or

(2) require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of this state;

(3) require the removal of documentary material from the custody of the person upon whom the demand is served except in accordance with the provisions of Subsection E.

D. Service of the demand may be made by:

(1) delivering a duly executed copy thereof to the person to be served, or if the person is not a natural person, to the statutory agent for the person or to any officer of the person to be served; or

(2) delivering a duly executed copy thereof to the principal place of business in this state of the person to be served; or

(3) mailing by registered or certified mail a duly executed copy of the demand addressed to the person to be served at his principal place of business in this state, or, if the person has no place of business in this state, to his principal office or place of business.

E. Documentary material demanded pursuant to the provisions of this section shall be produced for inspection and copying during normal business hours at the principal office or place of business of the person served, or at such other times and places as may be agreed upon by the person served and the attorney general.

F. No documentary material produced pursuant to a demand, or copies thereof, shall unless otherwise ordered by the district court in the county in which the person resides or has his principal place of business or in the district court of the county in which the person is [performing] or is about to perform the practice which is alleged to be unlawful under Section 57-15-1 NMSA 1978, for good cause shown, be produced for inspection or copying by anyone other than an authorized employee of the attorney general, nor shall the contents thereof be disclosed to anyone other than an authorized employee of the attorney general, or in a court in an action relating to the violation of Section 57-15-1 NMSA 1978.

G. At any time before the return date of the demand a petition to set aside the demand, modify the demand or extend the return date thereof may be filed in the district court in the county in which the person resides or has his principal place of business or in the district court of the county in which the person is [performing] or is about to perform the practice which is alleged to be unlawful under Section 57-15-1 NMSA 1978, and the court upon a showing of good cause may set aside the demand, modify it or extend the return date of the demand.

H. After service of the investigative demand upon him, if any person neglects or refuses to comply with the demand, the attorney general may invoke the aid of the court in the enforcement of the demand. In appropriate cases the court shall issue its order requiring the person to appear and produce the documentary material required in the demand and may upon failure of the person to comply with the order punish the person for contempt.

I. This section shall not be applicable to criminal prosecution.

History: 1953 Comp., § 49-12-5.1, enacted by Laws 1967, ch. 270, § 2.

57-15-7. Regulations.

The attorney general is empowered to issue and file as required by law all regulations necessary to implement and enforce any provision of this act [57-15-2, 57-15-6 to 57-15-8 NMSA 1978].

History: 1953 Comp., § 49-12-5.2, enacted by Laws 1967, ch. 270, § 3.

57-15-8. Enforcement.

In order to promote the uniform administration of this act [57-15-2, 57-15-6 through 57-15-8 NMSA 1978] in New Mexico, the attorney general is to be responsible for its enforcement, but he may in appropriate cases delegate this authority to the district attorneys of the state and when this is done, the district attorneys shall have every power conferred upon the attorney general by this act.

History: 1953 Comp., § 49-12-5.3, enacted by Laws 1967, ch. 270, § 4.

57-15-9. Construction.

This act [57-15-1 through 57-15-5, 57-15-9, 57-15-10 NMSA 1978] neither enlarges nor diminishes the rights of parties in private litigation.

History: 1953 Comp., § 49-12-6, enacted by Laws 1965, ch. 79, § 6.

57-15-10. Exceptions.

Nothing in this article [57-15-1 to 57-15-5, 57-15-9, 57-15-10 NMSA 1978] shall apply to any television or sound radio broadcasting station or to any publisher or printer of a newspaper, magazine or other form of printed advertising who broadcasts, publishes or prints such advertisement.

History: 1953 Comp., § 49-12-7, enacted by Laws 1965, ch. 79, § 7.

ARTICLE 16
Motor Vehicle Dealers Franchising

57-16-1. Declaration of policy.

The distribution and sale of motor vehicles in this state vitally affects the general economy of the state and the public interest and welfare of its citizens. It is the policy of this state and the purpose of this act to exercise the state's police power to ensure a sound system of distributing and selling motor vehicles and regulating the manufacturers, distributors, representatives and dealers of those vehicles to provide for compliance with manufacturer's warranties, and to prevent frauds, unfair practices, discriminations, impositions and other abuses of our citizens.

History: 1953 Comp., § 64-37-1, enacted by Laws 1973, ch. 6, § 1.

57-16-2. Application of act.

The provisions of this act shall apply to all persons, manufacturers, representatives, distributors and dealers and to all written or oral agreements between a manufacturer, distributor or representative with a motor vehicle dealer including, but not limited to, the franchise offering, the franchise agreement, sales of goods, services or advertising, leases or mortgages of real or personal property, promises to pay, security interest, pledges, insurance contracts, advertising contracts, construction or installation contracts, servicing contracts and all other such agreements in which the manufacturer, distributor or representative has any direct or indirect interest.

History: 1953 Comp., § 64-37-2, enacted by Laws 1973, ch. 6, § 2.

57-16-3. Definitions.

As used in Chapter 57, Article 16 NMSA 1978:

A. "current price" means an amount equal to the price listed in the manufacturer's or distributor's printed price list in effect when the franchise is terminated, less applicable trade and cash discounts;

B. "dealer cost" means an amount equal to the sum of the original invoice price that the dealer paid for inventory and the cost of the delivery of the inventory from the manufacturer or distributor to the dealer, less applicable discounts;

C. "designated family member" means a spouse, child, grandchild, parent, brother or sister of a deceased or incapacitated dealer who is entitled to inherit the dealer's ownership interest in the dealership under the terms of a will or the laws of intestate succession in this state. In the case of an incapacitated dealer, the term means the person appointed by a court as the legal representative of the dealer's property. The term also includes the appointed and qualified personal representative and the testamentary trustee of a deceased dealer. However, the term shall be limited to mean only that individual designated by a dealer in a written document filed with the manufacturer, distributor or representative in the event that such a document has been filed;

D. "distributor" means any person who distributes or sells new or used motor vehicles to dealers and who is not a manufacturer;

E. "do not drive order" means a notice advising a motor vehicle dealer or an owner of a motor vehicle not to drive the vehicle until the vehicle has been repaired because the vehicle has a safety defect, fails to comply with a federal motor vehicle safety standard or fails to comply with a federal requirement;

F. "former franchisee":

(1) means a dealer that has entered into a franchise agreement with a manufacturer and that has:

(a) entered into a termination agreement or deferred termination agreement with the manufacturer related to the franchise; or

(b) has had the franchise canceled, terminated or otherwise ended; and

(2) includes the designated successor of the former franchisee in the event the former franchisee is deceased or disabled;

G. "franchise" means an oral or written arrangement for a definite or indefinite period in which a manufacturer, distributor or representative grants to a motor vehicle dealer a license to use a trade name, service mark or related characteristic and in which there is a community of interest in the marketing of motor vehicles or services related to marketing, service or repair of motor vehicles at wholesale, retail, leasing or otherwise;

H. "fraud" includes, in addition to its normal legal connotation, the following:

(1) a misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact;

(2) a promise or representation not made honestly and in good faith; and

(3) an intentional failure to disclose a material fact;

I. "inventory" means new or unused motorcycles, motor vehicles, motorcycle attachments and motorcycle and motor vehicle repair parts that are provided by a manufacturer or distributor to a dealer under a franchise agreement and that are purchased within thirty-six months of the termination of the franchise or are listed in the manufacturer's or distributor's current sales manual or price list at the time that the franchise is terminated;

J. "manufacturer" means any person who manufactures or assembles new motor vehicles either within or outside of this state and may include a predecessor manufacturer or a successor manufacturer;

K. "motorcycle" means any motor vehicle used on or off a public highway that has an unladen weight of less than one thousand five hundred pounds;

L. "motor vehicle" means every self-propelled vehicle, having two or more wheels, by which a person or property may be transported on a public highway and includes recreational vehicles;

M. "motor vehicle dealer" or "dealer" means a person who sells or solicits or advertises the sale of new or used motor vehicles and is licensed as a dealer pursuant to the Motor Vehicle Code [Chapter 66, Articles 1 to 8 NMSA 1978]. "Motor vehicle dealer" or "dealer" shall not include:

(1) receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under judgment, decree or order of any court;

(2) public officers while performing their duties as such officers;

(3) persons making casual sales of their own vehicles duly registered and licensed to them by the state; or

(4) finance companies, banks and other lending institutions covering sales of repossessed vehicles;

N. "person" means every natural person, partnership, corporation, association, trust, estate or any other legal entity;

O. "predecessor manufacturer" means a manufacturer that is acquired, succeeded by or assumed by a successor manufacturer;

P. "prospective purchaser" means a person who has a bona fide written agreement to purchase a franchise;

Q. "recall claim" includes a claim for reimbursement for the parts and labor required for a dealer to repair a motor vehicle subject to a do not drive order or stop sale order;

R. "recreational vehicle" means any motor vehicle with a camping body that either has its own motive power or is drawn by another vehicle;

S. "relevant market area" means an area of a size specified in this subsection around an existing motor vehicle dealer's place of business. The size of the area shall be the greater of the area of responsibility specified in the dealer's franchise or a circle with a center at the dealer's place of business and a radius of:

(1) seven miles, if the population of the county in which the dealership is located is two hundred fifty thousand or more;

(2) fifteen miles, if the population of the county in which the dealership is located is less than two hundred fifty thousand but is thirty-five thousand or more; or

(3) twenty miles in all other cases.

If the existing and proposed dealerships are in different counties, the lesser of the applicable mileage limitations shall be used. For purposes of this subsection, the population of any area shall be determined in accordance with the most recent decennial census or the most recent population update from the national planning data corporation or other similar recognized source, whichever is later;

T. "representative" means any person who is or acts as an agent, employee or representative of a manufacturer or distributor and who performs any duties in this state relating to promoting the distribution or sale of new or used motor vehicles or contacts dealers in this state on behalf of a manufacturer or distributor;

U. "sale" includes:

(1) the issuance, transfer, agreement for transfer, exchange, pledge, hypothecation or mortgage in any form, whether by transfer in trust or otherwise, of any motor vehicle or interest therein or of any franchise related thereto; and

(2) any option, subscription or other contract or solicitation looking to a sale or offer or attempt to sell in any form, whether spoken or written. A gift or delivery of any motor vehicle or franchise with respect thereto with, or as, a bonus on account of the sale of anything shall be deemed a sale of such motor vehicle or franchise;

V. "stop sale order" means a notice prohibiting a motor vehicle dealer from leasing or selling and delivering at wholesale or retail a used motor vehicle in the inventory of the dealer until the vehicle has been repaired because the vehicle has a safety defect, fails to comply with a federal motor vehicle safety standard or fails to comply with a federal requirement;

W. "successor manufacturer" means a motor vehicle manufacturer that, on or after January 1, 2010, acquires, succeeds to or assumes any part of the business of a predecessor manufacturer as the result of:

(1) a change in ownership, operation or control of the predecessor manufacturer;

(2) the termination, suspension or cessation of all or a part of the business operation of the predecessor manufacturer;

(3) the discontinuance of the sale of a product line; or

(4) a change in the distribution system by the predecessor manufacturer, whether through a change in distributor or the predecessor manufacturer's decision to cease conducting business through a distributor; and

X. "value of the used motor vehicle" means the average trade-in value indicated in an independent third party guide for a used motor vehicle of the same year, make and model.

History: 1953 Comp., § 64-37-3, enacted by Laws 1973, ch. 6, § 3; 1977, ch. 100, § 1; 1985, ch. 213, § 1; 1991, ch. 49, § 1; 1995, ch. 19, § 1; 1997, ch. 31, § 1; 2010, ch. 38, § 1; 2010, ch. 40, § 1; 2018, ch. 28, § 1.

57-16-4. Unlawful acts; dealers.

It is unlawful for any dealer to:

A. require a retail purchaser of a new motor vehicle, as a condition of sale and delivery thereof, to purchase special features, equipment, parts or accessories not ordered or desired by the purchaser, provided such features, equipment, parts or accessories are not already installed on the new motor vehicle when received by the dealer;

B. use false, deceptive or misleading advertising in connection with his business;

C. willfully defraud any retail buyer to the buyer's damage;

D. fail to perform the obligations placed on the dealer in connection with the delivery and preparation of a new motor vehicle for retail sale as provided in the manufacturer's preparation and delivery agreements;

E. fail to perform the obligations placed on the dealer in connection with the manufacturer's warranty agreements;

F. represent or sell as a new motor vehicle any motor vehicle which has been used and operated for demonstration purposes or which is otherwise a used motor vehicle; or

G. intentionally fail to perform any written agreement with any retail buyer.

History: 1953 Comp., § 64-37-4, enacted by Laws 1973, ch. 6, § 4; 1985, ch. 236, § 1.

57-16-5. Unlawful acts; manufacturers; distributors; representatives.

It is unlawful for a manufacturer, distributor or representative to:

A. coerce or attempt to coerce a dealer to order or accept delivery of a motor vehicle, appliances, equipment, parts or accessories therefor or any other commodity that the motor vehicle dealer has not voluntarily ordered;

B. coerce or attempt to coerce a dealer to order or accept delivery of a motor vehicle with special features, appliances, accessories or equipment not included in the list price of the motor vehicles as publicly advertised by the manufacturer;

C. coerce or attempt to coerce a dealer to order for any person any parts, accessories, equipment, machinery, tools, appliances or any commodity whatsoever;

D. refuse to deliver, in reasonable quantities and within a reasonable time after receipt of dealer's order, to a motor vehicle dealer having a franchise or contractual

arrangement for the retail sale of motor vehicles sold or distributed by the manufacturer, distributor or representative, those motor vehicles, parts or accessories covered by the franchise or contract specifically publicly advertised by the manufacturer, distributor or representative to be available for immediate delivery; provided, however, the failure to deliver a motor vehicle, parts or accessories shall not be considered a violation of Chapter 57, Article 16 NMSA 1978 if the failure is due to an act of God, work stoppage or delay due to a strike or labor difficulty, shortage of materials, freight embargo or other cause over which the manufacturer, distributor or representative or an agent thereof has no control;

E. coerce or attempt to coerce a motor vehicle dealer to enter into an agreement with the manufacturer, distributor or representative or to do any other act prejudicial to the dealer by threatening to cancel a franchise or a contractual agreement existing between the manufacturer, distributor or representative and the dealer; provided, however, that notice in good faith to a motor vehicle dealer of the dealer's violation of the terms or provisions of the franchise or contractual agreement does not constitute a violation of Chapter 57, Article 16 NMSA 1978;

F. terminate or cancel the franchise or selling agreement of a dealer without due cause. "Due cause" means a material breach by a dealer, due to matters within the dealer's control, of a lawful provision of a franchise or selling agreement. As used in this subsection, "material breach" means a contract violation that is substantial and significant. In determining whether due cause exists under this subsection, the court shall take into consideration only the dealer's sales in relation to the business available to the dealer; the dealer's investment and obligations; injury to the public welfare; the adequacy of the dealer's sales and service facilities, equipment and parts; the qualifications of the management, sales and service personnel to provide the consumer with reasonably good service and care of new motor vehicles; the dealer's failure to comply with the requirements of the franchise; and the harm to the manufacturer or distributor. The nonrenewal of a franchise or selling agreement, without due cause, shall constitute an unfair termination or cancellation regardless of the terms or provisions of the franchise or selling agreement. The manufacturer, distributor or representative shall notify a motor vehicle dealer in writing by registered mail of the termination or cancellation of the franchise or selling agreement of the dealer at least sixty days before the effective date thereof, stating the specific grounds for termination or cancellation; and the manufacturer, distributor or representative shall notify a motor vehicle dealer in writing by registered mail at least sixty days before the contractual term of the dealer's franchise or selling agreement expires that it will not be renewed, stating the specific grounds for nonrenewal in those cases where there is no intention to renew, and in no event shall the contractual term of a franchise or selling agreement expire without the written consent of the motor vehicle dealer involved prior to the expiration of at least sixty days following the written notice. During the sixty-day period, either party may in appropriate circumstances petition a district court to modify the sixty-day stay or to extend it pending a final determination of proceedings on the merits. The court may grant preliminary and final injunctive relief;

G. use false, deceptive or misleading advertising in connection with the manufacturer's, distributor's or representative's business;

H. offer to sell or to sell a motor vehicle to a motor vehicle dealer in this or any other state of the United States at a lower actual price than the actual price offered to any other motor vehicle dealer in this state for the same model vehicle similarly equipped or to utilize devices, including sales promotion plans or programs that result in a lesser actual price; provided, however, the provisions of this subsection do not apply to sales to a motor vehicle dealer for resale to a unit of the United States government, the state or its political subdivisions; and provided, further, the provisions of this subsection do not apply to sales to a motor vehicle dealer of a motor vehicle ultimately sold, donated or used by the dealer in a driver education program; and provided, further, that the provisions of this subsection do not apply if a manufacturer, distributor or representative offers to sell or sells new motor vehicles to all motor vehicle dealers at an equal price. As used in this section, "actual price" means the price to be paid by the dealer less any incentive paid by the manufacturer, distributor or representative, whether paid to the dealer or the ultimate purchaser of the vehicle. This provision does not apply to sales by the manufacturer, distributor or representatives to the United States government or its agencies. The provisions of this subsection dealing with vehicle prices in another state and defining actual price do not apply to a manufacturer or distributor if all of the manufacturer's or distributor's dealers within fifty miles of a neighboring state are given all cash or credit incentives available in the neighboring state, whether the incentives are offered by the manufacturer or distributor or a finance subsidiary of either, affecting the price or financing terms of a vehicle;

I. willfully discriminate, either directly or indirectly, in price between different purchasers of a commodity of like grade or quality where the effect of the discrimination may be to lessen substantially competition or tend to create a monopoly or to injure or destroy the business of a competitor;

J. offer to sell or to sell parts or accessories to a motor vehicle dealer for use in the dealer's own business for the purpose of repairing or replacing the same or a comparable part or accessory at a lower actual price than the actual price charged to any other motor vehicle dealer for similar parts or accessories for use in the dealer's own business; provided, however, in those cases where motor vehicle dealers have a franchise to operate and serve as wholesalers of parts and accessories to retail outlets or other dealers, whether or not the dealer is regularly designated as a wholesaler, nothing in this section prevents a manufacturer, distributor or representative from selling to the motor vehicle dealer who operates and serves as a wholesaler of parts and accessories such parts and accessories as may be ordered by the motor vehicle dealer for resale to retail outlets at a lower actual price than the actual price charged a motor vehicle dealer who does not operate or serve as a wholesaler of parts and accessories;

K. prevent or attempt to prevent by contract or otherwise a motor vehicle dealer from changing the capital structure of the dealer's dealership or the means by or through which the dealer finances the operation of the dealership, if the dealer at all

times meets any reasonable capital standards agreed to between the dealer and the manufacturer, distributor or representative, and if the change by the dealer does not result in a change in the executive management control of the dealership;

L. prevent or attempt to prevent by contract or otherwise a motor vehicle dealer or an officer, partner or stockholder of a motor vehicle dealer from selling or transferring a part of the interest of any of them to any other person or party; provided, however, that no dealer, officer, partner or stockholder shall have the right to sell, transfer or assign the franchise or power of management or control thereunder without the consent of the manufacturer, distributor or representative except that the manufacturer, distributor or representative shall not withhold consent to the sale, transfer or assignment of the franchise to a qualified buyer capable of being licensed in New Mexico and who meets the manufacturer's or distributor's uniformly applied requirement for appointment as a dealer. Uniform application shall not prevent the application of a separate standard of consent for sale, transfer or assignment to minority or women dealer candidates, and shall not require the application of an identical standard to all persons in all situations. The requirement of uniform application shall be met if the manufacturer applies the same set of standards, which takes into account business performance and experience, financial qualifications, facility requirements and other relevant characteristics; provided that, if two dealers, persons or situations are identical, given the characteristics considered in the standards, the two dealers, persons or situations shall be treated identically, except as provided in this subsection. Upon request, a manufacturer or distributor shall provide its dealer with a copy of the standards that are normally relied upon by the manufacturer or distributor to evaluate a proposed sale, transfer or assignment. A manufacturer, distributor or representative shall send a letter by certified mail approving or withholding consent within sixty calendar days of receiving the completed application forms and related information requested by a manufacturer or distributor as provided below. A manufacturer, distributor or representative shall send its existing motor vehicle dealer the necessary application forms and identify the related information required within twenty calendar days of receiving written notice from the existing motor vehicle dealer of the proposed sale or transfer. No manufacturer, distributor or representative shall require any information not requested in the twenty-day period, and submission of the information requested within that period together with a completed form of the application provided shall constitute a completed application form. A request for consent shall be deemed granted, and the manufacturer, distributor or representative shall be estopped from denying the consent, if the consent has not been expressly withheld during the applicable sixty-day period;

M. obtain money, goods, services, anything of value or any other benefit from any other person with whom the motor vehicle dealer does business on account of or in relation to the transactions between the dealer and the other person, unless the benefit is promptly accounted for and transmitted to the motor vehicle dealer;

N. require a motor vehicle dealer to assent to a release, assignment, novation, waiver or estoppel that would relieve a person from liability imposed by Chapter 57, Article 16 NMSA 1978;

O. require a motor vehicle dealer to provide installment financing with a specified financial institution;

P. establish an additional franchise, including any franchise for a warranty or service facility outside of the relevant market area of the dealer establishing the facility, but excluding the relocation of existing franchises, for the same line-make in a relevant market area where the same linemake [line-make] is presently being served by an existing motor vehicle dealer if such addition would be inequitable to the existing dealer; provided, however, that the sales and service needs of the public shall be given due consideration in determining the equities of the existing dealer. The sole fact that the manufacturer, distributor or representative desires further penetration of the market is not grounds for establishing an additional franchise; provided, further, that the manufacturer, distributor or representative shall give a ninety-day written notice by registered mail to all same line-make dealers in a relevant market area of its intention to establish an additional franchise;

Q. offer to sell or lease or to sell or lease a new motor vehicle to a person, except a distributor, at a lower actual price therefor than the actual price offered and charged to a motor vehicle dealer for the same model vehicle similarly equipped or to utilize any device that results in a lower actual price;

R. sell, lease or provide motorcycles, parts or accessories to a person not a dealer or distributor for the line-make sold, leased or provided. The provisions of this subsection do not apply to sales, leases or provisions of motor vehicles, parts or accessories by a manufacturer, distributor or representative to the United States government or its agencies or the state or its political subdivisions;

S. offer a finance program, either directly or through an affiliate, based on the physical location of the selling dealer or the residence of the buyer. The provisions of this subsection do not apply to a manufacturer or distributor that has no dealer within fifty miles of a state line or if all of the manufacturer's or distributor's dealers within that fifty miles are given all cash or credit incentives available in the neighboring state, whether the incentives are offered by the manufacturer or the distributor or a finance subsidiary of either, affecting the price or financing terms of a vehicle;

T. force a dealer to sell or relocate a franchise with another manufacturer located at the same physical location or consider the existence of another line-make at a dealership for product allocation, successorship, location approval and capitalization; provided that a manufacturer or distributor may require that the dealer:

(1) meet the manufacturer's capitalization requirements;

(2) meet the manufacturer's facilities requirements; and

(3) not have committed fraudulent acts;

U. enforce a right of first refusal or option to purchase the dealership by a manufacturer or distributor or to require a dealer to grant a right or option to a manufacturer or distributor;

V. be licensed as a dealer or perform warranty or other service or own an interest, directly or indirectly, in a person licensed as a dealer or performing warranty or other service; provided that a manufacturer or distributor may own a person licensed as a dealer for a reasonable time in order to dispose of an interest acquired as a secured party or as part of a dealer development program;

W. fail to recognize and approve the transfer of a dealership to a person named as a successor, donee, beneficiary or devisee in a valid testamentary or trust instrument; provided that a manufacturer or distributor may impose standards or criteria used in a transfer;

X. impose capitalization requirements not necessary to assure that the dealer can meet its financial obligations;

Y. compel a dealer through a finance subsidiary of the manufacturer or distributor to agree to unreasonable operating requirements or directly or indirectly to terminate a dealer, except as allowed by Subsection F of this section, through the actions of a finance subsidiary of the manufacturer or distributor. This subsection shall not limit the right of a financing entity to engage in business practices in accordance with the usage of the trade in which it is engaged;

Z. require a dealer or the dealer's successor to:

(1) construct a new dealership, require the relocation of an existing dealership or substantially change, alter or remodel a dealer's facility except as necessary to comply with health or safety laws or to comply with technology requirements necessary to sell or service vehicles; or

(2) construct a new dealership, require relocation of an existing dealership or substantially change, alter or remodel an existing dealership before the tenth anniversary of the date that the construction or change, alteration or remodel of the dealership at that location was completed if the construction was in substantial compliance with standards or plans provided by a manufacturer, distributor or representative;

AA. unreasonably withhold approval for a dealer to purchase substantially similar goods or services related to the construction, alteration, remodel or renovation of a dealership facility from vendors of the dealer's choice. This subsection shall not be construed to allow a dealer or vendor to infringe upon or impair a manufacturer's trademark rights or to erect or maintain a sign that does not conform to the manufacturer's reasonable fabrication specifications and trademark usage guidelines;

BB. use an unreasonable, arbitrary or unfair sales or other performance standard in determining a franchise motor vehicle dealer's compliance with a franchise agreement. The manufacturer has the burden of proving the reasonableness of its performance standards;

CC. fail to compensate a motor vehicle dealer for labor and parts required for a dealer to perform necessary repairs on an affected new or used motor vehicle pursuant to a recall, do not drive order or stop sale order, if the dealer holds a franchise of the same line-make as the subject vehicle;

DD. fail to compensate a motor vehicle dealer as prescribed by Chapter 57, Article 16 NMSA 1978 for a delay in delivering parts or equipment needed to perform recall-related repairs on an affected used motor vehicle in the dealer's inventory that is subject to a do not drive order or stop sale order, if the dealer holds a franchise of the same line-make as the vehicle;

EE. subject to the manufacturer's audit rights provided in Section 57-16-7 NMSA 1978, reduce compensation to a motor vehicle dealer, process a charge back to a dealer, reduce the amount of compensation that the manufacturer otherwise owes to an individual dealer under an incentive program or remove an individual dealer from an incentive program solely because the motor vehicle dealer submitted a claim or received compensation for a claim. This subsection does not prohibit a manufacturer from modifying or discontinuing an incentive program prospectively or from making ordinary business decisions; or

FF.use data, calculations or statistical determinations of the sales performance of a motor vehicle dealer to take adverse action against the motor vehicle dealer for any period of time during which the dealer has at least five percent of its total new and used motor vehicle inventory subject to a stop sale order or do not drive order; provided that the motor vehicle dealer's performance, as reflected in the data, calculations or statistical determinations, is adversely affected by the stop sale order or do not drive order.

History: 1953 Comp., § 64-37-5, enacted by Laws 1973, ch. 6, § 5; 1985, ch. 213, § 2; 1993, ch. 167, § 1; 1997, ch. 31, § 2; 2001, ch. 222, § 1; 2013, ch. 13, § 1; 2018, ch. 28, § 2.

57-16-5.1. Prohibition on denial of claims based on technical errors.

A manufacturer, distributor or representative shall not charge back an element of a paid claim, customer or dealer incentive, recall claim or warranty claim based on a dealer's incidental failure to comply with a claim requirement or a clerical error or other technicality, as long as the dealer corrects the clerical error or other technicality according to licensee guidelines within ninety days of learning of the clerical error or other technicality and provides appropriate documentation to demonstrate the need for the repair. This section applies to a successor manufacturer or distributor.

History: Laws 2018, ch. 28, § 4.

57-16-5.2. Used vehicles; do not drive or stop sale orders; duty to provide parts or equipment; compensation for delay.

A. If a manufacturer, a distributor or the federal government issues a stop sale order or do not drive order on a used motor vehicle that is part of a franchise motor vehicle dealer's inventory, the manufacturer or distributor upon availability shall immediately provide to the dealer the part or equipment needed to make the vehicle comply with the motor vehicle standards or to correct the defect.

B. If a remedy or part necessary to repair a used motor vehicle subject to a stop sale order or do not drive order is not available within thirty days of the issuance of the order, upon request of a franchise motor vehicle dealer, the manufacturer shall compensate its franchise motor vehicle dealer for each affected used motor vehicle of the same line-make as new vehicles that the dealer is authorized to sell or service in the dealer's inventory at a prorated rate of at least one percent of the value of the used motor vehicle per month, commencing on the thirtieth day after the order was issued and ending on the earlier of the date that a remedy or all parts necessary to repair or service the affected used motor vehicle are made available to the dealer or the dealer sells, trades or otherwise disposes of the affected used motor vehicle. Alternatively, a manufacturer may compensate a motor vehicle dealer under a recall compensation program if the motor vehicle dealer agrees to be compensated under the program. A manufacturer is not required to compensate a motor vehicle dealer for more than the total value of the used motor vehicle.

C. Compensation provided to a franchise motor vehicle dealer under Subsection B of this section is exclusive and shall not be combined with any other recall compensation remedy under state or federal law.

D. For the purposes of this section, a used motor vehicle is part of the franchise motor vehicle dealer's inventory if the used motor vehicle is held for sale and in the possession of the dealer on the date the do not drive order or stop sale order is issued or if the dealer obtains the used motor vehicle as a result of trade-in pursuant to the purchase of a new or used motor vehicle or a lease return contract after the date that the order is issued but before the remedy and all parts necessary to repair the used motor vehicle are made available to the dealer. The manufacturer may establish the method by which a dealer demonstrates that an affected motor vehicle is part of the dealer's inventory. The method may not be unreasonable, be unduly burdensome or require the dealer to provide information to the manufacturer that is not necessary to validate payment.

History: Laws 2018, ch. 28, § 5.

57-16-6. Obligations; statement of compensation.

Every manufacturer shall specify to the dealer the delivery and preparation obligations of its motor vehicle dealers prior to delivery of new motor vehicles to retail buyers. A copy of the delivery and preparation obligations of its motor vehicle dealers and a schedule or statement of the compensation to be paid or credited to its motor vehicle dealers for the work and services they shall be required to perform in connection with such delivery and preparation obligations shall be furnished to the dealer. The compensation as set forth on such schedule or statement shall be reasonable and paid or credited as set out in Section 7 [57-16-7 NMSA 1978] of this act.

History: 1953 Comp., § 64-37-6, enacted by Laws 1973, ch. 6, § 6.

57-16-6.1. Motorcycle dealers; new product; franchise or sales agreement.

A. Before a manufacturer, distributor or representative offers a new or additional motorcycle product for resale to any person to act as dealer whose market area, as defined in Subsection P of Section 57-16-5 NMSA 1978, includes the place of business of an existing dealer of a manufacturer, distributor or representative, the manufacturer, distributor or representative shall first offer the new or additional motorcycle product to the existing dealer in writing by registered mail with all of the conditions for marketing the new or additional motorcycle product in the market area which the manufacturer, distributor or representative will impose on any person marketing the new or additional motorcycle product in the market area. The manufacturer, distributor or representative shall not offer the new or additional motorcycle product to any other person, to act as a dealer of the new or additional motorcycle product, whose market area, as defined in Subsection P of Section 57-16-5 NMSA 1978, includes the place of business of the existing dealer, until either sixty days has elapsed after the offer of the new or additional motorcycle product to the existing dealer or the existing dealer has rejected, in writing, that offer, whichever is sooner.

B. Any renewal of an existing franchise or sales agreement by a manufacturer, distributor or representative which occurs on or after July 1, 1985, or any new franchise or sales agreement which is executed by a manufacturer, distributor or representative on or after July 1, 1985, shall contain provisions for the addition of those motorcycle models, types or products which are under separate franchises or sales agreements to the dealer and for the addition of franchise agreements for new or additional motorcycle products introduced by the manufacturer, distributor or representative on or after July 1, 1985, so that, upon the date of renewal of the last separate franchise or sales agreement which was entered into by the dealer with the manufacturer, distributor or representative before July 1, 1985, all of those models and types of motorcycles, and any new or additional motorcycle products, which are offered by the manufacturer, distributor or representative on or after July 1, 1985 and accepted by the dealer, are under one franchise.

History: 1978 Comp., § 57-16-6.1, enacted by Laws 1985, ch. 213, § 3.

57-16-6.2. Recreational vehicles; franchise agreements.

A. Every recreational vehicle manufacturer, distributor or representative shall execute a written franchise or sales agreement with each of its recreational vehicle dealers. Each agreement shall include the following provisions:

(1) warranty service obligations, including rates charged by a dealer for performing warranty service;

(2) specific territory or market area designation;

(3) grounds for termination;

(4) repurchase obligations;

(5) sales volume and performance; and

(6) dispute resolution procedures.

B. Notwithstanding the provisions of Subsection A of this section, a dealer and manufacturer, distributor or representative may mutually agree not to include the provisions listed in Paragraphs (2) through (6) of Subsection A of this section; provided, however, a written declaration stating which of the provisions were intentionally omitted and not applicable shall be incorporated into the written agreement.

History: Laws 1995, ch. 19, § 2; 2003, ch. 199, § 1.

57-16-7. Warranty and recall claims; payment.

A. Each manufacturer shall specify in its franchise agreement, or in a separate written agreement, with each of its dealers licensed in this state, the dealer's obligation to perform warranty work or service on the manufacturer's products.

B. Each manufacturer shall provide each of its dealers with a schedule of compensation to be paid to the dealer for recall or warranty repairs, work or service, including parts, labor and diagnostic work, required of the dealer by the manufacturer in connection with the manufacturer's products. The schedule of compensation for a recall or warranty repair shall not be less than the rates charged by the dealer for similar service to retail customers for nonwarranty service and repairs.

C. The rates charged by the dealer for nonwarranty service or work for parts means the price paid by the dealer for those parts, including all shipping and other charges, increased by the franchisee's average percentage markup. A dealer shall establish and declare the dealer's average percentage markup by submitting to the manufacturer one hundred sequential customer-paid service repair orders or ninety days of customer-paid service repair orders, whichever is less, covering repairs made no more than one

hundred eighty days before the submission. A change in a dealer's established average percentage markup takes effect thirty days following the submission. A manufacturer shall not require a dealer to establish average percentage markup by another methodology. A manufacturer shall not require information that is unduly burdensome or time-consuming to provide, including part-by-part or transaction-by-transaction calculations.

D. A manufacturer shall compensate a dealer for labor and diagnostic work for recall or warranty repairs at the rates charged by the dealer to its retail customers for such work. A dealer shall establish and declare the dealer's average customer pay labor rate by submitting to the manufacturer the lesser of one hundred sequential customer-paid service repair orders or ninety days of customer-paid service repair orders covering repairs made no more than one hundred eighty days before the submission.

E. If a manufacturer can demonstrate that the rates under Subsection C or D of this section were incorrectly calculated by a dealer or unreasonably exceed those of all other franchised motor vehicle dealers in the same relevant market area offering the same or a competitive motor vehicle line, the manufacturer is not required to honor the rate increase proposed by the dealer. If the manufacturer is not required to honor the rate increase proposed by the dealer, the dealer is entitled to resubmit a new proposed rate for labor and diagnostic work.

F. A dealer shall not be granted an increase in the average percentage markup or labor and diagnostic work rate more than twice in one calendar year.

G. All recall or warranty claims for parts and labor made by dealers under this section shall be submitted to the manufacturer within one year of the date the work was performed. All claims submitted must be paid by the manufacturer within thirty days following receipt, provided that the claim has been approved by the manufacturer. The manufacturer has the right to audit claims and to charge the dealer for any unsubstantiated, incorrect or false claims for a period of six months following payment. However, the manufacturer may audit and charge the dealer for any fraudulent claims during any period for which an action for fraud may be commenced under applicable state law.

H. All claims submitted by dealers on the forms and in the manner specified by the manufacturer shall be either approved or disapproved within thirty days following their receipt. The manufacturer shall notify the dealer in writing of any disapproved claim and shall set forth the reasons why the claim was not approved. Any claim not specifically disapproved in writing within thirty days following receipt is approved, and the manufacturer is required to pay that claim within thirty days of receipt of the claim.

I. A manufacturer may not recover its costs for compensating its dealers licensed in this state for a recall or warranty claim either by reduction in the amount due to the dealer or by separate charge, surcharge or other imposition.

J. A manufacturer, distributor or representative shall not deny a claim by a dealer for performing a covered warranty repair or required recall, do not drive order or stop sale order repair on a motor vehicle if the dealer discovered the need for the repair during the course of a separate repair request by the customer; provided that the dealer provides the required documentation, which shall not be unreasonably burdensome, demonstrating the need for the repair.

K. The provisions of this section shall not apply to recreational travel trailers or to parts of systems, fixtures, appliances, furnishings, accessories and features of motor homes.

History: 1953 Comp., § 64-37-7, enacted by Laws 1973, ch. 6, § 7; 1979, ch. 310, § 1; 1993, ch. 167, § 2; 1997, ch. 14, § 1; 2011, ch. 111, § 1; 2011, ch. 118, § 1; 2018, ch. 28, § 3.

57-16-7.1. Sales and service incentives; audit.

A manufacturer or distributor may audit a claim for sales and service incentives only during the six-month period immediately following payment or credit issued for the claim; however, this limitation shall not apply if there is a reasonable suspicion of fraud.

History: Laws 1997, ch. 14, § 2; 2011, ch. 111, § 2; 2011, ch. 118, § 2.

57-16-8. Unreasonable restrictions; site control agreements; exclusive use agreements.

A. It is unlawful to, directly or indirectly, impose unreasonable restrictions on the motor vehicle dealer or franchise relative to transfer, sale, right to renew, termination discipline, noncompetitive covenants, site-control whether by sublease, collateral pledge of lease or otherwise, right of first refusal to purchase, option to purchase, compliance with subjective standards and assertion of legal or equitable rights.

B. Unless a separate agreement lasting no more than fifteen years has been voluntarily entered into for separate consideration, it is unlawful to, directly or indirectly, require a site control agreement or exclusive use agreement as a condition of:

(1) awarding a franchise to a prospective motor vehicle dealer;

(2) adding a line make or franchise to an existing dealer;

(3) renewing the franchise of an existing dealer;

(4) approving the relocation of an existing dealer's facility; or

(5) approving the sale or transfer of ownership of a franchise.

C. As used in this section, "site control agreement" or "exclusive use agreement" means any agreement that has the effect of:

(1) requiring a dealer to establish or maintain exclusive dealership facilities;

(2) restricting the ability of a dealer or a dealer's lessor to transfer, sell, lease or change the use of the dealership premises; or

(3) preventing or attempting to prevent a dealer from acquiring, adding or maintaining a sales or service operation for another line make of motor vehicles at the same or expanded facility at which the dealer currently operates a dealership, provided that the dealer complies with any reasonable facilities requirements of the manufacturer, successor manufacturer or distributor.

History: 1953 Comp., § 64-37-8, enacted by Laws 1973, ch. 6, § 8; 2010, ch. 38, § 2; 2010, ch. 40, § 2.

57-16-9. Franchise renewal; termination; anticipatory termination.

A. Anything to the contrary notwithstanding, it is unlawful for the manufacturer, distributor or representative without due cause to fail to renew a franchise on terms then equally available to all its motor vehicle dealers or their prospective purchasers, to terminate a franchise or to restrict the transfer of a franchise unless the dealer receives fair and reasonable compensation for the value of the business. A prospective purchaser may enforce the provisions of this section whether or not the person is a dealer.

B. A public announcement by a manufacturer or distributor of an intention to cease manufacturing or distribution of a motor vehicle brand within three years of the announcement or upon expiration of a dealers' current franchise or selling agreement may at the option of an affected dealer be deemed an anticipatory involuntary termination of the dealer's franchise.

History: 1953 Comp., § 64-37-9, enacted by Laws 1973, ch. 6, § 9; 1997, ch. 31, § 3; 2010, ch. 38, § 3; 2010, ch. 40, § 3.

57-16-9.1. Succession to motorcycle dealership.

A. A manufacturer, distributor or representative shall not prevent or refuse to give effect to the succession to ownership or management control of a motorcycle dealership upon the death or incapacity of the dealer by the surviving spouse, heir, legatee or devisee nor shall the manufacturer, distributor or representative interfere, prevent or hinder, either directly or indirectly, the continuance of the business by reason of such succession, except as otherwise provided in this act.

B. Any designated family member of a deceased or incapacitated dealer may succeed the motorcycle dealer in ownership or management control under the existing agreement; provided that the designated family member provides notice to the manufacturer, distributor or representative, in writing by registered mail, of the intention to succeed to the dealership within one hundred and twenty days after the dealer's death or incapacity and the successor agrees to be bound by all the terms of the original agreement. The successor must meet the reasonable criteria applied by the manufacturer, distributor or representative to new dealers.

C. The rejection of succession, without good cause, shall constitute an unfair termination or cancellation, regardless of the terms or provisions of the franchise or selling agreement. If the manufacturer, distributor or representative believes that good cause exists for rejection, such manufacturer, distributor or representative shall provide notice to the successor, in writing by registered mail within sixty days of the receipt of the notice of intention to succeed. In no event shall the contractual term of any franchise or selling agreement expire, without the written consent of the successor, prior to the expiration of at least ninety days following such written notice. During the ninety-day period the designated family member or successor may petition a court to modify such ninety-day stay or to extend it pending a final determination of such proceedings on the merits. The court shall have authority to grant preliminary and final injunctive relief.

D. A motorcycle dealer may designate any person as the successor by written instrument filed with the manufacturer, distributor or representative and such written instrument shall be controlling.

History: 1978 Comp., § 57-16-19.1, enacted by Laws 1985, ch. 213, § 4.

57-16-9.2. Motor vehicle dealers; termination of franchise; return of inventory.

A. If on termination of a franchise the dealer delivers to the manufacturer or distributor the inventory, vehicle brand-specific tools, signage and other specialized systems, equipment and real estate required by the manufacturer that was purchased from the manufacturer or distributor and that is held by the dealer on the date of termination, the manufacturer or distributor shall pay to the dealer:

(1) the dealer cost of the new, unsold and undamaged motorcycles and motor vehicles from the current and immediately preceding two model years and purchased from the manufacturer or distributor within fourteen months prior to receipt of a notice of termination;

(2) an amount equal to ninety-five percent of the current price of new, unused and undamaged motorcycle attachments and motor vehicle repair parts;

(3) an amount equal to an additional five percent of the current price of new, unused and undamaged motorcycle attachments and motor vehicle repair parts, unless

the manufacturer or distributor performs the handling, packing and loading of the parts, in which case no additional amount is required under this paragraph;

(4) the fair market value, determined by appraisal as if installed for continuous use in an operating dealership, of all vehicle brand-specific special tools, signage and other specialized systems and equipment required by the manufacturer or distributor for dealership operations. The fair market value will be determined by a qualified independent appraiser agreed upon by the manufacturer or distributor and the dealer unless the fair market value is mutually agreed upon by the parties; and

(5) the economic loss to the dealer resulting from idled or underused dealer facility real estate due to a manufacturer's involuntary termination, determined by any reasonable means, including appraisal, unless the dealer is in violation of the franchise agreement. Economic loss is presumed to be at least equal to the value of two years of dealer facility fair market rental value, as if the facility were an operating dealership; real estate property tax; and property insurance.

B. The manufacturer or distributor may subtract from the sum due under Subsection A of this section the amount of debts owed by the dealer to the manufacturer or distributor. The manufacturer or distributor and the dealer are each responsible for one-half of the cost of delivering the inventory to the manufacturer or distributor.

C. The manufacturer or distributor shall pay the amount due under this section before the sixty-first day after the day that the manufacturer or distributor receives inventory from the dealer.

D. On payment of the amount due under this section, title to the inventory is transferred to the manufacturer or distributor.

E. The provisions of this section shall not apply to recreational travel trailer or motor home manufacturers or dealers.

History: 1978 Comp., § 57-16-9.2, enacted by Laws 1991, ch. 49, § 2; 1993, ch. 167, § 3; 2010, ch. 38, § 4; 2010, ch. 40, § 4.

57-16-9.3. Motor vehicle dealers; termination of franchise; return of inventory; exceptions.

A manufacturer or distributor is not required to repurchase:

A. inventory that the dealer orders either after the dealer receives notice of the termination of the franchise from the manufacturer or distributor or after any relief, granted by a court to the dealer in the form of temporary restraining orders, temporary injunctions or permanent injunctions, has expired;

B. inventory for which the dealer is unable to furnish evidence of clear title; or

C. motorcycle attachments or motor vehicle repair parts that have a limited storage life, are in a broken or damaged package, are usually sold as part of a set, if the parts are separated from the set, or cannot be sold without reconditioning.

History: 1978 Comp., § 57-16-9.3, enacted by Laws 1991, ch. 49, § 3; 1993, ch. 167, § 4.

57-16-10. Refunds; discounts.

In connection with a sale of a motor vehicle or vehicles to the state or to any political subdivision thereof, no manufacturer, distributor or representative shall offer any discounts, refunds or any other similar type of inducement to any dealer without making the same offer or offers to all other of its dealers within the relevant market area, and if such inducements are made, the manufacturer, distributor or representative shall give simultaneous notice thereof to all of its dealers within the relevant market area who have requested such notice.

History: 1953 Comp., § 64-37-10, enacted by Laws 1973, ch. 6, § 10.

57-16-11. Injunction.

Whenever it appears that a person has violated, or is violating, or is threatening to violate, any provision of this act, the aggrieved person may cause a civil suit to be instituted in district court for injunctive relief to restrain the person from continuing the violation or threat of violation.

History: 1953 Comp., § 64-37-11, enacted by Laws 1973, ch. 6, § 11.

57-16-12. Venue of suits; relief.

A suit for injunctive relief may be brought either in the county where the defendant resides or in the county where the violation or threat of violation occurs. In any suit to enjoin a violation or threat of violation of this act, the court may grant temporary restraining orders, temporary injunctions and permanent injunctions.

History: 1953 Comp., § 64-37-12, enacted by Laws 1973, ch. 6, § 12.

57-16-13. Right of action; damages.

In addition to any other judicial relief, any person who shall be injured in his business or property by reason of anything forbidden in this act may sue therefor in the district court and shall recover actual damages by him sustained, and the cost of suit, including a reasonable attorney's fee. In an action for money damages, the court or jury may award punitive damages not to exceed three times the actual damages, if the defendant acted maliciously.

History: 1953 Comp., § 64-37-13, enacted by Laws 1973, ch. 6, § 13.

57-16-14. Limitations on suits.

Actions rising out of any provision of this act shall be commenced within four years next after the cause of action accrues; provided, however, that if a person liable hereunder conceals the cause of action from the knowledge of the person entitled to bring it, the period prior to the discovery of his cause of action by the person so entitled shall be excluded in determining the time limited for the commencement of the action. If a cause of action accrues during the pendency of any civil, criminal or administrative proceeding against a person brought by the United States, or any of its agencies, under the antitrust laws, the Federal Trade Commission Act or any other federal act, or the laws of the state related to antitrust laws or to franchising, such actions may be commenced within one year after the final disposition of such civil, criminal or administrative proceeding.

History: 1953 Comp., § 64-37-14, enacted by Laws 1973, ch. 6, § 14.

57-16-15. Price schedule change.

A manufacturer or distributor motor vehicle price increase shall not apply to vehicles which the dealer had ordered for private retail consumers prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer shall constitute evidence of each such order. In the event of price reductions, the amount of any such reduction received by a dealer shall be passed on to the private retail consumer by the dealer if the retail price was negotiated on the basis of the previous higher price to the dealer. Price reduction shall apply to all motor vehicles in the dealer's inventory that are subject to the reduction. Price differences applicable to new model motor vehicles at the time of the introduction of new models shall not be considered a price increase or price decrease.

History: 1953 Comp., § 64-37-15, enacted by Laws 1973, ch. 6, § 15.

57-16-16. Penalty.

Any dealer who shall willfully violate any of the provisions of Section 4 [57-16-4 NMSA 1978] of this act shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars ($100) or more than five hundred dollars ($500), or by imprisonment in the county jail for a period not to exceed six months, or by both such fine and imprisonment.

History: 1953 Comp., § 64-37-16, enacted by Laws 1973, ch. 6, § 16.

ARTICLE 16A
Motor Vehicle Quality Assurance

57-16A-1. Short title.

This act [57-16A-1 to 57-16A-9 NMSA 1978] may be cited as the "Motor Vehicle Quality Assurance Act".

History: Laws 1985, ch. 220, § 1.

57-16A-2. Definitions.

As used in the Motor Vehicle Quality Assurance Act:

A. "collateral charges" means additional charges to a consumer not directly attributed to a manufacturer's suggested retail price label for a new motor vehicle and includes all taxes, license, title and registration fees and other governmental charges related to the purchase of the vehicle;

B. "comparable motor vehicle" means an identical or reasonably equivalent motor vehicle;

C. "consumer" means the purchaser, other than for purposes of resale, of a new or used motor vehicle normally used for personal, family or household purposes, a person to whom such a motor vehicle has been transferred during the duration of an express warranty applicable to the motor vehicle and any other person entitled by the terms of the warranty to enforce the obligations of the warranty;

D. "express warranty" means a written affirmation of the fact of promise made by a manufacturer to a consumer in connection with the sale of a new or used motor vehicle that relates to the nature of the material or workmanship or to a specified level of performance over a specified period of time, including any terms or conditions precedent to the enforcement of obligations pursuant to the warranty;

E. "manufacturer" means a person engaged in the manufacturing, assembling, importing or distributing of a motor vehicle as a regular business;

F. "motor vehicle" means a passenger motor vehicle, including an automobile, pickup truck, motorcycle or van normally used for personal, family or household purposes, that is sold and registered in this state and whose gross vehicle weight is less than ten thousand pounds;

G. "used motor vehicle" means a motor vehicle that has been sold, bargained or exchanged or a motor vehicle that is the subject of a title that has been transferred from the person who first acquired the motor vehicle from the manufacturer, importer or dealer or agent of the manufacturer or importer and that has been placed in bona fide consumer use; and

H. "used motor vehicle dealer" means a person or business that sells or offers for sale a used motor vehicle after selling or offering for sale four or more used motor vehicles in the previous twelve months but does not include:

(1) a bank or financial institution;

(2) an insurance company;

(3) a business selling a used motor vehicle to an employee of the business; or

(4) a lessor selling a leased vehicle to the lessee of the vehicle or to an employee of the lessee of the vehicle.

History: Laws 1985, ch. 220, § 2; 2003, ch. 216, § 1.

57-16A-3. Conformation to express warranties.

A. If a new motor vehicle does not conform to all applicable express warranties and the consumer reports the nonconformity to the manufacturer, its agent or its authorized dealer during the term of such express warranties or during the period of one year following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, the manufacturer, its agent or its authorized dealer shall make such repairs as are necessary to conform the vehicle to such express warranties.

B. If the manufacturer or its agent or authorized dealer, after a reasonable number of attempts, is unable to conform the new motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use and market value of the motor vehicle to the consumer, the manufacturer shall replace the motor vehicle with a comparable motor vehicle or accept return of the vehicle from the consumer and refund to the consumer the full purchase price including all collateral charges, less a reasonable allowance for the consumer's use of the vehicle. The subtraction of a reasonable allowance for use shall apply when either a replacement or refund of the new motor vehicle occurs. As used in this subsection, a reasonable allowance for use shall be that amount directly attributable to use by the consumer prior to his first report of the nonconformity to the manufacturer, agent or dealer and during any subsequent period when the vehicle is not out of service by reason of repair. Refunds shall be made to consumers or lienholders as their interests may appear.

C. It shall be presumed that a reasonable number of attempts as mentioned in Subsection B of this section have been undertaken to conform a new motor vehicle to the applicable express warranties if:

(1) the same uncorrected nonconformity has been subject to repair four or more times by the manufacturer or its agents or authorized dealers within the express warranty term or during the period of one year following the date of original delivery of

the motor vehicle to a consumer, whichever is the earlier date, but the nonconformity continues to exist; or

(2) the vehicle is in the possession of the manufacturer, its agent or authorized dealer for repair a cumulative total of thirty or more business days during such term or during such period whichever is the earlier date, exclusive of down time for routine maintenance as prescribed by the manufacturer. The term of an express warranty, such one-year period and such thirty-day period shall be extended by any period of time during which repair services are not available to the consumer because of war, invasion, strike, fire, flood or other natural disaster. In no event shall the presumption herein provided apply against a manufacturer unless the manufacturer has received prior direct written notification from or on behalf of the consumer and an opportunity to cure the defect alleged. The manufacturer shall provide written notice and instruction to the consumer, either in the warranty or a separate notice, of the obligation to file this written notification before invoking the remedies available pursuant to the Motor Vehicle Quality Assurance Act.

History: Laws 1985, ch. 220, § 3.

57-16A-3.1. Used motor vehicles.

A. Unless a seller is a used motor vehicle dealer, before the seller attempts to sell a used motor vehicle, the seller shall possess the title to the used motor vehicle and the title shall be in the seller's name.

B. Except as otherwise provided in the Motor Vehicle Quality Assurance Act, a used motor vehicle dealer shall not exclude, modify or disclaim the implied warranty of merchantability prescribed in Section 55-2-314 NMSA 1978 or limit the remedies for a breach of the warranty before midnight of the fifteenth calendar day after delivery of a used motor vehicle or until a used motor vehicle is driven five hundred miles after delivery, whichever is earlier. In calculating time under this subsection, a day on which the warranty is breached and all subsequent days in which the used motor vehicle fails to conform with the implied warranty of merchantability are excluded. In calculating distance under this subsection, the miles driven to obtain or in connection with the repair, servicing or testing of the used motor vehicle that fails to conform with the implied warranty of merchantability are excluded. An attempt to exclude, modify or disclaim the implied warranty of merchantability or to limit the remedies for a breach of the warranty in violation of this subsection renders a purchase agreement voidable at the option of the purchaser.

C. An implied warranty of merchantability is met if a used motor vehicle functions substantially free of a defect that significantly limits the use of the used motor vehicle for the ordinary purpose of transportation on any public highway. The implied warranty of merchantability expires at midnight of the fifteenth calendar day after delivery of a used motor vehicle or until a used motor vehicle is driven five hundred miles after delivery, whichever is earlier. In calculating time, a day on which the implied warranty of

merchantability is breached is excluded and all subsequent days in which the used motor vehicle fails to conform with the warranty are also excluded. In calculating distance, the miles driven to obtain or in connection with the repair, servicing or testing of the used motor vehicle that fails to conform with the implied warranty of merchantability are excluded.

D. An implied warranty of merchantability does not extend to damage that occurs after the sale of the used motor vehicle that results from:

(1) off-road use;

(2) racing;

(3) towing;

(4) abuse;

(5) misuse;

(6) neglect;

(7) failure to perform regular maintenance; and

(8) failure to maintain adequate oil, coolant and other required fluids or lubricants.

E. If the implied warranty of merchantability described in this section is breached, the consumer shall give reasonable notice to the seller within thirty days of the date of the breach. Before the consumer exercises another remedy pursuant to Chapter 55, Article 2 NMSA 1978, the seller shall have a reasonable opportunity to repair the used motor vehicle. The consumer shall pay one-half of the cost of the first two repairs necessary to bring the used motor vehicle into compliance with the warranty. The payments by the consumer are limited to a maximum payment of twenty-five dollars ($25.00) for each repair.

F. The maximum liability of a seller pursuant to this section is limited to the purchase price paid for the used motor vehicle, to be refunded to the consumer or lender, as applicable, in exchange for return of the vehicle, unless the seller knew or should have known of the defect given the circumstances in which the vehicle was acquired or sold and the seller did not disclose that defect.

G. An agreement for the sale of a used motor vehicle by a used motor vehicle dealer is voidable at the option of the consumer unless it contains on its face the following conspicuous statement printed in boldface, ten-point or larger type set off from the body of the agreement:

"New Mexico law requires that this vehicle will be fit for the ordinary purposes for which the vehicle is used for fifteen days or five hundred miles after delivery, whichever is earlier, except with regard to particular defects disclosed on the first page of this agreement. You (the consumer) will have to pay up to twenty-five dollars ($25.00) for each of the first two repairs if the warranty is violated.".

H. The inclusion in the agreement of the statement prescribed in Subsection G of this section does not create an express warranty.

I. A consumer of a used motor vehicle may waive the implied warranty of merchantability only for a particular defect in the vehicle and only if all of the following conditions are satisfied:

(1) the used motor vehicle dealer fully and accurately discloses to the consumer that because of circumstances unusual to the business of the used motor vehicle dealer, the used motor vehicle has a particular defect;

(2) the consumer agrees to buy the used motor vehicle after disclosure of the defect; and

(3) before the sale, the consumer indicates agreement to the waiver by signing and dating the following conspicuous statement that is printed on the first page of the sales agreement in boldface ten-point or larger type and that is written in the language in which the presentation was made:

"Attention consumer: sign here only if the dealer has told you that this vehicle has the following problem(s) and you agree to buy the vehicle on those terms:

1. _____

2. _____

3. _____.".

J. A used motor vehicle dealer has the burden to prove by a preponderance of the evidence that the dealer complied with Subsection I of this section.

K. A consumer or seller that is aggrieved by a transaction pursuant to this section and that seeks a legal remedy shall pursue an appropriate remedy prescribed in Chapter 55, Article 2 NMSA 1978 and shall comply with the requirements prescribed in that article.

History: Laws 2003, ch. 216, § 3.

57-16A-4. Affirmative defenses.

It shall be an affirmative defense to any claim under the Motor Vehicle Quality Assurance Act that:

A. an alleged nonconformity does not substantially impair the use and market value of the motor vehicle;

B. a nonconformity is the result of abuse, neglect or unauthorized modifications or alterations of the motor vehicle;

C. a claim by a consumer was not filed in good faith; or

D. any other affirmative defense allowed by law.

History: Laws 1985, ch. 220, § 4.

57-16A-5. Limitation of remedy.

Any consumer who seeks enforcement of the provisions of the Motor Vehicle Quality Assurance Act shall be foreclosed from pursuing any Uniform Commercial Code remedy set forth in Sections 55-2-602 through 55-2-608 NMSA 1978.

History: Laws 1985, ch. 220, § 5.

57-16A-6. Informal dispute resolution.

If a manufacturer has established or participates in a fair and impartial informal dispute settlement procedure which substantially complies with the substantive requirements of Title 16, Part 703 of the Code of Federal Regulations, the provisions of Subsection B of Section 3 [57-16A-3B NMSA 1978] of the Motor Vehicle Quality Assurance Act concerning refunds or replacement shall not apply to any consumer who has not first resorted to that procedure. The state attorney general may investigate and determine that the informal dispute settlement procedure is fair and impartial and conforms with the requirements of Title 16, Part 703 of the Code of Federal Regulations.

History: Laws 1985, ch. 220, § 6.

57-16A-7. Resale of returned motor vehicle.

No motor vehicle which has not been properly repaired pursuant to the provisions of Subsection B of Section 3 [57-16A-3 NMSA 1978] of the Motor Vehicle Quality Assurance Act, or pursuant to a similar law of another state, may be resold in New Mexico unless the manufacturer provides full written disclosure of the reason for the return to any prospective buyer.

History: Laws 1985, ch. 220, § 7.

57-16A-7.1. Notice of replacement or repurchase to used motor vehicle dealers and consumers.

A manufacturer, its agent, its authorized dealer or a used motor vehicle dealer that has been ordered by judgment or decree to replace or repurchase or that has replaced or repurchased a motor vehicle pursuant to the Motor Vehicle Quality Assurance Act shall, before offering the motor vehicle for resale, attach to the motor vehicle written notification indicating that the motor vehicle has been replaced or repurchased. A consumer or a used motor vehicle dealer may bring a cause of action against a person who removes the notification from the motor vehicle, unless the manufacturer, its agent or its authorized dealer or a used motor vehicle dealer, before completion of the sale, has provided the purchaser with written notification by the manufacturer, dealer or agent of the dealer, that the motor vehicle has been replaced or repurchased.

History: Laws 2003, ch. 216, § 2.

57-16A-8. Limitation of action.

Any action brought to enforce the provisions of the Motor Vehicle Quality Assurance Act shall be commenced within eighteen months following the date of original delivery of the motor vehicle to a consumer, or, in the event that a consumer resorts to an informal dispute settlement procedure pursuant to Section 6 [57-16A-6 NMSA 1978] of the Motor Vehicle Quality Assurance Act, within ninety days following the final action of the panel, whichever is later.

History: Laws 1985, ch. 220, § 8.

57-16A-9. Reasonable attorney fees.

A consumer who prevails in an action brought to enforce the provisions of the Motor Vehicle Quality Assurance Act shall be entitled to receive reasonable attorneys' fees and court costs from the manufacturer. If a consumer does not prevail in such an action and brings that action for frivolous reasons or in bad faith, the manufacturer shall be entitled to receive reasonable attorneys' fees and court costs from the consumer.

History: Laws 1985, ch. 220, § 9.

ARTICLE 17
Standards of Weights and Measures

57-17-1. Definitions.

As used in this act:

A. "person" includes individuals, partnerships, corporations, companies, societies and associations;

B. "weight(s)" and "measure(s)" include all instruments and devices used for weighing and measuring and their necessary and associated accessories and appliances;

C. "sell" and "sale" include barter and exchange;

D. "apparatus" includes any manual or mechanical unit, method or device used to determine weight, measure or quantity;

E. "correct" means the condition of apparatus, which by reason of its construction and adjustment, will give accurate readings or indications of weight and quantity;

F. "incorrect" means the condition of apparatus, or its construction, which precludes it from being reasonably permanent in its adjustment or which will not allow it to repeat its indications of weight or quantity with accuracy;

G. "in package form" means a good or commodity packaged or contained in advance of sale so as to constitute a unity [unit] quantity of the good or commodity; a good or commodity not contained, but upon which is marked a selling price based upon weight or measure, shall be construed to be in packaged form; a shipping container containing goods or commodities in packaged form is excluded from this definition;

H. "weight" means net weight;

I. "sale from bulk" means the sale of commodities when the quantity is determined at the time of sale;

J. "board" means the board of regents of New Mexico state university; and

K. "director" means the director of the New Mexico department of agriculture.

History: 1953 Comp., § 76-1-28, enacted by Laws 1959, ch. 202, § 1; 1973, ch. 386, § 1.

57-17-2. Systems of weights and measures.

The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and either one or both of these systems shall be used for all commercial purposes in the state. The definitions of basic units of weights and measure, the tables of weight and measure and weights and measures equivalents as published by the national bureau of standards shall be used by the board in arriving at standards which shall govern weighing and measuring equipment and transactions in the state.

History: 1953 Comp., § 76-1-29, enacted by Laws 1973, ch. 386, § 2.

57-17-3. Physical standards.

Weights and measures that are traceable to the United States prototype standards supplied by the federal government, or approved as being satisfactory by the national bureau of standards shall be the state primary standards of weights and measures. The state primary standards shall be maintained in such calibration as prescribed by the national bureau of standards. Secondary standards may be prescribed by the director. Secondary standards shall be verified upon their initial receipt and as often thereafter as deemed necessary by the director.

History: 1953 Comp., § 76-1-30, enacted by Laws 1973, ch. 386, § 3.

57-17-4. Enforcement and administration.

A. Sections 57-17-1 through 57-17-19 NMSA 1978 shall be administered and enforced by the director under the direction of the board. Such sums as may be appropriated by the legislature and fees which are collected shall be allowed to the department for salaries for inspectors and for necessary clerical employees, necessary equipment and supplies, travel and contingent expenses.

B. The board shall after due notice and hearing issue reasonable regulations to carry out the provisions of Articles 17 and 18 of this Chapter 57 NMSA 1978. The regulations shall have the force of law and may include but not be limited to:

(1) standards of weight, measure or count, reasonable standards of fill and labeling requirements for a commodity in package form; and

(2) specifications and tolerances for apparatus, weights and measures designed to eliminate from use apparatus the inaccuracy of which would facilitate the perpetration of fraud.

History: 1953 Comp., § 76-1-31, enacted by Laws 1973, ch. 386, § 4.

57-17-5. Bonds.

A bond with sureties, to be approved by the secretary of state and conditioned upon faithful performance of duties, shall be given by the director in the penal sum of five thousand dollars ($5,000) and, upon appointment, by each inspector in the penal sum of one thousand dollars ($1,000). The premium on a bond required by this section shall be paid by the state.

History: 1953 Comp., § 76-1-32, enacted by Laws 1959, ch. 202, § 5; 1973, ch. 386, § 5.

57-17-6. Custody of state standards.

The New Mexico standards of weight and measure shall be kept in a safe and suitable place in the office of the director and shall not be removed except for repairs or certification.

History: 1953 Comp., § 76-1-33, enacted by Laws 1959, ch. 202, § 6; 1973, ch. 386, § 6.

57-17-7. Duties of director.

It shall be the duty of the director to:

A. enforce the provisions of this act;

B. maintain custody of the New Mexico standards of weight and measure and of the other standards and equipment entrusted to his care;

C. keep accurate records of all standards of weight and measure;

D. keep and have general supervision over apparatus used to determine weight and measure offered for sale, sold or in use in the state;

E. report annually to the governor of the state, the report to cover all activities carried out under the provisions of Articles 17 and 18 of this Chapter 57 NMSA 1978;

F. test at least once annually all apparatus, weights and measures used in checking the receipt or disbursement of supplies in institutions supported in whole or in part by moneys appropriated by the legislature;

G. inspect and test for accuracy, at least once annually, commercial apparatus, weights and measures used in:

(1) determining the weight, measurement or count of goods and commodities sold or offered for sale on the basis of weight or measure;

(2) computing the basic charge or payment for services rendered on the basis of weight or measure; and

(3) determining weight or measure when a charge is made for such determination; and

H. weigh, measure and inspect, from time to time, packages and amounts of goods and commodities offered for sale, sold or in the process of delivery to determine whether the weight or quantity of the good or commodity is the same as that represented by the terms of the offer or sale.

History: 1953 Comp., § 76-1-34, enacted by Laws 1959, ch. 202, § 7; 1973, ch. 386, § 7.

57-17-8. Powers of the director; police powers; right of entry and stoppage.

To facilitate the performance of his duties and the enforcement of the provisions of this act and the regulations promulgated hereunder, the director, in the performance of his duties, is empowered to:

A. approve for use, and seal or mark with appropriate devices, the weights and measures he finds upon inspection and test to be correct;

B. reject and mark or tag as "recommended for repair" apparatus, weights and measures he finds upon inspection and test to be incorrect, but which in his best judgment are susceptible of satisfactory repair;

C. condemn or seize weights and measures he finds upon inspection to be incorrect, but which in his best judgment are not susceptible of satisfactory repair;

D. arrest by formal warrant a willful violator of the provisions of this act or the regulations promulgated hereunder; and to seize, without formal warrant, for use as evidence, incorrect or unsealed apparatus, weights and measures and packages or goods and commodities, found by him to be sold or offered for sale in violation of law;

E. to enter, without formal warrant, a structure or premises for the purposes of inspection during business hours;

F. conduct investigations to ensure compliance with this act; and

G. issue stop-use, hold and removal orders with respect to any weights and measures commercially used, and stop-sale, hold and removal orders with respect to any packaged commodities or bulk commodities kept, offered or exposed for sale.

History: 1953 Comp., § 76-1-35, enacted by Laws 1959, ch. 202, § 8; 1973, ch. 386, § 8.

57-17-9. Duties and powers of inspectors.

When acting under instructions and under the direction of the director, the powers and duties of the inspectors of weights and measures shall be the same as the powers and duties given to and imposed upon the director.

History: 1953 Comp., § 76-1-36, enacted by Laws 1959, ch. 202, § 9; 1973, ch. 386, § 9.

57-17-10. Duty of owner of incorrect apparatus.

An owner or user of apparatus of weight or measure, recommended for repair, shall cause the apparatus to be made correct within a reasonable period specified by the director or an inspector. Except, at the election of the owner or user, the apparatus may be disposed of in a manner specifically authorized by the director. An apparatus of weight or measure which has been recommended for repair shall not be used again for a commercial purpose until it has been made correct, and found to be correct, by the director or an inspector unless otherwise provided for by regulation.

History: 1953 Comp., § 76-1-37, enacted by Laws 1959, ch. 202, § 10; 1973, ch. 386, § 10.

57-17-11. Methods of sale of commodities; general.

A commodity in liquid form shall be sold only by liquid measure or by weight, and a commodity not in liquid form shall be sold only by weight, by measure of length or area or by count; provided, that the provisions of this section shall not apply to a commodity sold for immediate consumption on the premises of sale, to vegetables sold by the head or bunch, to cotton seed sold to cotton gins or to a commodity when in package or container form standardized by law. The board shall issue such regulations as are required to carry out the provisions of this section.

History: 1953 Comp., § 76-1-38, enacted by Laws 1959, ch. 202, § 11; 1965, ch. 279, § 1; 1973, ch. 386, § 11.

57-17-12. Declarations on packages; declarations of unit price on random packages.

A. Except as otherwise provided by law or regulation of the board, a commodity in package form shall bear on the outside of the package a definite, plain and conspicuous declaration of net quantity of the contents in terms of weight, measure or count, and in the case of any package not sold on the premises where packed, the name and place of business of the manufacturer, packer or distributor; and the identity of the commodity in the package, unless the same can easily be identified through the wrapper or container.

B. In addition to the declarations required by this section, any package being one of a lot containing random weights of the same commodity and bearing the total selling price of the package shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight.

History: 1953 Comp., § 76-1-39, enacted by Laws 1959, ch. 202, § 12; 1973, ch. 386, § 12.

57-17-13. Misleading packages.

No commodity in package form shall be so wrapped, nor be in a container so made, formed or filled as to mislead the purchaser as to the quantity of its contents, and the contents of a container shall not fall below the reasonable standard of fill as may have been prescribed for the commodity by the director.

History: 1953 Comp., § 76-1-40, enacted by Laws 1959, ch. 202, § 13; 1973, ch. 386, § 13.

57-17-14. Retail sales; regulation of.

The board may by regulation, when it is necessary or desirable for the protection of the public, establish standard quantities, weights and sizes by which specific commodities may be sold at retail. If any specific commodity is regulated in this regard, by another state agency or law, the regulation of that other state agency or law shall control.

History: 1953 Comp., § 76-1-40.1, enacted by Laws 1973, ch. 386, § 14.

57-17-15. Misrepresentation of price.

Whenever a commodity or service is sold, offered or advertised for sale by weight, measure or count, the price shall not be misrepresented, nor shall the price be represented in any manner calculated or tending to mislead or deceive a purchaser.

History: 1953 Comp., § 76-1-41, enacted by Laws 1959, ch. 202, § 14.

57-17-16. Hindering or obstructing officers; penalties.

A person who shall hinder or obstruct in any way the director or an inspector, in the performance of his official duties, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty dollars ($20.00) or more than one hundred dollars ($100), or by imprisonment for not more than three months, or by both fine and imprisonment.

History: 1953 Comp., § 76-1-50, enacted by Laws 1959, ch. 202, § 23; 1973, ch. 386, § 15.

57-17-17. Impersonation of officer; penalties.

A person who shall impersonate, in any manner, the director or an inspector, by the use of his seal or a counterfeit of his seal, or in any other manner, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500), or by imprisonment for not more than one year, or by both fine and imprisonment.

History: 1953 Comp., § 76-1-52, enacted by Laws 1959, ch. 202, § 25; 1973, ch. 386, § 16.

57-17-18. Offenses and penalties.

A person who, by himself or by his servant or agent, or as the servant or agent of another person, performs any one of the acts specified in this section shall be guilty of a misdemeanor and, upon a first conviction thereof, shall be punished by a fine of not less than twenty dollars ($20.00) or more than one hundred dollars ($100), or by imprisonment for not more than three months, or by both fine and imprisonment; and upon a second or subsequent conviction thereof, he shall be punished by a fine of not less than fifty dollars ($50.00) or more than five hundred dollars ($500), or by imprisonment in the county jail for not more than one year, or by both fine and imprisonment in the discretion of the court:

A. use or have in his possession, for the purpose of using for any commercial purpose, sell, offer for sale or hire, or have in his possession for the purpose of selling or hiring, an incorrect weight or measure, or any device or instrument calculated to falsify any weight or measure;

B. use, or have in his possession for current use, in the buying or selling of any commodity or good, or for hire or award, or in the computation of any basic charge or payment for services rendered on the basis of weight or measurement, or in the determination of weight or measurement when a charge is made for such determination, a weight or measure which has not been sealed within the next preceding year, by the director or an inspector, unless written notice has been given to the director to the effect that the weight or measure is available for examination, or is due for re-examination, as the case may be, and unless specific written permission to use such weight or measure has been received from the office of the director;

C. dispose of any rejected or condemned weight or measure in a manner contrary to law;

D. remove from any weight or measure, contrary to law, any tag, seal or mark placed thereon by the director or an inspector;

E. sell or offer for sale, less than the quantity he represents of any commodity, good or service;

F. take more than the quantity he represents of any commodity, good or service when, as buyer, he furnishes the weight or measure by means of which the amount of the commodity, good or service is determined;

G. keep for the purpose of sale, advertise or offer for sale, or sell any commodity, good or service in a condition or manner contrary to law;

H. use in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure which is not so positioned that its indications may be accurately read and the weighing or measuring operation observed from some position which may reasonably be assumed by a customer; and

I. violate any provision of this act or of the regulations promulgated under the provisions of this act, for which a specific penalty has not been prescribed.

History: 1953 Comp., § 76-1-53, enacted by Laws 1959, ch. 202, § 26; 1973, ch. 386, § 17.

57-17-19. Inspection fees.

The board may establish fees to recover the cost of performing services of inspection, testing or calibrating weights, measures and weighing and measuring devices when such services are requested by the person owning or using the weight, measure or device. All fees shall be placed in an account with the business office of New Mexico state university to be used for the enforcement of Articles 17 and 18 of this Chapter 57 NMSA 1978.

History: 1953 Comp., § 76-1-54, enacted by Laws 1973, ch. 386, § 18.

57-17-20. Homemade food items; exemption.

The provisions of Chapter 57, Article 17 NMSA 1978 shall not apply to homemade food items produced or sold pursuant to the Homemade Food Act [25-12-1 to 25-12-5 NMSA 1978].

History: Laws 2021, ch. 98, § 8.

ARTICLE 18
Weighmasters

57-18-1. Short title.

This act [57-18-1 to 57-18-26 NMSA 1978] may be cited as the "Weighmaster Act".

History: 1953 Comp., § 76-4-1, enacted by Laws 1973, ch. 236, § 1.

57-18-2. Definitions.

As used in the Weighmaster Act:

A. "weighmaster" means a natural person licensed under the provisions of the Weighmaster Act;

B. "vehicle" means any device by which any property, produce, commodity or article is transported;

C. "director" means the director of the state department of agriculture;

D. "board" means the board of regents of New Mexico state university;

E. "public weighing" means the determination of any weight upon which a sale is based, or upon which a basic charge or payment for services rendered is based, when the person making the weight determination is not a party to, or an agent of the party to, the transaction upon which the weight is based;

F. "third-party weighing" means public weighing; and

G. "weight certificate" means a document in the form of a certificate consecutively numbered and indicating the weight in accordance with the standards of weights and measures set forth in Sections 57-17-1 through 57-17-19 NMSA 1978.

History: 1953 Comp., § 76-4-2, enacted by Laws 1973, ch. 236, § 2; 1977, ch. 89, § 1.

57-18-3. Enforcement; rules and regulations.

The director is authorized to enforce the provisions of the Weighmaster Act. The board shall issue regulations for the enforcement of the Weighmaster Act.

History: 1953 Comp., § 76-4-3, enacted by Laws 1973, ch. 236, § 3.

57-18-4. Qualifications for weighmaster.

A citizen of the United States, who is mature, of good moral character, who has the ability to weigh accurately and to make correct weight certificates, and who has received from the director a weighmaster license, shall be authorized to act as a weighmaster.

History: 1953 Comp., § 76-4-4, enacted by Laws 1973, ch. 236, § 4; 1979, ch. 80, § 1.

57-18-5. License application.

An application for a weighmaster license shall be made upon a form provided by the director. The application shall furnish evidence that the applicant has the qualifications required by Section 4 [57-18-4 NMSA 1978] of the Weighmaster Act.

History: 1953 Comp., § 76-4-5, enacted by Laws 1973, ch. 236, § 5.

57-18-6. Evaluation of qualifications of applicants; records.

The director may promulgate rules for determining the qualifications of the applicant for a weighmaster license. He may pass upon the qualifications of the applicant on the basis of the information supplied in the application, or he may examine the applicant orally or in writing, or both, for the purpose of determining his qualifications. He shall grant the weighmaster license to those applicants who possess the qualifications required by Sections 4 [57-18-4 NMSA 1978] and 6 [this section] of the Weighmaster Act. The director shall keep a record of all applications and of all licenses issued.

History: 1953 Comp., § 76-4-6, enacted by Laws 1973, ch. 236, § 6.

57-18-7. License fees.

The board may establish reasonable fees for weighmaster licenses and deputy weighmaster licenses to assist in carrying out the provisions of the Weighmaster Act. The fees shall not exceed the amount necessary to cover the cost of examination of applicants, issuance of the licenses and making the necessary inspections required under the Weighmaster Act.

History: 1953 Comp., § 76-4-7, enacted by Laws 1973, ch. 236, § 7.

57-18-8. Bond required.

Before any license is issued, except a deputy weighmaster license, the applicant shall execute and deliver to the director a surety bond in the sum of one thousand dollars ($1,000) or other proof of financial responsibility that the board may set by regulation. The bond shall be executed by the applicant as principal and by a corporate surety company qualified and authorized to do business in this state as a surety. The bond shall be conditioned upon the faithful and honest compliance with the provisions of the Weighmaster Act. The bond shall run to the state in favor of every person availing himself of the services and certifications issued by the weighmaster or any of his deputies.

History: 1953 Comp., § 76-4-8, enacted by Laws 1973, ch. 236, § 8; 1977, ch. 89, § 2.

57-18-9. Licenses; period; renewal.

Each weighmaster license shall be issued for a period of one year. Effective date of license shall be determined by the director. The license holder shall file a renewal application with the director prior to the expiration date. Renewal applications shall be in the form prescribed by the director.

History: 1953 Comp., § 76-4-9, enacted by Laws 1973, ch. 236, § 9.

57-18-10. Licensed weighmaster.

A. A weighmaster license is required of any person who does public weighing or third-party weighing, except as provided in Section 57-18-18 NMSA 1978, or charges a fee for any weight determination.

B. The issuance of a weighmaster license shall not obligate the state to pay to the licensee any compensation for his services as a licensed weighmaster. Each weighmaster shall sign each certificate in indelible markings at the time of issuance as provided for in Section 57-18-12 NMSA 1978.

C. Weighmasters may designate any person under their employ who otherwise complies with the provisions of the Weighmaster Act to act for them as a deputy weighmaster. Licensed weighmasters shall forward to the director the names of persons designated as deputy weighmasters, together with fees as established under the provisions of the Weighmaster Act.

History: 1953 Comp., § 76-4-10, enacted by Laws 1973, ch. 236, § 10; 1977, ch. 89, § 3.

57-18-11. Deputy weighmaster.

Except for the surety bond requirement provided in Section 8 [57-18-8 NMSA 1978] of the Weighmaster Act, the duties, qualifications and responsibilities of the deputy weighmaster shall be the same as those of the weighmaster provided in the Weighmaster Act. The deputy weighmaster shall perform his duties in accordance with the same provisions of the Weighmaster Act applicable to the weighmaster.

History: 1953 Comp., § 76-4-11, enacted by Laws 1973, ch. 236, § 11.

57-18-12. Weight certificate; required entries; official weights.

The director shall prescribe the form of weight certificates to be used by each weighmaster. The weight certificates shall be consecutively numbered and shall bear, but not be limited to, the following information: the date of issuance, the kind of property, produce, commodity or article weighed, the name of the declared owner or agent of the owner or of the consignee of the material weighed, the accurate weight of the material weighed, the means by which the material was being transported at the time it was weighed and other available information as may be necessary to distinguish or identify the property, produce, commodity or article. The weight certificate, when properly made and signed, is prima facie evidence of the accuracy of the weights shown, which for all purposes shall be considered as official weights if issued under the direct supervision of the director or his agent.

History: 1953 Comp., § 76-4-12, enacted by Laws 1973, ch. 236, § 12; 1977, ch. 89, § 4.

57-18-13. Weight certificate; execution; requirements.

Each weighmaster shall personally determine each weight entered on a weight certificate issued by him. He shall make no entries on a weight certificate issued by some other person except as allowed by regulation. Each weight certificate shall show clearly that weight or weights were actually determined. In any case in which only the gross, the tare or the net weight is determined by the weighmaster, he shall cancel the printed entries for the weights not determined or computed. If gross and tare weights are shown on a weight certificate and both of these were not determined on the same scale and on the day for which the certificate is dated, the weighmaster shall identify on the certificate the scale used for determining each weight and the date of each determination.

History: 1953 Comp., § 76-4-13, enacted by Laws 1973, ch. 236, § 13.

57-18-14. Scale used.

When making a weight determination as provided for by the Weighmaster Act, a weighmaster shall use a proper weighing device. A proper weighing device is one suitable for weighing the amount and kind of material to be weighed. A proper weighing device is one that has been inspected and approved for use by a weights and measures officer of this state within a period of twelve months immediately preceding the date of the weighing.

History: 1953 Comp., § 76-4-14, enacted by Laws 1973, ch. 236, § 14.

57-18-15. Scale used; capacity; platform size; one-draft weighing.

A weighmaster shall not use any scale to weigh a load which exceeds the nominal or rated capacity of the scale. All persons shall be off the vehicle and clear of the scale platform when a weighmaster is weighing the vehicle, except that the driver may remain on the vehicle if so noted on the weight certificate.

History: 1953 Comp., § 76-4-15, enacted by Laws 1973, ch. 236, § 15.

57-18-16. Copies of weight certificate.

A weighmaster shall keep and preserve for at least one year a legible copy of each weight certificate issued by him. Copies of weight certificates shall be kept open to the inspection by any weights and measures officer of this state.

History: 1953 Comp., § 76-4-16, enacted by Laws 1973, ch. 236, § 16.

57-18-17. Reciprocal acceptance of weight certificates.

Whenever there is statutory authority in any other state which licenses weighmasters, for the recognition and acceptance of the weight certificates issued by licensed weighmasters of this state, the director of this state is authorized to recognize and accept the weight certificates of the other state.

History: 1953 Comp., § 76-4-17, enacted by Laws 1973, ch. 236, § 17.

57-18-18. Optional licensing.

The following may, but are not required to, obtain licenses as weighmasters:

A. a weights and measures officer when acting within the scope of his official duties;

B. a person weighing property, produce, commodities or articles that he or his employer is buying or selling;

C. a person weighing property, produce, commodities or articles in conformity with the requirements of federal statutes;

D. retailers weighing or measuring commodities for sale by them in retail stores directly to consumers except weighing bulk lot commodities on vehicle or hopper scales;

E. persons who measure the amount of oil, gas or other fuels for purposes of royalty computation and payment or for other operations of fuel and oil companies and their retail outlets; or

F. producers of agricultural commodities or livestock, weighing commodities produced or purchased by them or by their producer neighbors, when no charge is made for such weighing, or no signed or initialed statement or memorandum is issued of the weight upon which a purchase or sale of the commodity is based.

History: 1953 Comp., § 76-4-18, enacted by Laws 1973, ch. 236, § 18.

57-18-19. Reweighing.

Duly authorized representatives of the director may at any time require a loaded or unloaded vehicle to proceed to the nearest vehicle scale for the purpose of verifying the gross or tare weight of the vehicle.

History: 1953 Comp., § 76-4-19, enacted by Laws 1973, ch. 236, § 19.

57-18-20. Livestock sales.

Notwithstanding any other provisions of the Weighmaster Act, livestock shall be weighed by a weighmaster where livestock is sold on the basis of weight at a public

salesyard, or by or at any livestock market, market agency or dealer subject to the federal Packers and Stockyards Act.

History: 1953 Comp., § 76-4-20, enacted by Laws 1973, ch. 236, § 20.

57-18-21. Salvage materials.

Scrap metal and salvage material shall be weighed by a weighmaster where scrap metal and salvage materials are purchased or sold by dealers, brokers or commission merchants on the basis of weight obtained from a vehicle scale.

History: 1953 Comp., § 76-4-21, enacted by Laws 1973, ch. 236, § 21.

57-18-22. Prohibited acts.

No person shall perform the duties or acts to be performed by a weighmaster under the Weighmaster Act or shall hold himself out as a weighmaster, issue any weight certificate, ticket, memorandum or statement for which a fee is charged, unless he holds a valid license as a weighmaster or a deputy weighmaster.

History: 1953 Comp., § 76-4-22, enacted by Laws 1973, ch. 236, § 22.

57-18-23. Suspension and revocation of license.

The director is authorized to suspend or revoke the license of any weighmaster or a deputy weighmaster when:

A. he is satisfied, after a hearing upon ten days' notice to the licensee, that the licensee has violated any provision of the Weighmaster Act or any valid regulations of the board affecting licensed weighmasters; or

B. the licensee has been convicted in any court of competent jurisdiction of violating any provision or regulation issued under the Weighmaster Act.

History: 1953 Comp., § 76-4-23, enacted by Laws 1973, ch. 236, § 23.

57-18-24. Offenses and penalties.

Any person who requests a weighmaster to weigh any property, produce, commodity or article falsely or incorrectly, or who requests a false or incorrect weight certificate, or who issues a weight certificate simulating the weight certificate prescribed in the Weighmaster Act, and who is not a weighmaster, shall be guilty of a misdemeanor. Upon conviction for the first offense, he shall be punished by a fine of not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100). Upon a second or subsequent conviction, he shall be punished by a fine of not less than one hundred

dollars ($100) nor more than five hundred dollars ($500), or by imprisonment for not less than thirty days nor more than ninety days, or by both the fine and imprisonment.

History: 1953 Comp., § 76-4-24, enacted by Laws 1973, ch. 236, § 24.

57-18-25. Offenses and penalties; malfeasance.

Any licensed weighmaster or deputy weighmaster who falsifies a weight certificate, or who delegates his authority to any person not licensed as a weighmaster or deputy weighmaster, or who signs a weight certificate with his official signature before performing the act of weighing, shall be guilty of a misdemeanor. Upon conviction he shall be punished by a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500), or by imprisonment for not less than thirty days nor more than ninety days, or by both the fine and imprisonment.

History: 1953 Comp., § 76-4-25, enacted by Laws 1973, ch. 236, § 25.

57-18-26. Offenses and penalties; general.

Any person who violates any provision of the Weighmaster Act or any rule or regulation promulgated pursuant thereto for which no specific penalty has been provided shall be guilty of a misdemeanor. Upon conviction he shall be punished by a fine of not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100).

History: 1953 Comp., § 76-4-26, enacted by Laws 1973, ch. 236, § 26.

ARTICLE 19
Petroleum Products

57-19-1. Repealed.

History: Laws 1937, ch. 102, § 1; 1941 Comp., § 69-501; 1953 Comp., § 65-6-1; Laws 1973, ch. 117, § 1; 1977, ch. 71, § 1; repealed by Laws 1993, ch. 98, § 14.

57-19-2. Repealed.

History: Laws 1937, ch. 102, § 2; 1941 Comp., § 69-502; 1953 Comp., § 65-6-2; Laws 1959, ch. 302, § 1; repealed by Laws 1993, ch. 98, § 14.

57-19-3. Repealed.

History: Laws 1937, ch. 102, § 3; 1941 Comp., § 69-503; 1953 Comp., § 65-6-3; repealed by Laws 1993, ch. 98, § 14.

57-19-4. Repealed.

History: Laws 1937, ch. 102, § 4; 1941 Comp., § 69-504; 1953 Comp., § 65-6-4; repealed by Laws 1993, ch. 98, § 14.

57-19-5. Repealed.

History: Laws 1937, ch. 102, § 5; 1941 Comp., § 69-505; 1953 Comp., § 65-6-5; repealed by Laws 1993, ch. 98, § 14.

57-19-6. Repealed.

History: Laws 1937, ch. 102, § 6; 1941 Comp., § 69-506; 1953 Comp., § 65-6-6; repealed by Laws 1993, ch. 98, § 14.

57-19-7. Repealed.

History: Laws 1937, ch. 102, § 7; 1941 Comp., § 69-507; 1953 Comp., § 65-6-7; repealed by Laws 1993, ch. 98, § 14.

57-19-8. Repealed.

History: Laws 1937, ch. 102, § 8; 1941 Comp., § 69-508; Laws 1949, ch. 119, § 1; 1953 Comp., § 65-6-8; Laws 1959, ch. 302, § 2; repealed by Laws 1993, ch. 98, § 14.

57-19-9. Repealed.

History: Laws 1937, ch. 102, § 9; 1941 Comp., § 69-509; Laws 1949, ch. 119, § 2; 1953 Comp., § 65-6-9; Laws 1959, ch. 302, § 3; repealed by Laws 1993, ch. 98, § 14.

57-19-10. Repealed.

History: Laws 1937, ch. 102, § 10; 1941 Comp., § 69-510; 1953 Comp., § 65-6-10; Laws 1959, ch. 302, § 4; 1971, ch. 78, § 1; 1977, ch. 71, § 2; repealed by Laws 1993, ch. 98, § 14.

57-19-11. Repealed.

History: Laws 1937, ch. 102, § 11; 1941 Comp., § 69-511; Laws 1951, ch. 178, § 1; 1953 Comp., § 65-6-11; Laws 1959, ch. 302, § 5; repealed by Laws 1993, ch. 98, § 14.

57-19-12. Repealed.

History: 1953 Comp., § 65-6-11.1, enacted by Laws 1977, ch. 71, § 3; repealed by Laws 1993, ch. 98, § 14.

57-19-13. Repealed.

History: 1953 Comp., § 65-6-11.2, enacted by Laws 1977, ch. 71, § 4; repealed by Laws 1993, ch. 98, § 14.

57-19-14. Repealed.

History: Laws 1937, ch. 102, § 12; 1941 Comp., § 69-512; 1953 Comp., § 65-6-19; Laws 1959, ch. 302, § 11; repealed by Laws 1993, ch. 98, § 14.

57-19-15. Repealed.

History: Laws 1937, ch. 102, § 13; 1941 Comp., § 69-513; 1953 Comp., § 65-6-20; Laws 1959, ch. 302, § 12; 1973, ch. 117, § 4; repealed by Laws 1993, ch. 98, § 14.

57-19-16. Repealed.

History: Laws 1937, ch. 102, § 14; 1941 Comp., § 69-514; 1953 Comp., § 65-6-21; repealed by Laws 1993, ch. 98, § 14.

57-19-17. Repealed.

History: Laws 1937, ch. 102, § 15; 1941 Comp., § 69-515; 1953 Comp., § 65-6-22; Laws 1973, ch. 117, § 5; repealed by Laws 1993, ch. 98, § 14.

57-19-18. Repealed.

History: Laws 1937, ch. 102, § 17; 1941, ch. 160, § 1; 1941 Comp., § 69-516; 1953 Comp., § 65-6-23; Laws 1959, ch. 302, § 13; 1977, ch. 71, § 5; repealed by Laws 1993, ch. 98, § 14.

57-19-19. Repealed.

History: 1953 Comp., § 65-6-24, enacted by Laws 1971, ch. 78, § 2; 1973, ch. 117, § 6; repealed by Laws 1993, ch. 98, § 14.

57-19-20. Repealed.

History: 1953 Comp., § 65-6-25, enacted by Laws 1973, ch. 117, § 7; 1977, ch. 71, § 6; 1979, ch. 171, § 1; repealed by Laws 1993, ch. 98, § 14.

57-19-21. Repealed.

History: 1953 Comp., § 65-6-26, enacted by Laws 1973, ch. 117, § 8; repealed by Laws 1993, ch. 98, § 14.

57-19-22. Repealed.

History: 1953 Comp., § 65-6-27, enacted by Laws 1973, ch. 117, § 9; repealed by Laws 1993, ch. 98, § 14.

57-19-23. [Oxygenated fuels]; prohibited acts.

No supplier of gasoline shall prohibit or prevent a wholesaler or retailer of gasoline from selling oxygenated fuels at a location owned by the wholesaler or retailer, provided that:

A. a wholesaler or retailer shall not represent any oxygenated fuel as the branded product of the supplier without the consent of the supplier and shall sell and represent such oxygenated fuels in a manner not inconsistent with reasonable and material terms and conditions in any contract with the supplier and in conformity with the provisions of the Petroleum Marketing Practices Act, 15 U.S.C. 2801 et seq. However, no contractual term or condition shall be construed to prohibit or prevent the blending of oxygenates with gasoline by the wholesaler or retailer; and

B. any supplier who furnishes during any month fifty percent or more of its gasoline sold in New Mexico in such manner and form that any oxygenate can be added by the wholesaler or retailer is exempt from the requirements of this section during each such month.

History: 1978 Comp., § 57-19A-1, enacted by Laws 1987, ch. 91, § 1.

57-19-24. Repealed.

57-19-25. Short title.

This act [57-19-25 to 57-19-37 NMSA 1978] may be cited as the "Petroleum Products Standards Act".

History: Laws 1993, ch. 98, § 1.

57-19-26. Purpose.

It is the purpose of the Petroleum Products Standards Act to guarantee adequate quality and quantity standards for petroleum products through a strong and

comprehensive program involving inspection, sampling, testing and enforcement measures.

History: Laws 1993, ch. 98, § 2.

57-19-27. Definitions.

As used in the Petroleum Products Standards Act:

A. "biodiesel" means a renewable, biodegradable, mono alkyl ester combustible liquid fuel that is derived from agricultural plant oils or animal fats and that meets American society for testing and materials specification for biodiesel fuel, B100, blend stock for distillate fuels;

B. "board" means the board of regents of New Mexico state university;

C. "dealer" means a dealer as defined by the Special Fuels Supplier Tax Act [Chapter 7, Article 16A NMSA 1978];

D. "department" means the New Mexico department of agriculture;

E. "diesel fuel" means any diesel-engine fuel used for the generation of power to propel a motor vehicle;

F. "director" means the director of the New Mexico department of agriculture;

G. "distributor" means a distributor as defined by the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978];

H. "lubricating oil" means any oil used to lubricate transmissions, gears or axles;

I. "motor fuel" means any liquid product used for the generation of power in an internal combustion engine, excluding liquified petroleum gases and aviation fuels;

J. "motor oil" means oil for use in lubricating internal combustion engines;

K. "person" means any natural person, firm, partnership, association or corporation;

L. "petroleum product" means motor fuel, kerosene, lubricating oil, motor oil, anti-freeze or brake fluid; and

M. "retailer" means any person who sells motor fuel and delivers the motor fuel into the supply tanks of motor vehicles.

History: Laws 1993, ch. 98, § 3; 2007, ch. 208, § 1.

57-19-28. Duties of the board; authority of the director.

A. The board is responsible for the administration and enforcement of the provisions of the Petroleum Products Standards Act. The board shall adopt rules and regulations necessary to administer and enforce the provisions of that act. The board shall provide public notice and allow public comment on all proposed rules and regulations.

B. The director shall have the authority to:

(1) inspect, investigate, analyze and take appropriate actions to administer and enforce the provisions of the Petroleum Products Standards Act;

(2) enter any commercial premises from which petroleum products are offered for sale during normal business hours. If the premises are not open to the public, the director shall present the director's credentials and enter only with consent from the commercial entity. If no consent is given, the director shall obtain a search warrant;

(3) collect or cause to be collected samples of petroleum products offered for sale and cause such samples to be tested or analyzed to determine if they are in compliance with the provisions of the Petroleum Products Standards Act and regulations adopted pursuant to that act;

(4) issue and enforce stop-sale, hold and removal orders with respect to a petroleum product kept, offered or exposed for sale in violation of the provisions of the Petroleum Products Standards Act and regulations adopted pursuant to that act;

(5) require distributors and retailers to retain records pertaining to petroleum product purchases and sales for a period of not more than one year;

(6) maintain and operate a petroleum product testing laboratory to ensure that all petroleum products offered for sale in New Mexico meet standards prescribed in the Petroleum Products Standards Act and regulations adopted pursuant to that act;

(7) issue and enforce stop-use orders for measuring equipment or vehicle tanks that are used commercially and that do not conform to the provisions of the Petroleum Products Standards Act and regulations adopted pursuant to that act; and

(8) delegate to authorized representatives any of the responsibilities for the proper administration of the Petroleum Products Standards Act.

C. If in consultation with the secretary of energy, minerals and natural resources and pursuant to regular, periodic monitoring, the director determines that sufficient amounts of biodiesel are not available to meet the requirements of Section 57-19-29 NMSA 1978 or that the price of the biodiesel blend significantly exceeds the price of diesel fuel for at least two months, the director shall suspend those requirements for a period of up to six months.

History: Laws 1993, ch. 98, § 4; 2007, ch. 208, § 2.

57-19-29. Quality standards.

A. Unless modified by regulation of the board, the quality standards, tests and methods of conducting analyses on petroleum products manufactured, kept, stored, sold or offered for sale in New Mexico shall be those last adopted and published by the American society for testing and materials or the society of automotive engineers and shall be used to determine compliance with the Petroleum Products Standards Act and regulations adopted pursuant to that act. In the absence of a petroleum product quality standard, test or method from the American society for testing and materials or the society of automotive engineers, the board may adopt a regulation that establishes a quality standard, test or method to conduct analyses on petroleum products.

B. After July 1, 2010 and before July 1, 2012, all diesel fuel sold to state agencies, political subdivisions of the state and public schools for use in motor vehicles on the streets and highways of this state shall contain five percent biodiesel, except that this standard may be temporarily suspended by the director in accordance with Section 57-19-28 NMSA 1978.

C. On or after July 1, 2012, all diesel fuel sold to consumers for use in motor vehicles on the streets and highways of this state shall contain five percent biodiesel, except that this standard may be temporarily suspended by the director in accordance with Section 57-19-28 NMSA 1978.

History: Laws 1993, ch. 98, § 5; 2007, ch. 208, § 3.

57-19-30. Inspection of measuring devices.

A. The director shall inspect all equipment used commercially in measuring or dispensing petroleum products in the state. The director shall ascertain that all such equipment is correct and accurate. The specifications, tolerances and other requirements for equipment used commercially in measuring petroleum products shall be set by regulations adopted by the board.

B. No person shall refuse to permit the director or his authorized representative to inspect, test and seal as necessary any commercial device designed to measure and dispense petroleum products. No person shall break the seal without permission from the director or his authorized representative. A broken seal on a commercial device designed to measure or dispense petroleum products shall be prima facie evidence of a violation of the Petroleum Products Standards Act.

History: Laws 1993, ch. 98, § 6.

57-19-31. Inspection and certification of vehicle tanks used as measures.

A. The director shall establish calibration stations to inspect, measure and calibrate the capacity of a vehicle tank used as a measure to deliver petroleum products in New Mexico. The director shall determine where to locate the stations.

B. The owner or operator of a vehicle tank used as a measure to deliver petroleum products in the state shall notify the director before he uses the vehicle tank, and the director shall set a time to inspect and calibrate the vehicle tank at a calibration station. The director may accept calibration certificates from other agencies.

History: Laws 1993, ch. 98, § 7.

57-19-32. Labeling.

A. No person shall sell, offer for sale or permit the sale of any petroleum product unless there is firmly attached or painted on the container or dispenser from which the petroleum product is offered for sale a sign or label stating the grade or type of product being offered for sale. The sign or label shall be plainly, visibly and prominently displayed in a manner prescribed by regulation of the board.

B. The board may identify petroleum products of a special nature, composition or quality, and it may establish labeling requirements for such products.

C. A sign or label used in connection with automotive motor or lubricating oil shall include the society of automotive engineers viscosity grade classification number preceded by the letters "SAE".

History: Laws 1993, ch. 98, § 8; 1998, ch. 20, § 1.

57-19-33. Deceit; petroleum products; purchasers.

No person shall store, sell, offer or advertise for sale a petroleum product that may deceive, tends to deceive or has the effect of deceiving the purchaser of that product about the composition, grade, quantity or price of the product or that the product meets the standards prescribed by the Petroleum Products Standards Act and regulations adopted pursuant to that act.

History: Laws 1993, ch. 98, § 9.

57-19-34. Fees.

The board may authorize the director to establish and publish a schedule of fees to recover the cost of services performed by the director at the request of a person or firm.

History: Laws 1993, ch. 98, § 10.

57-19-35. Money collected.

All money collected pursuant to the provisions of the Petroleum Products Standards Act shall be deposited with the board of regents of New Mexico state university for use by the department in carrying out the provisions of that act.

History: Laws 1993, ch. 98, § 11.

57-19-36. Penalties; administrative procedures; appeals.

A. No person, by himself, by his servant or agent or as the servant or agent of another person shall:

(1) violate the provisions of the Petroleum Products Standards Act;

(2) violate any regulation adopted pursuant to the Petroleum Products Standards Act; or

(3) misrepresent a petroleum product as meeting the standards of the Petroleum Products Standards Act.

B. Any person who violates Subsection A of this section is guilty of a petty misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

C. The board shall establish a system of administrative penalties for violations of the Petroleum Products Standards Act. The administrative penalties may be assessed by the director in lieu of or in addition to other penalties provided by statute. In establishing the system of administrative penalties, the board, after public notice and public hearing, shall adopt rules that meet the following minimum requirements:

(1) the maximum amount of any administrative penalty shall not exceed one thousand dollars ($1,000) for any one violation of the Petroleum Products Standards Act by any person;

(2) violations for which administrative penalties may be assessed shall be clearly defined, along with a scale of administrative penalties relating the amount of the administrative penalty to the severity and frequency of the violation;

(3) provisions shall be included for due process, including proper notification of administrative proceedings, right to discovery of charges and evidence and appeal procedures; and

(4) prior to assessing administrative penalties pursuant to the provisions of the Petroleum Products Standards Act, the department shall comply with Paragraphs (2) and (3) of this subsection.

D. Appeals from decisions of the director regarding the assessment of an administrative penalty shall be to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: Laws 1993, ch. 98, § 12; 1998, ch. 55, § 51; 1999, ch. 265, § 54.

57-19-37. Injunction.

A. In order to ensure compliance with, and in order to enforce the provisions of, the Petroleum Products Standards Act the director may apply to a court of competent jurisdiction to have a person enjoined from engaging in a practice prohibited by that act.

B. Upon application to a court for the issuance of an injunction against a person who is not complying with the provisions of the Petroleum Products Standards Act, the court may issue an order to restrain the person temporarily from engaging in the prohibited practice. The court shall hear the matter and, upon a preponderance of the evidence that the person is not complying with the provisions of the Petroleum Products Standards Act, the court shall enjoin the person from engaging in the prohibited practice.

History: Laws 1993, ch. 98, § 13.

57-19-38. Aversive or bittering agent in engine coolant and antifreeze; liability limitation; exceptions; penalty.

A. Engine coolant or antifreeze sold in this state after January 1, 2006 that is manufactured after July 1, 2005 and that contains more than ten percent ethylene glycol shall include denatonium benzoate at a minimum of thirty parts per million and a maximum of fifty parts per million as an aversive or bittering agent within the product so as to render it unpalatable. A manufacturer or packager of engine coolant or antifreeze subject to the provisions of this section shall maintain a record of the trade name, scientific name and active ingredients of an aversive or bittering agent used pursuant to this section. Information and documentation maintained pursuant to this section shall be furnished to a member of the public upon request.

B. The requirements of this section apply only to manufacturers, packagers, distributors, recyclers or sellers of engine coolant or antifreeze.

C. A manufacturer, packager, distributor, recycler or seller of engine coolant or antifreeze that is required to contain an aversive or bittering agent pursuant to this section is not liable to any person for personal injury, death, property damage, damage

to the environment or natural resources or economic loss that results from the inclusion of denatonium benzoate in engine coolant or antifreeze.

D. The limitation on liability provided in Subsection B of this section is only applicable if denatonium benzoate is included in engine coolant or antifreeze in the concentrations mandated by this section. The limitation on liability provided in Subsection B of this section does not apply to a particular liability to the extent that the cause of that liability is unrelated to the inclusion of denatonium benzoate in engine coolant or antifreeze.

E. No political subdivision of this state shall have authority to establish or continue in effect a prohibition, limitation, standard or other requirement relating to the inclusion of an aversive or bittering agent in engine coolant or antifreeze, with respect to retail containers containing less than fifty-five gallons of engine coolant or antifreeze, which is different from, or in addition to, the provisions of this section.

F. The provisions of this section do not apply to the sale of a motor vehicle that contains engine coolant or antifreeze.

G. The New Mexico department of agriculture has the authority to inspect, investigate, analyze and take appropriate actions to administer and enforce the provisions of this section.

H. A person who violates the provisions of this section is guilty of a petty misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

History: Laws 2005, ch. 62, § 1.

ARTICLE 19A
Petroleum Products Fair Trade Practices

57-19A-1. Short title.

Sections 1 through 9 [57-19A-1 to 57-19A-9 NMSA 1978] of this act may be cited as the "Petroleum Products Fair Trade Practices Act".

History: Laws 1991, ch. 243, § 1.

57-19A-2. Definitions.

As used in the Petroleum Products Fair Trade Practices Act:

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

B. "petroleum product" includes liquid fuels, lubricating oils, greases and similar products.

History: Laws 1991, ch. 243, § 2.

57-19A-3. Imitation of design, symbol or trademark.

No person shall knowingly disguise or camouflage his equipment by imitating the design, symbol or trade name under which recognized brands of petroleum products are generally marketed, and no person shall deceive any purchaser of the kind, quality or brand of petroleum products sold or offered for sale.

History: Laws 1991, ch. 243, § 3.

57-19A-4. Pumps and containers for storage or sale; improper marking.

No person shall knowingly possess or use a pump, tank, container or other device or equipment to store, keep, expose for sale, offer for sale or sell any petroleum product other than that manufactured, sold or distributed by the person whose name, trademark or trade name is affixed to the pump, tank, container or other device or equipment.

History: Laws 1991, ch. 243, § 4.

57-19A-5. Adulteration or blending of products sold under different names.

No person shall knowingly expose or offer for sale or sell a petroleum product of a manufacturer or distributor that has been mixed, blended or compounded with the products of other manufacturers or distributors under the trade name, trademark or name or other distinguishing mark of either of the manufacturers or distributors or as the unadulterated product of a manufacturer or distributor. Nothing in this section shall prevent the lawful owner from applying his own trademark, trade name or symbol to any product or material.

History: Laws 1991, ch. 243, § 5.

57-19A-6. Adulteration of [or] blending of products sold under same name.

No person shall knowingly expose for sale, offer for sale or sell any petroleum product as a[n] unadulterated product of a manufacturer or distributor or as the unadulterated product of any other manufacturer or distributor if it has been mixed, blended, compounded or adulterated with a petroleum product of the same manufacturer or distributor that is of a different quality or character from the quality or character of the other petroleum products. Nothing in this section shall prevent the lawful owner of a petroleum product from applying his own trademark, trade name or symbol to any product or material.

History: Laws 1991, ch. 243, § 6.

57-19A-7. Mislabeling.

No person shall knowingly aid or assist any other person in depositing or delivering into any tank, pump, receptacle or other container or distributing device any petroleum product other than the petroleum product that is intended to be stored in the tank, pump, receptacle or other container or distributing device as indicated by the name of the manufacturer or distributor or by the trademark, trade name or other distinguishing mark of the product displayed on the tank, pump, receptacle or other container or distributing device.

History: Laws 1991, ch. 243, § 7.

57-19A-8. Private remedies.

A. A person damaged by a violation of the provisions of the Petroleum Products Fair Trade Practices Act may be granted an injunction under the principles of equity and on terms that the court considers reasonable. Proof of monetary damage, loss of profits or intent to deceive or take unfair advantage of any person is not required.

B. The relief provided in this section is in addition to remedies otherwise available against the same conduct under the common law or other statutes of this state.

History: Laws 1991, ch. 243, § 8.

57-19A-9. Construction.

The Petroleum Products Fair Trade Practices Act neither enlarges nor diminishes the rights of parties in private litigation.

History: Laws 1991, ch. 243, § 9.

ARTICLE 20
Beverage Containers

57-20-1. Short title.

This act [57-20-1 to 57-20-3 NMSA 1978] may be cited as the "Beverage Container Act".

History: Laws 1981, ch. 289, § 1.

57-20-2. Definitions.

As used in the Beverage Container Act:

A. "beverage" means beer or other malt beverages, fruit juice, vegetable juice and mineral waters, soda water and similar carbonated soft drinks, in liquid form and intended for human consumption; and

B. "beverage container" means the individual, separate, metal can containing a beverage.

History: Laws 1981, ch. 289, § 2.

57-20-3. Metal beverage containers; pull tabs; penalty.

A. On and after January 1, 1983, it is unlawful for any person to sell or offer for sale at retail within New Mexico any metal beverage container designed and constructed with a metal opening device that detaches from the container when the container is opened in a manner normally used to empty the contents of the container.

B. Any person violating the provisions of Subsection A of this section is guilty of a misdemeanor and shall be fined not less than fifty dollars ($50.00) nor more than one hundred dollars ($100) provided, however, that no penalty shall be imposed on a retailer who sells or offers to sell any beverage container acquired by the retailer prior to January 1, 1983.

History: Laws 1981, ch. 289, § 3.

ARTICLE 21
Advertisement of Health Care Services

57-21-1. Purpose of act.

The purpose of this act [57-21-1 to 57-21-3 NMSA 1978] is to protect the health and welfare of the people of New Mexico.

History: Laws 1983, ch. 79, § 1.

57-21-2. Definition.

As used in this act [57-21-1 to 57-21-3 NMSA 1978], "health care practitioner" means anyone licensed or certified to provide health care services in this state and includes but is not limited to nurses, physicians, dentists, osteopaths, chiropractors, optometrists, podiatrists, acupuncturists, psychiatrists, psychologists and physical therapists; provided that "health care practitioner" shall not include anyone licensed to provide health care services in this state who employs ten or more physicians.

History: Laws 1983, ch. 79, § 2.

57-21-3. Advertising requirements; penalty.

A. Any health care practitioner advertising services to the public shall state in the advertisement his name, address or telephone number and the designation of the profession in which he is licensed or certified to practice.

B. Anyone violating the provisions of Subsection A of this section is guilty of a misdemeanor.

History: Laws 1983, ch. 79, § 3.

ARTICLE 22
Charitable Solicitations

57-22-1. Short title.

Chapter 57, Article 22 NMSA 1978 may be cited as the "Charitable Solicitations Act".

History: Laws 1983, ch. 140, § 1; 1999, ch. 124, § 1.

57-22-2. Purpose.

The purpose of the Charitable Solicitations Act is to authorize the attorney general to monitor, supervise and enforce the charitable purposes of charitable organizations and regulate professional fundraisers operating in this state.

History: Laws 1983, ch. 140, § 2; 1999, ch. 124, § 2.

57-22-3. Definitions.

As used in the Charitable Solicitations Act:

A. "charitable organization" means any entity that has been granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or identifies itself to the public as having a charitable purpose;

B. "charitable purpose" means a benevolent, social welfare, scientific, educational, environmental, philanthropic, humane, patriotic, public health, civic or other eleemosynary objective or an activity conducted in support of or in the name of law enforcement officers, firefighters or other persons who protect public safety;

C. "contribution" means the promise, grant or pledge of any money, credit or property of any kind or value provided to a charitable organization in response to a solicitation, but does not include program service revenue or bona fide membership fees, dues or assessments; provided that bona fide membership fees, dues or assessments do not include contributions made in exchange for membership in a charitable organization unless membership confers rights and benefits in addition to receiving literature of the charitable organization;

D. "educational institution" means:

(1) an entity organized and operated primarily as a school, college or other instructional institution with a defined curriculum, student body and faculty, conducting classes on a regular basis; and

(2) auxiliary entities, including parent-teacher organizations, booster and support clubs that support, encourage or promote a school, college or other instructional institution and its defined curriculum, student body, faculty, facilities or activities;

E. "professional fundraiser" means a person that solicits or employs or directs others to solicit contributions from the public on behalf of a charitable organization in exchange for compensation and has custody or control of the contributions; provided that "professional fundraiser" does not include a director, officer, bona fide employee or salaried officer, volunteer, attorney, accountant or investment counselor of a charitable organization;

F. "professional fundraising counsel" means a person that provides services or employs or directs others to provide services for compensation to a charitable organization in the solicitation of contributions, including managing or preparing materials to be used in conjunction with any solicitation; provided that the person does not:

(1) directly solicit contributions; or

(2) receive, have access to or control any contribution received in response to the solicitation; provided further that "professional fundraising counsel does not include

a director, officer, bona fide employee or salaried officer, volunteer, attorney, accountant or investment counselor of a charitable organization;

G. "religious organization" means a church, organization or group organized for the purpose of divine worship or religious teaching or other specific religious activity or any other organization that is formed in association with or to primarily encourage, support or promote the work, worship, fellowship or teaching of the church, organization or group; and

H. "solicit" or "solicitation" means any communication requesting a contribution or offering an opportunity to participate in a game of chance, raffle or similar event with the representation that the contribution or participation will support a charitable purpose, and includes:

(1) any verbal request made in person or by telephone, radio, television, electronic communication or other media;

(2) any written or published request mailed, sent, delivered, circulated, distributed, posted in a public place, advertised or communicated through any medium to the public;

(3) any sale or attempt to sell a good or service; and

(4) any invitation to attend an assembly, event, exhibition, performance or social gathering of any kind.

A contribution is not required for a solicitation to have occurred, and "solicit" or "solicitation" does not include direct grants or allocation of funds received or solicited from any affiliated fundraising organization by a member agency or unsolicited contributions received from any individual donor, foundation, trust, governmental agency or other source, unless such contributions are received in conjunction with a solicitation drive.

History: Laws 1983, ch. 140, § 3; 1999, ch. 124, § 3.

57-22-4. Application of act.

A. The Charitable Solicitations Act shall not apply to a religious organization, even if it is a charitable organization.

B. Exempt from the registration and reporting requirements of the Charitable Solicitations Act are:

(1) educational institutions and organizations defined in Section 6-5A-1 NMSA 1978; and

(2) persons soliciting for an individual or group that has suffered a medical or other catastrophe and:

(a) the individual or group is identified by name at the time of the solicitation;

(b) the purpose for the solicited contribution is clearly stated; and

(c) the gross contributions collected, without any deductions for or by the solicitor or any other person, are deposited directly to an account in the name of the individual or group in a local federally insured financial institution established for that sole purpose and solely used for the direct benefit of the named individual or group as beneficiary.

C. The Charitable Solicitations Act shall apply to charitable organizations and professional fundraisers.

History: Laws 1983, ch. 140, § 4; 1999, ch. 124, § 4.

57-22-5. Attorney general to maintain register of charitable organizations as public record.

The attorney general shall establish and maintain a register of all documents filed by charitable organizations in accordance with the Charitable Solicitations Act. The register shall be open to public inspection except that the attorney general may withhold from public inspection documents or information obtained in the course of an investigation undertaken pursuant to the provisions of that act or that otherwise may be withheld from public inspection by law.

History: Laws 1983, ch. 140, § 5; 1999, ch. 124, § 5.

57-22-6. Filing of required documents.

A. A charitable organization existing, operating or soliciting in the state, unless exempted by Section 57-22-4 NMSA 1978, shall register with the attorney general on a form provided by the attorney general; correct any deficiencies in its registration upon notice of deficiencies provided by the attorney general; and provide a copy of its IRS Form 1023 or IRS Form 1024 application for exempt status with its registration.

B. The attorney general shall notify each charitable organization required to register within ten business days of receipt of the registration form of any deficiencies in the registration and may make rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978], as are necessary for the proper administration of this section, including:

(1) requirements for filing additional information, including disclosure of professional fundraising counsel retained by the charitable organization; and

(2) provisions for suspending the filing of reports or granting an exemption from the registration and reporting requirements of this section for a charitable organization subject to audit, registration, charter or other requirements of a statewide, regional or national association and if it is determined that such reports or registration is not necessary for the protection of the public interest.

C. In addition to any other reporting requirements pursuant to the Charitable Solicitations Act, every charitable organization that has received tax-exempt status pursuant to Section 501(c)(3) of the federal Internal Revenue Code of 1986, as amended, and that is required to file a Form 990, 990EZ or 990PF pursuant to the Internal Revenue Code of 1986, as amended, shall file that form and the accompanying schedule A annually with the office of the attorney general up to six months following the close of the charitable organization's fiscal year. Extensions of time for filing may be allowed at the discretion of the attorney general for good cause shown. Such forms shall be public records and available for public inspection. Organizations that do not file a Form 990, 990EZ or 990PF pursuant to the Internal Revenue Code of 1986, as amended, shall file an annual report, under oath, on the form provided by the attorney general for that purpose. A charitable organization with total expenses in excess of seven hundred fifty thousand dollars ($750,000) shall be audited by an independent certified public accountant. Audits shall be performed in accordance with generally accepted accounting principles. If the attorney general has reason to believe it is in the public interest, the attorney general may, prior to the institution of a civil proceeding, require a charitable organization to submit an audit in accordance with generally accepted accounting principles. A charitable organization shall correct any deficiencies in an annual report upon notice of deficiencies provided by the attorney general.

D. A charitable organization that fails to register before a solicitation is made or fails to timely file its tax filings with the attorney general pursuant to Subsection C of this section may be assessed a late filing fee of one hundred dollars ($100).

E. The attorney general may accept information filed by a charitable organization with another state or the federal government in lieu of the registration and reporting requirements of the Charitable Solicitations Act if such information is determined by the attorney general to be in substantial compliance with the registration and reporting requirements of that act."

History: Laws 1983, ch. 140, § 6; 1993, ch. 73, § 1; 1999, ch. 124, § 6; 2023, ch. 43, § 2.

57-22-6.1. Professional fundraisers; registration.

A. Professional fundraisers shall, before entering into a contract with any charitable organization, except a religious organization, to solicit for or on its behalf:

(1) register with the attorney general on a form provided by the attorney general;

(2) file with the attorney general a surety bond pursuant to the Charitable Solicitations Act; and

(3) file with the attorney general a copy of the intended written contract between the professional fundraiser and the charitable organization on whose behalf the professional fundraiser intends to conduct a solicitation campaign.

B. The contract between the professional fundraiser and the charitable organization shall clearly describe the:

(1) compensation and authority of the professional fundraiser;

(2) solicitation campaign;

(3) location and telephone numbers from where solicitations are intended to be conducted;

(4) list of names and addresses of all employees, agents or other persons who are to solicit during the campaign; and

(5) copies of the solicitation literature, including scripts of any written or verbal solicitation.

C. The charitable organization on whose behalf the professional fundraiser is acting shall certify that the contract and solicitation materials filed with the attorney general are true and complete.

D. Within ten business days after receiving a registration pursuant to this section, the attorney general shall notify the professional fundraiser of any deficiencies in the registration, contract or bond; otherwise the filing is deemed approved as filed.

E. A professional fundraiser who fails to register with the attorney general may be assessed a late registration fee of five hundred dollars ($500).

History: Laws 1999, ch. 124, § 12.

57-22-6.2. Professional fundraisers; bond.

A professional fundraiser shall file a surety bond at the time of the registration with the attorney general in an amount and on a form provided by the attorney general. The professional fundraiser shall maintain the surety bond, or alternative financial assurances approved by the attorney general, as long as the professional fundraiser solicits in the state.

History: Laws 1999, ch. 124, § 13.

57-22-6.3. General provisions; charitable organizations; professional fundraisers; prohibited practices.

A charitable organization or a professional fundraiser shall not:

A. engage in deceptive fundraising practices, meaning any false or misleading verbal or written statement, description or representation of any kind knowingly made in connection with a solicitation and that may, tends to or does deceive or mislead any person and includes:

(1) using the name or likeness of any person in solicitation literature without the express written consent of the person; provided that publication of previous contributors' names to acknowledge their contributions shall not require their express written consent;

(2) using a name, symbol or statement that is so closely related or similar to that used by another charitable organization or governmental agency that the use would tend to confuse or mislead the public; and

(3) misrepresenting, confusing or misleading any person to reasonably believe incorrectly that the contributions being solicited are or will be used for purposes, persons or programs in the state; or

B. collect or attempt to collect a contribution in person or by courier unless:

(1) the solicitation and collection or attempt to collect occur contemporaneously; or

(2) the solicitation includes the sale of goods or items and the collection or attempt to collect occurs contemporaneously with the delivery of the goods or items agreed to be purchased by the contributor.

History: Laws 1999, ch. 124, § 14.

57-22-6.4. Professional fundraiser; records and reports.

A. At least every six months, the professional fundraiser shall account in writing to the charitable organization for all contributions received and all expenses incurred under their contract. The charitable organization shall maintain a copy of the accounting of contributions and expenses for three years and make it available to the attorney general upon request.

B. All contributions of money received by the professional fundraiser shall be deposited in an account at a federally insured financial institution within two days after receipt. The account shall be established and maintained in the name of the charitable organization. Disbursements from the account shall be made upon warrants signed by

an authorized representative of the charitable organization and may also be signed by the professional fundraiser.

C. The professional fundraiser shall include the following information in its accounting required by Subsection A of this section to the charitable organization:

(1) the name and address of each person contributing to the charitable organization and the date and amount of the contribution. This information shall not be publicly disclosed and shall be used only for law enforcement purposes;

(2) the name and residence address of each employee, agent or other person involved in the solicitation;

(3) the script or other instructional information provided by the charitable organization or professional fundraiser to employees, agents or other persons conducting solicitations;

(4) a record of expenses incurred by the professional fundraiser that the charitable organization paid; and

(5) the name and address of each financial institution and the account number of each account in which the professional fundraiser deposited contributions received from the solicitation.

D. The professional fundraiser and the employees of the professional fundraiser shall disclose the following in solicitations:

(1) the name of the charitable organization; and

(2) the fact that the solicitation is made by or through a professional fundraiser.

E. Every professional fundraiser and charitable organization shall have either a registered agent in the state or shall file a consent to service of process with the attorney general. The consent to service shall be in the form prescribed by the attorney general and shall be irrevocable.

History: Laws 1999, ch. 124, § 15.

57-22-7. Restriction on use of fact of filing in solicitation.

No solicitation for charitable purposes shall use the fact or requirement of registration or of the filing of any report with the attorney general pursuant to the Charitable Solicitations Act with the intent to cause or in a manner tending to cause any person to believe that the solicitation, the manner in which it is conducted, its purposes, any use to which the proceeds will be applied or the person or organization conducting

it has been or will be in any way endorsed, sanctioned or approved by the attorney general or any governmental agency or office.

History: Laws 1983, ch. 140, § 7; 1999, ch. 124, § 7.

57-22-8. Disclosure of fundraising costs.

A. All charitable organizations subject to the Charitable Solicitations Act shall disclose upon request the percentage of the funds solicited that are spent on the costs of fundraising. For purposes of this section, costs of fundraising shall include all money directly expended on fundraising and that portion of all administrative expenses and salaries of the charitable organization attributable to fundraising activities.

B. Whenever a solicitation on behalf of a charitable organization subject to the Charitable Solicitations Act is undertaken by a professional fundraiser, the professional fundraiser shall disclose that fact to prospective contributors.

History: Laws 1983, ch. 140, § 8; 1999, ch. 124, § 8.

57-22-9. Authority of the attorney general.

A. The attorney general may, on behalf of the state, examine and investigate any charitable organization subject to the Charitable Solicitations Act to ascertain the conditions of its affairs and to what extent, if at all, it fails to comply with the trusts that it has assumed or if it has departed from the purposes for which it was formed. In the case of failure or departure, the attorney general may institute, in the name of the state, a proceeding necessary to correct the noncompliance or departure by any remedy available under the common law.

B. The attorney general may, in the name of the state, seek injunctive relief, civil penalties, financial accounting or restitution from any person who has failed to comply with the registration, filing or disclosure provisions of the Charitable Solicitations Act or who has otherwise violated the provisions of that act.

C. The attorney general, in the name of the state, may initiate appropriate proceedings to seek compliance with the provisions of the Charitable Solicitations Act and with any rules promulgated by the attorney general pursuant to that act. The attorney general may promulgate rules for the proper administration of that act.

D. Nothing in this section shall be construed to preclude a person or group of persons from asserting a private cause of action against a charitable organization or professional fundraiser.

History: Laws 1983, ch. 140, § 9; 1999, ch. 124, § 9.

57-22-9.1. Investigative demand; civil penalty.

A. Whenever the attorney general has reason to believe that any person may be in possession, custody or control of information or documentary material, including an original or copy of any book, record, report, memorandum, paper, communication, tabulation, chart, photograph, mechanical transcription or other tangible document or recording, that the attorney general believes to be relevant to the subject matter of an investigation of a probable violation of the Charitable Solicitations Act, the attorney general may, prior to the institution of a civil proceeding, execute in writing and cause to be served upon the person a civil investigative demand. The demand shall require the person to answer interrogatories or to produce documentary material and permit the inspection and copying of the material. The demand of the attorney general shall not be a matter of public record and shall not be published by him except by order of the court.

B. Each demand shall:

(1) state the general subject matter of the investigation;

(2) describe with reasonable certainty the information or documentary material to be provided;

(3) identify the time period within which the information or documentary material is to be provided, which in no case shall be less than ten days after the date of service of the demand; and

(4) state the date on which any documentary material shall be available for inspection and copying.

C. No demand shall:

(1) contain any requirement that would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of the state;

(2) require the disclosure of any documentary material that would be privileged or that for any other reason would not be required by a subpoena duces tecum by a court of the state; or

(3) require the removal of any documentary material from the custody of the person upon which the demand is served except in accordance with the provisions of Subsection E of this section.

D. Service of the demand may be made by:

(1) delivering a duly executed copy of the demand to the person to be served or, if the person is not a natural person, to the registered or statutory agent for the person to be served;

(2) delivering a duly executed copy of the demand to the principal place of business in New Mexico of the person to be served; or

(3) mailing by registered mail or certified mail a duly executed copy of the demand addressed to the person to be served at his principal place of business in the state or, if the person has no place of business in the state, to his principal place of business.

E. Documentary material demanded pursuant to Subsection A of this section shall be produced for inspection and copying during normal business hours at the principal place of business of the person served or may be inspected and copied at such other times and places as may be agreed upon by the person served and the attorney general.

F. Documentary material and its contents produced pursuant to a demand or answers to interrogatories shall not be produced for inspection or copying by anyone other than an authorized employee of the attorney general. The district court in the county in which the person resides or has his principal place of business or is about to perform or is performing the practice that is alleged to be unlawful under the Charitable Solicitations Act may order documentary material, its contents or answers to interrogatories to be produced for inspection or copying by someone other than an authorized employee of the attorney general.

G. At any time before the return date of the demand, a petition to set aside the demand, modify the demand or extend the return date on the demand may be filed in the district court in the county in which the person resides or has his principal place of business or is about to perform or is performing the practice that is alleged to be unlawful under the Charitable Solicitations Act, and the court upon showing of good cause may set aside the demand, modify it or extend the return date on the demand.

H. If after service of the demand the person neglects or refuses to comply with the demand, the attorney general may invoke the aid of the court in the enforcement of the demand.

I. This section shall not be applicable to criminal prosecutions.

J. In an action brought pursuant to the Charitable Solicitations Act, if the court finds that a person has violated a provision of that act or rules promulgated pursuant to that act, the attorney general may recover, on behalf of the state, a maximum civil penalty of five thousand dollars ($5,000) per violation.

History: Laws 1999, ch. 124, § 16.

57-22-9.2. Exchange of information with other states.

The attorney general may exchange information obtained by the civil investigative demand with comparable authorities of other states or the federal government regarding charitable organizations, professional fundraisers and professional fundraising counsel. Information acquired by exchange with other states or the federal government shall be exempt from inspection pursuant to the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978]. Information shall not be exchanged with comparable authorities of other states or the federal government unless the information is similarly exempt from inspection pursuant to applicable laws of such other states or the federal government.

History: Laws 1999, ch. 124, § 17.

57-22-10. Standard of care.

All officers, directors, managers, trustees, professional fundraisers, professional fundraising counsel or other persons having access to the money of a charitable organization intended for use for charitable purposes shall be held to the standard of care defined for fiduciary trustees under common law.

History: Laws 1983, ch. 140, § 10; 1999, ch. 124, § 10.

57-22-11. Exemptions from state and local taxation.

Every officer, agency, board or commission of this state, or political subdivision of this state receiving applications for exemption from taxation shall provide to the attorney general copies of all the applications, supporting documents and official responses.

History: Laws 1983, ch. 140, § 11; 1999, ch. 124, § 11.

ARTICLE 23
Franchise Termination

57-23-1. Short title.

This act [57-23-1 to 57-23-8 NMSA 1978] may be cited as the "Franchise Termination Act".

History: Laws 1985, ch. 229, § 1.

57-23-2. Definitions.

As used in the Franchise Termination Act:

A. "current price" means an amount equal to the price listed in the supplier's printed price list in effect when the franchise is terminated, less applicable trade and cash discounts;

B. "dealer cost" means an amount equal to the sum of the original invoice price that the dealer paid for inventory and the cost to the dealer of its delivery from the supplier to the dealer, less applicable discounts;

C. "dealer" means a person in the business of the retail sale of farm tractors, farm implements or the attachments to or repair parts for farm tractors or farm implements;

D. "franchise" means 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;

E. "inventory" means new or unused farm tractors, farm implements, utility tractors, industrial tractors, attachments and repair parts that are provided by a supplier to a dealer under a franchise agreement and that were purchased within thirty-six months of the termination of the franchise or were listed in the supplier's current sales manual at the time of termination; and

F. "supplier" means a manufacturer, wholesaler or distributor of farm tractors, farm implements, utility tractors or industrial tractors or the attachments to or repair parts for that equipment.

History: Laws 1985, ch. 229, § 2.

57-23-3. Termination of franchise; return of inventory.

A. If on termination of a franchise, the dealer delivers to the supplier the inventory that was purchased from the supplier and that is held by the dealer on the date of termination, the supplier shall pay to the dealer:

(1) the dealer cost of the new, unsold, undamaged and complete farm tractors, farm implements, utility tractors, industrial tractors and attachments returned by the dealer;

(2) an amount equal to ninety percent of the current price of new, undamaged repair parts returned by the dealer; and

(3) an amount equal to an additional five percent of the current price of new, undamaged repair parts returned by the dealer, unless the supplier performs the handling, packing and loading of the parts, in which case no additional amount is required under this paragraph.

B. The supplier may subtract from the sum due under Subsection A of this section the amount of debts owed by the dealer to the supplier. The supplier and dealer are each responsible for one-half of the cost of delivering the inventory to the supplier.

C. The supplier shall pay the amount due under this section before the sixty-first day after the day that the supplier receives inventory from the dealer and after the dealer has furnished proof that the inventory was purchased from the supplier.

D. On payment of the amount due under this section, title to the inventory is transferred to the supplier.

History: Laws 1985, ch. 229, § 3.

57-23-4. Exceptions.

A supplier is not required to repurchase:

A. inventory:

(1) that the dealer orders after the dealer receives notice of the termination of the franchise from the supplier; or

(2) for which the dealer cannot furnish evidence of clear title that is satisfactory to the supplier; or

B. a repair part that:

(1) has a limited storage life;

(2) is in a broken or damaged package;

(3) is usually sold as part of a set, if the part is separated from the set; or

(4) cannot be sold without reconditioning or repackaging.

History: Laws 1985, ch. 229, § 4.

57-23-5. Warranty claim.

If after the termination of a franchise, the dealer submits a warranty claim to the supplier for work performed prior to the effective date of the termination, the supplier shall accept or reject the claim not later than the forty-fifth day after the day that the supplier receives the claim. A claim not rejected before the deadline shall be deemed accepted. The supplier shall pay an accepted claim not later than the sixtieth day after the day that the supplier receives the claim.

History: Laws 1985, ch. 229, § 5.

57-23-6. Late payment.

If a supplier does not make the payment required by the Franchise Termination Act before the sixty-first day after the day that the supplier received the final shipment of the inventory from the dealer, the supplier shall be liable to the dealer for:

A. the greater of the dealer cost or current price of the inventory;

B. the expenses incurred by the dealer in returning the inventory to the supplier;

C. interest on the greater of the dealer cost or current price of the inventory, at the rate applicable to a judgment of a court of this state, for the period beginning on the sixty-first day after the day the supplier received the inventory;

D. reasonable attorney's fees; and

E. costs.

History: Laws 1985, ch. 229, § 6.

57-23-7. Security interest.

The Franchise Termination Act does not affect a supplier's security interest in inventory.

History: Laws 1985, ch. 229, § 7.

57-23-8. Application of bulk transfer law.

The provisions of the Uniform Commercial Code - Bulk Transfers [repealed] do not apply to a transaction between a supplier and dealer that is required by the Franchise Termination Act.

History: Laws 1985, ch. 229, § 8.

ARTICLE 24
Food Products Delivery Guarantees

57-24-1. Short title.

This act [57-24-1 to 57-24-4 NMSA 1978] may be cited as the "Food Products Delivery Guarantee Act".

History: Laws 1991, ch. 116, § 1.

57-24-2. Food products delivery guarantees; definition.

As used in the Food Products Delivery Guarantee Act, "food products delivery guarantee" means any statement guaranteeing or warranting the time of delivery of any food product or service.

History: Laws 1991, ch. 116, § 2.

57-24-3. Civil penalty.

Pursuant to a finding by any court that a person made a food products delivery guarantee that proximately resulted in injury or damage to another or another's property, the attorney general, upon petition to the court, may recover, on behalf of the state of New Mexico, a civil penalty not exceeding five thousand dollars ($5,000) for each occurrence of injury or damage.

History: Laws 1991, ch. 116, § 3.

57-24-4. Civil remedies.

Any person may bring a civil action for injuries or damages proximately caused by any food products delivery guarantee. Damages shall include nominal, compensatory or punitive damages. Costs and attorneys' fees shall be awarded by the court to a prevailing party. The relief provided in this section is in addition to remedies otherwise provided by law.

History: Laws 1991, ch. 116, § 4.

ARTICLE 25
Carnival Ride Insurance

57-25-1. Short title.

This act [57-25-1 to 57-25-6 NMSA 1978] may be cited as the "Carnival Ride Insurance Act".

History: Laws 1993, ch. 284, § 1.

57-25-2. Definitions.

As used in the Carnival Ride Insurance Act:

A. "carnival ride" means any mechanical device, aquatic device or combination of devices that carries or conveys passengers on, along, around, through or over a fixed or restricted route or course or within a defined area for the purpose of giving its passengers amusement, pleasure, thrills or excitement, including bungee jumping facilities and state fair rides, but does not include playground equipment, a single-passenger, coin-operated device secured by a stationary foundation or a small promotional event or operation consisting of fewer than six kiddie rides designed for children twelve years of age or younger, including merry-go-rounds;

B. "department" means the regulation and licensing department;

C. "inspection" means a physical examination of a carnival ride by an inspector of the regulation and licensing department prior to issuing a certificate of inspection, including reinspection;

D. "operator" means a person actually engaged in or directly controlling the operation of a carnival ride; and

E. "owner" means a person, including the state or any political subdivision of the state, who owns or leases a carnival ride.

History: Laws 1993, ch. 284, § 2; 1995, ch. 79, § 1.

57-25-3. Liability insurance required; certificate of inspection required; carnival ride insurance fund created.

A. No person shall operate a carnival ride without a policy of insurance in an amount not less than three million dollars ($3,000,000) against liability for injury to persons arising out of the operation of the carnival ride.

B. Either a copy of the policy furnished to the insured or a certificate stating that the insurance required by this section is in effect shall be filed with the department and a local government entity.

C. The policy shall contain a schedule listing by name and serial number each carnival ride insured by the policy. In the event of additions or deletions of carnival rides during the policy terms, such changes shall be shown on a change endorsement, a copy of which shall be submitted to the department and the local government entity.

D. In the event of policy cancellation by either the insured owner or operator or the insurance company, the insured shall furnish notice of the cancellation to the department and the local government entity not later than ten days prior to cancellation.

E. No person, owner or operator of a carnival ride shall operate any carnival ride without obtaining a certificate of inspection for each ride by an inspector of the department or its designee and filing the certificate of inspection with the local

government. The owner or operator shall annually have each carnival ride inspected and annually file the certificate of inspection. The certificate of inspection shall state that the carnival ride operator or owner has had the rides independently inspected by a national amusement ride safety official class 1, 2 or 3 inspector within twelve months of the operation of the ride within the state and whether any deficiencies noted by the engineer have been corrected. In addition, the owner or operator of the ride shall inspect the ride each day the ride is operated before any member of the public is permitted to board the ride. The owner or operator shall keep a current log of such inspections which shall be available for review by local enforcement officials during operating hours.

F. The insured shall pay a fifty dollar ($50.00) per carnival ride per inspection filing fee with the department.

G. The "carnival ride insurance fund" is created in the state treasury. The fund shall consist of all filing fees received by the department pursuant to the Carnival Ride Insurance Act. Money in the carnival ride insurance fund is appropriated to the department for the purpose of carrying out the provisions of the Carnival Ride Insurance Act. The fund shall not be expended for any purpose other than carrying out the provisions of the Carnival Ride Insurance Act.

History: Laws 1993, ch. 284, § 3; 1995, ch. 79, § 2; 1996, ch. 60, § 1.

57-25-4. Penalty.

A. The department or its authorized representative may issue a written order for the temporary cessation of operation of a carnival ride if it has been determined that the owner or operator has not acquired a policy of insurance or has not maintained inspections of his carnival rides. The operation of the ride shall not resume until the requisite insurance is in effect, inspections have been made and the requisite certificates have been filed with the department and the local government entity.

B. The department may appear in its own name in the district court of Santa Fe county or any other county having jurisdiction to prevent violations or to enforce the provisions of the Carnival Ride Insurance Act, the orders, rules and regulations, codes and minimum standards made pursuant to this act by injunction, mandamus or any other proper legal proceeding without bond, including an order not to move the carnival ride.

C. The local law enforcement agency shall have the authority to enforce the provisions of the Carnival Ride Insurance Act. Any person who does not maintain liability insurance on a carnival ride, operates a carnival ride or authorizes the operation of a carnival ride that does not have insurance, does not annually have his carnival rides inspected or does not file the proper certificates as set forth in the Carnival Ride Insurance Act is guilty of a misdemeanor and upon conviction the court shall impose a fine of up to one thousand dollars ($1,000) a day for the operation of each ride.

History: Laws 1993, ch. 284, § 4.

57-25-5. Liability; limitations.

No provision of the Carnival Ride Insurance Act shall be construed to place any liability on the state or on the department with respect to any claim by any person, firm or corporation relating to a carnival ride or to any injury or damages arising from a carnival ride.

History: Laws 1993, ch. 284, § 5.

57-25-6. Exemptions.

The provisions of the Carnival Ride Insurance Act shall not apply to nonprofit organizations that own and operate a carnival ride ten days or less each year.

History: Laws 1993, ch. 284, § 6.

ARTICLE 26
Rental-Purchase Agreements

57-26-1. Short title.

Sections 1 through 12 [57-26-1 to 57-26-12 NMSA 1978] of this act may be cited as the "Rental-Purchase Agreement Act".

History: Laws 1995, ch. 38, § 1.

57-26-2. Definitions.

As used in the Rental-Purchase Agreement Act:

A. "advertisement" means a commercial message in any medium that solicits a consumer to enter a rental-purchase agreement;

B. "cash sale price" means the price stated in a rental-purchase agreement for which the lessor would have sold and the consumer would have bought the goods that are the subject matter of a rental-purchase agreement if the transaction had been a sale for cash and may include any taxes and charges for delivery, installation, servicing, repairs, alterations or improvements;

C. "consumer" means an individual who rents goods under a rental-purchase agreement to be used primarily for personal, family or household purposes;

D. "consummation" means the date on which a consumer enters a rental-purchase agreement;

E. "goods" means personal property of which a consumer acquires use under a rental-purchase agreement;

F. "lessor" means a person who regularly provides the use of goods under rental-purchase agreements and to whom rental payments are initially payable on the face of the rental-purchase agreement; and

G. "rental-purchase agreement" means an agreement for the use of goods by an individual for personal, family or household purposes, for an initial period of four months or less, that is automatically renewable with each payment after the initial period, that does not obligate or require the consumer to continue renting or using the goods beyond the initial period and that permits the consumer to become the owner of the goods.

History: Laws 1995, ch. 38, § 2.

57-26-3. Exempted transactions; relationship to other laws.

A. The Rental-Purchase Agreement Act does not apply to the following:

(1) rental-purchase agreements made primarily for business, commercial or agricultural purposes;

(2) a lease of a safe deposit box;

(3) a lease or bailment of personal property that is incidental to the lease of real property and provides that the consumer has no option to purchase the leased property;

(4) a lease of a "motor vehicle", as defined in Subsection C of Section 56-1-1 NMSA 1978; or

(5) a lease of a "mobile home", as defined in Subsection D of Section 56-1-1 NMSA 1978.

B. Rental-purchase agreements are not governed by the provisions of:

(1) the Uniform Commercial Code [Chapter 55 NMSA 1978];

(2) Chapter 56, Articles 1 and 8 NMSA 1978; or

(3) Chapter 58, Article 15 NMSA 1978.

History: Laws 1995, ch. 38, § 3.

57-26-4. General requirements of rental-purchase agreements.

A. Each rental-purchase agreement shall be in writing, dated, signed by the consumer and lessor and completed as to all essential provisions.

B. The printed or typed portion of the rental-purchase agreement, other than instructions for completion, shall be in a size equal to at least eight-point type. The rental-purchase agreement shall be designated "rental-purchase agreement".

C. The lessor shall deliver to the consumer, or mail to him at his address shown on the rental-purchase agreement, a copy of the agreement as accepted by the consumer. Until the lessor does so, a consumer who has not received delivery of the rented goods shall have the right to rescind his rental-purchase agreement and receive a refund of all payments made. An acknowledgment by the consumer of delivery of a copy of the rental-purchase agreement shall be in a size equal to at least ten-point bold type and, if contained in the agreement, shall appear directly above the consumer's signature.

D. The rental-purchase agreement shall contain the names of the lessor and consumer, the lessor's business address and the residence or other address of the consumer as specified by the consumer.

E. The lessor shall disclose to the consumer the information required by Section 5 [57-26-5 NMSA 1978] of the Rental-Purchase Agreement Act on the face of the rental-purchase agreement above the line for the consumer's signature. The disclosures shall be made at or before consummation of the rental-purchase agreement. In a transaction involving more than one lessor, only one lessor need make the disclosures, but all lessors shall be bound by the disclosures. If a disclosure becomes inaccurate as a result of any act, occurrence or any agreement by the consumer after delivery of the required disclosures, the resulting inaccuracy is not a violation of the Rental-Purchase Agreement Act.

F. A lessor who provides an advertisement in any language other than English shall have rental-purchase agreements printed in each non-English language of the advertisement and shall make those rental-purchase agreements available to consumers.

History: Laws 1995, ch. 38, § 4.

57-26-5. Disclosures.

A. For each rental-purchase agreement, the lessor shall disclose in the agreement the following items, as applicable:

(1) whether the periodic payment is weekly, monthly or otherwise, the dollar amount of each payment and the total number and total dollar amount of all periodic payments necessary to acquire ownership of the goods;

(2) a statement that the consumer will not own the goods until the consumer has paid the total amount necessary to acquire ownership;

(3) a statement advising the consumer whether the consumer is liable for loss or damage to the goods and, if so, a statement that the liability will not exceed the fair market value of the goods as of the time they are lost or damaged;

(4) a brief description of the goods, sufficient to identify the goods to the consumer and the lessor, including an identification number, if applicable, and a statement indicating whether the goods are new or used. A statement that indicates new goods are used is not a violation of the Rental-Purchase Agreement Act;

(5) a statement of the cash sale price of the goods, but if one rental-purchase agreement involves a lease of two or more items as a set, a statement of the aggregate cash price of all items shall satisfy this requirement;

(6) the total of initial payments paid or required at or before consummation of the rental-purchase agreement or delivery of the goods, whichever is later;

(7) a statement that the total amount of payments does not include other charges or fees and a statement of all other charges or fees;

(8) a statement clearly summarizing the terms of the consumer's option to purchase, including a statement that the consumer has the right to exercise an early purchase option, and the price, formula or method for determining the early purchase price;

(9) a statement identifying the party responsible for maintaining or servicing the goods while they are being rented, together with a description of that responsibility and a statement that if any part of a manufacturer's express warranty covers the goods at the time the consumer acquires ownership of them, it shall be transferred to the consumer, if allowed by the terms of the warranty;

(10) a statement that the consumer may terminate the rental-purchase agreement without penalty by voluntarily surrendering or returning the goods in good repair, reasonable wear and tear excepted, along with any past due rental payments upon expiration of any rental period;

(11) notice of the right to reinstate a rental-purchase agreement, as provided in the Rental-Purchase Agreement Act; and

(12) the following notice printed or typed in a size equal to at least ten-point bold type:

"NOTICE TO THE CONSUMER

Do not sign this agreement before you read it or if it contains blank spaces. You are entitled to a copy of the agreement you sign."

B. With respect to matters governed by the federal Consumer Credit Protection Act, 15 U.S.C. Sections 1601 et seq., compliance with that act satisfies the requirements of this section.

History: Laws 1995, ch. 38, § 5.

57-26-6. Prohibited provisions.

A rental-purchase agreement shall not contain:

A. a confession of judgment;

B. a negotiable instrument;

C. a security interest or any other claim of a property interest in any property of the consumer;

D. a wage assignment;

E. a waiver by the consumer of claims or defenses;

F. a provision authorizing the lessor or a person acting on the lessor's behalf to enter upon the consumer's premises unlawfully or to commit any breach of the peace in the repossession of goods;

G. a provision requiring the purchase of insurance or a liability damage waiver from the lessor for goods that are the subject of the rental-purchase agreement;

H. a provision that mere failure to return goods constitutes probable cause for a criminal action;

I. a provision requiring the consumer to make a payment in addition to regular periodic payments in order to acquire ownership of the goods or a provision requiring the consumer to make periodic payments totaling more than the dollar amount necessary to acquire ownership as disclosed pursuant to Section 5 [57-26-5 NMSA 1978] of the Rental-Purchase Agreement Act;

J. a provision for more than one reinstatement fee on any one periodic payment, regardless of the period of time during which it remains unpaid; or

K. a provision for a late charge or any other type of charge or penalty for reinstating a rental-purchase agreement, other than a reinstatement fee; however, a lessor may use the term "late charge" or a similar term to refer to a reinstatement fee.

History: Laws 1995, ch. 38, § 6.

57-26-7. Reinstatement.

A. A consumer who fails to make a timely rental payment may reinstate the rental-purchase agreement without losing any rights or options that exist under the agreement by the payment of the following charges within five days of the renewal date of an agreement with monthly periodic payments or within two days of the renewal date of an agreement requiring periodic payments more frequently than monthly:

(1) all past due rental charges;

(2) if the goods have been picked up, the reasonable costs of pickup and redelivery; and

(3) any applicable reinstatement fee.

B. If a consumer has paid less than two-thirds of the total of payments necessary to acquire ownership of the goods and has returned or voluntarily surrendered the goods within seven days of the renewal date, other than through judicial process, the consumer may reinstate the rental-purchase agreement during a period of not less than twenty-one days after the date of the return of the goods.

C. If a consumer has paid two-thirds or more of the total of payments necessary to acquire ownership of the goods and has returned or voluntarily surrendered the goods within seven days of the renewal date, other than through judicial process, the consumer may reinstate the rental-purchase agreement during a period of not less than thirty days after the date of the return of the goods.

D. Nothing in this section shall prevent a lessor from attempting to repossess property during the reinstatement period, but such a repossession shall not affect the consumer's right to reinstate. Upon reinstatement, the lessor shall provide the consumer with the same goods, if available, or with substitute goods of comparable quality and condition.

History: Laws 1995, ch. 38, § 7.

57-26-8. Receipts.

Upon request by the consumer, a lessor shall provide the consumer with a written receipt for each payment made.

History: Laws 1995, ch. 38, § 8.

57-26-9. Renegotiations and extensions.

A. A renegotiation occurs when any term of a rental-purchase agreement that is required to be disclosed by Section 5 [57-26-5 NMSA 1978] of the Rental-Purchase Agreement Act is changed by agreement between the lessor and consumer. A renegotiation creates a new rental-purchase agreement requiring the lessor to give all the disclosures required by Section 5 of the Rental-Purchase Agreement Act.

B. A renegotiation shall not include:

(1) reinstatement of a rental-purchase agreement in accordance with Section 7 [57-26-7 NMSA 1978] of the Rental-Purchase Agreement Act;

(2) a lessor's waiver or failure to assert any claim against the consumer;

(3) a deferral, extension or waiver of a portion of a periodic payment or of one or more periodic payments; or

(4) a change, made at the consumer's request, of the day of the week or month on which periodic payments are to be made.

History: Laws 1995, ch. 38, § 9.

57-26-10. Advertising.

A. An advertisement that refers to or states the dollar amount of a periodic payment and the right to acquire ownership of a specific item shall also clearly and conspicuously state:

(1) that the transaction advertised is a rental-purchase agreement;

(2) the total number and total amount of periodic payments necessary to acquire ownership of the item; and

(3) that the consumer acquires no ownership rights in the item unless the total amount necessary to acquire is paid.

B. Any owner or personnel of any medium in which an advertisement appears or through which it is disseminated shall not be liable for failure to comply with the provisions of this section.

C. The provisions of Subsection A of this section shall not apply to an advertisement that does not refer to or state the amount of any payment or that is published in the yellow pages of a telephone directory or in any similar directory of business.

D. Every item displayed or offered under a rental-purchase agreement shall bear a tag or card that clearly and conspicuously indicates in Arabic numerals each of the following:

(1) the cash price of the item;

(2) the amount of the periodic payment; and

(3) the total number and total amount of periodic payments necessary to acquire ownership.

E. An advertisement in any language other than English shall contain disclosures as required by this section in the non-English language.

History: Laws 1995, ch. 38, § 10.

57-26-11. Enforcement; remedies; limitations.

A. A lessor who fails to comply with the requirements of the Rental-Purchase Agreement Act is liable to the consumer damaged thereby in an amount equal to:

(1) the greater of the actual damages sustained by the consumer as a result of the lessor's failure to comply or twenty-five percent of the total of payments necessary to acquire ownership, but not less than one hundred dollars ($100) or more than one thousand dollars ($1,000); and

(2) the costs of the action and reasonable attorneys' fees as determined by the court.

B. A consumer may not take any action to offset the amount for which a lessor is potentially liable under Subsection A of this section against any amount owed by the consumer, unless the amount of the lessor's liability has been determined by judgment of a court of competent jurisdiction in an action in which the lessor was a party. This subsection does not bar a consumer then in default on an obligation from asserting a violation of the Rental-Purchase Agreement Act as an original action or as a defense or counterclaim to an action brought by a lessor against the consumer.

C. The remedies of a consumer, pursuant to the provisions of this section, are in addition to any other rights or remedies available to a consumer pursuant to applicable laws or regulations.

D. No action under this section may be brought in any court of competent jurisdiction more than one year after the date the consumer made his last rental payment or more than one year after the date of the occurrence of the violation that is the subject of the suit, whichever is later.

History: Laws 1995, ch. 38, § 11.

57-26-12. Lessor's defenses.

A. If a lessor establishes by a preponderance of evidence that a violation of the Rental-Purchase Agreement Act was unintentional or the result of a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid such errors, the lessor shall not be subject to the provisions of Section 11 [57-26-11 NMSA 1978] of the Rental-Purchase Agreement Act and the validity of the transaction is not affected. Examples of bona fide errors are clerical errors, calculation errors, errors due to unintentionally improper computer programming or data entry and printing errors, but do not include errors of legal judgment with respect to a lessor's obligations under the Rental-Purchase Agreement Act.

B. A lessor is not subject to the provisions of Section 11 of the Rental-Purchase Agreement Act if, within sixty days after discovering a failure to comply with a requirement of the Rental-Purchase Agreement Act and prior to the institution of an action for noncompliance and prior to the receipt of written notice of the noncompliance from the consumer, the lessor notifies the consumer of the noncompliance and makes whatever adjustments in the appropriate account are necessary to correct the noncompliance.

C. No provision of Section 11 of the Rental-Purchase Agreement Act applies to any action done or omitted in good faith in conformity with some provision of that act, notwithstanding that after the action or omission has occurred the provision is amended, rescinded or determined by judicial or other competent authority to be invalid for any reason.

History: Laws 1995, ch. 38, § 12.

ARTICLE 27
Assistive Device Lemon Law

57-27-1. Short title.

This act [57-27-1 to 57-27-5 NMSA 1978] may be cited as the "Assistive Device Lemon Law".

History: Laws 1998, ch. 29, § 1.

57-27-2. Definitions.

As used in the Assistive Device Lemon Law:

A. "assistive device" means manual wheelchairs, motorized wheelchairs, motorized scooters and motorized wheelchair lifts that allow access to motor vehicles; hearing aids, telephone communication devices for the deaf, assistive listening devices and other aids that enhance a person's ability to hear; and voice-synthesized or voice-activated computer software, optical scanners, augmentative communication devices and Braille printers; including a demonstrator, that a consumer purchases or accepts transfer of in New Mexico that is used for a major life activity;

B. "collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity, including the cost of obtaining an alternative assistive device;

C. "consumer" means any of the following:

(1) the purchaser of an assistive device, if the assistive device was purchased from a dealer or manufacturer for purposes other than resale;

(2) a person to whom the assistive device is transferred for purposes other than resale, if the transfer occurs before the expiration of an express warranty applicable to the assistive device;

(3) the person who can enforce the warranty; and

(4) a person who leases an assistive device from a lessor pursuant to a written lease;

D. "current value of the written lease" means the total amount for which that lease obligates the consumer during the period of the lease remaining after its early termination, plus the assistive device lessor's early termination costs and the value of the assistive device at the lease expiration date if the lease sets forth that value, less the assistive device lessor's early termination savings;

E. "dealer" means a person who purchases assistive devices for resale or lease to consumers;

F. "demonstrator" means an assistive device used primarily for the purpose of demonstration to the public;

G. "early termination cost" means an expense or obligation that an assistive device lessor incurs as a result of both the termination of a written lease before the termination date set forth in that lease and the return of an assistive device to a manufacturer and includes a penalty for prepayment under a finance arrangement;

H. "early termination saving" means an expense or obligation that an assistive device lessor avoids as a result of both the termination of a written lease before the termination date set forth in the lease and the return of an assistive device to a manufacturer. Early termination saving includes an interest charge that the assistive device lessor would have paid to finance the assistive device or, if the lessor does not finance the assistive device, the difference between the total amount for which the lease obligates the consumer during the period of the lease term remaining after the early termination and the present value of that amount at the date of the early termination;

I. "manufacturer" means a person who manufactures or assembles assistive devices and agents of that person, including an importer, distributor, factory branch, distributor branch and any warrantors of the manufacturer's assistive device, but does not include an assistive device dealer;

J. "nonconformity" or "nonconforming" means a condition or defect that substantially impairs the use, value or safety of an assistive device that was purchased or whose acceptance of transfer occurred in New Mexico and that is covered by an express warranty applicable to the assistive device or to a component of the assistive device, but does not include a condition or defect that is the result of abuse, neglect or unauthorized modification or alteration of the assistive device by a consumer; and

K. "reasonable attempt to repair" means, within the terms of an express warranty applicable to a new assistive device, that:

(1) a nonconformity within the warranty is subject to repair by the manufacturer, the manufacturer's authorized dealer or a lessor at least four times and a nonconformity continues; or

(2) the assistive device is out of service for an aggregate of at least thirty cumulative days because of warranty nonconformity.

History: Laws 1998, ch. 29, § 2.

57-27-3. Obligations and interests.

A. A manufacturer who sells an assistive device to a consumer, either directly or through a dealer, shall furnish the consumer with an express warranty for the assistive device. The duration of the express warranty shall be not less than one year after first delivery of the assistive device to the consumer. In the absence of a written warranty from the manufacturer, the manufacturer shall be deemed to have expressly warranted to the consumer of an assistive device that for a period of one year from the date of first delivery to the consumer, the assistive device will be free from any nonconformity.

B. If a new assistive device does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, dealer or lessor and

makes the assistive device available for repair during the warranty period, the nonconformity shall be repaired at no charge to the consumer.

C. If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer, at the direction of the consumer, shall:

(1) accept return of the assistive device and replace it with a comparable new assistive device and refund any collateral costs within thirty days;

(2) accept return of the assistive device and refund to the consumer and to any holder of a perfected security interest in the consumer's assistive device, as their interest may appear, the full purchase price plus any finance charge amount paid by the consumer at the point of sale and collateral costs; or

(3) if the consumer was a lessee, accept return of the assistive device, refund to the lessor and to any holder of a perfected security interest in the assistive device, as their interest may appear, the current value of the written lease and refund to the consumer the amount that the consumer paid pursuant to the written lease plus any collateral costs.

D. A reasonable allowance for use may be charged to the consumer based on the number of days that the consumer used the assistive device before the consumer first reported the nonconformity to the manufacturer, dealer or lessor.

E. To receive a comparable new assistive device or a refund due pursuant to Paragraph (1) or (2) of Subsection C of this section, a consumer shall offer to transfer possession of the nonconforming assistive device to the manufacturer. No later than thirty days after the offer, the manufacturer shall provide the consumer with a comparable new assistive device or a refund. When the manufacturer provides the new assistive device or refund, the consumer shall return the nonconforming assistive device to the manufacturer, along with any endorsements necessary to transfer legal possession to the manufacturer.

F. To receive a refund due pursuant to Paragraph (3) of Subsection C of this section, a lessor shall offer to transfer possession of the nonconforming assistive device to the manufacturer. No later than thirty days after the offer, the manufacturer shall provide the refund to the lessor and to any holder of a perfected security interest in the assistive device as his interest may appear. When the manufacturer provides the refund, the lessor shall provide to the manufacturer any endorsements necessary to transfer legal possession to the manufacturer.

G. No person shall enforce the lease against the consumer after the consumer receives a refund due pursuant to Paragraph (3) of Subsection C of this section.

H. No assistive device returned by a consumer or lessor in this or any other state because of a nonconformity shall be resold or re-leased in this state unless full disclosure of the reasons for return is made to any prospective buyer or lessee.

History: Laws 1998, ch. 29, § 3.

57-27-4. Attorney general rules; arbitration.

The attorney general may adopt and promulgate rules necessary to carry out the provisions of the Assistive Device Lemon Law, including rules concerning arbitration of disputes arising from nonconforming assistive devices and failures to comply with the Assistive Device Lemon Law.

History: Laws 1998, ch. 29, § 4.

57-27-5. Consumer rights; actions; treble damages.

A. This section shall not be construed to limit rights and remedies available to a consumer under any other law.

B. In addition to pursuing any other remedy, a consumer may bring an action to recover actual damages or the sum of one hundred dollars ($100), whichever is greater. Where the trier of fact finds that the party charged with a violation of the Assistive Device Lemon Law has willfully engaged in the violation, the court may award up to three times actual damages or three hundred dollars ($300), whichever is greater, to the party complaining of the violation.

C. The court shall award attorney fees and costs to the party complaining of a violation of the Assistive Device Lemon Law if he prevails. The court shall award attorney fees and costs to the party charged with a violation of the Assistive Device Lemon Law if it finds that the party complaining of the violation brought an action that was an action that is frivolous or brought in bad faith.

D. In any class action filed under this section, the court may award damages to the named plaintiffs as provided in Subsection B of this section and may award members of the class such actual damages as were suffered by each member of the class as a result of a violation of the Assistive Device Lemon Law.

History: Laws 1998, ch. 29, § 5.

ARTICLE 28
Retainage

57-28-1. Short title.

Chapter 57, Article 28 NMSA 1978 may be cited as the "Prompt Payment Act".

History: Laws 2001, ch. 68, § 1; 2007, ch. 213, § 1.

57-28-2. Definitions

As used in the Prompt Payment Act:

A. "construction" means building, altering, repairing, installing or demolishing in the ordinary course of business any:

(1) road, highway, bridge, parking area or related project;

(2) building, stadium or other structure;

(3) airport, subway or similar facility;

(4) park, trail, athletic field, golf course or similar facility;

(5) dam, reservoir, canal, ditch or similar facility;

(6) sewage or water treatment facility, power generating plant, pump station, natural gas compression station or similar facility;

(7) sewage, water, gas or other pipeline;

(8) transmission line;

(9) radio, television or other tower;

(10) water, oil or other storage tank;

(11) shaft, tunnel or other mining appurtenance;

(12) electrical wiring, plumbing or plumbing fixture, gas piping, gas appliances or water conditions;

(13) air conditioning conduit, heating or other similar mechanical work;

(14) leveling or clearing land;

(15) excavating earth;

(16) drilling wells of any type, including seismographic shot holes or core drilling; and

(17) similar work, structures or installations;

B. "contractor" means a person performing construction through a contract with an owner;

C. "owner" means a person, local public body or state agency other than the department of transportation;

D. "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or similar legal entity; and

E. "subcontractor" means a person performing construction for the owner not through a contract with the owner.

History: Laws 2001, ch. 68, § 2; 2007, ch. 213, § 2.

57-28-3. Applicability of act.

The provisions of the Prompt Payment Act do not apply to construction contracts for residential property containing four or fewer dwelling units.

History: Laws 2001, ch. 68, § 3; 2007, ch. 213, § 3.

57-28-4. Repealed.

History: Laws 2001, ch. 68, § 4; repealed by Laws 2007, ch. 213, § 6.

57-28-5. Payments; prompt pay required; withholding prohibited.

A. Except as provided in Subsection B of this section, all construction contracts shall provide that payment for amounts due shall be paid within twenty-one days after the owner receives an undisputed request for payment. Payment by the owner to the contractor may be made by first-class mailing, electronic funds transfer or by hand delivery of the undisputed amount of a pay request based on work completed or service provided under the contact. If the owner fails to pay the contractor within twenty-one days after receipt of an undisputed request for payment, the owner shall pay interest to the contractor beginning on the twenty-second day after payment was due, computed at one and one-half percent of the undisputed amount per month or fraction of a month until the payment is issued. If an owner receives an improperly completed invoice, the owner shall notify the sender of the invoice within seven days of receipt in what way the invoice is improperly completed, and the owner has no further duty to pay on the improperly completed invoice until it is resubmitted as complete.

B. A local public body may make payment within forty-five days after submission of an undisputed request for payment when grant money is a source of funding, if:

(1) the construction contract specifically provides in a clear and conspicuous manner for a payment later than twenty-one days after submission of an undisputed request for payment; and

(2) the following legend or substantially similar language setting forth the specified number of days appears in clear and conspicuous type on each page of the plans, including bid plans and construction plans:

"Notice of Extended Payment Provision

This contract allows the owner to make payment within _____ days after submission of an undisputed request for payment.".

C. All construction contracts shall provide that contractors and subcontractors make prompt payment to their subcontractors and suppliers for amounts owed for work performed on the construction project within seven days after receipt of payment from the owner, contractor or subcontractor. If the contractor or subcontractor fails to pay the contractor's or subcontractor's subcontractor and suppliers by first-class mail or hand delivery within seven days of receipt of payment, the contractor or subcontractor shall pay interest to the subcontractors and suppliers beginning on the eighth day after payment was due, computed at one and one-half percent of the undisputed amount per month or fraction of a month until payment is issued. These payment provisions apply to all tiers of contractors, subcontractors and suppliers.

D. A creditor shall not collect, enforce a security interest against, garnish or levy execution on those progress payments or other payments that are owed by an owner, contractor or subcontractor to a person, or the owner's contractor's or subcontractor's surety, who has furnished labor or material pursuant to a construction contract.

E. When making payments, an owner, contractor or subcontractor shall not retain, withhold, hold back or in any other manner not pay amounts owed for work performed.

History: Laws 2001, ch. 68, § 5; 2007, ch. 213, § 4.

57-28-6. Repealed.

History: Laws 2001, ch. 68, § 6; repealed by Laws 2007, ch. 213, § 6.

57-28-7. Care and protection of work.

All material and work covered by partial payments become the property of the owner, but the contractor and subcontractor are not relieved from the sole responsibility for the care and protection of materials and work for which payments have been made; provided, however, the contractor and subcontractor have no duty for the care and protection of materials and work after the owner has assumed occupancy or use of the work.

History: Laws 2001, ch. 68, § 7.

57-28-8. Final payment.

Ten days after certification of completion, any amounts remaining due the contractor or subcontractor under the terms of the contract shall be paid upon the presentation of the following:

A. a properly executed release and duly certified voucher for payment;

B. a release, if required, of all claims and claims of lien against the owner arising under and by virtue of the contract other than such claims of the contractor, if any, as may be specifically excepted by the contractor or subcontractor from the operation of the release in stated amounts to be set forth in the release; and

C. proof of completion.

History: Laws 2001, ch. 68, § 8.

57-28-9. Repealed.

History: Laws 2001, ch. 68, § 9; repealed by Laws 2007, ch. 213, § 6.

57-28-10. Repealed.

History: Laws 2001, ch. 68, § 10; repealed by Laws 2007, ch. 213, § 6.

57-28-11. Attorney fees.

In an action to enforce the provisions of the Prompt Payment Act, the court may award court costs and reasonable attorney fees.

History: Laws 2001, ch. 68, § 11; 2007, ch. 213, § 5.

ARTICLE 28A
Construction Contracts

57-28A-1. Construction contracts; provisions void.

A. A provision of a construction contract, agreement, understanding, specification or other documentation that is made part of a construction contract for an improvement to real property in New Mexico is void, unenforceable and against the public policy of the state if the provision:

(1) makes the construction contract subject to the laws of another state; or

(2) requires any litigation arising from the construction contract to be conducted in another state.

B. Any mediation, arbitration or other dispute resolution proceeding arising from or relating to a construction contract for work performed in this state shall be conducted in this state.

C. As used in this section, "construction contract" means a public, private, foreign or domestic contract or agreement relating to construction, alteration, repair or maintenance of any real property in New Mexico and includes agreements for architectural services, demolition, design services, development, engineering services, excavation or other improvement to real property, including buildings, shafts, wells and structures, whether on, above or under real property.

History: Laws 2011, ch. 28, § 1.

ARTICLE 29
Pharmacies

57-29-1. Pharmacy freedom of choice.

A contract, agreement or arrangement between a pharmacy and a wholesaler, distributor or pharmacy benefit manager for the provision of prescription drugs for resale shall not include a provision requiring the pharmacy to enter into any other contract, agreement or arrangement with the contracting wholesaler, distributor or pharmacy benefit manager to purchase prescription drugs on different terms.

History: Laws 2002, ch. 75, § 5 and Laws 2002, ch. 80, § 5.

ARTICLE 30
Sale of Recycled Metals

57-30-1. Short title.

Chapter 57, Article 30 NMSA 1978 may be cited as the "Sale of Recycled Metals Act".

History: Laws 2008, ch. 29, § 1; 2012, ch. 29, § 1; 2012, ch. 33, § 1.

57-30-2. Definitions.

As used in the Sale of Recycled Metals Act:

A. "aluminum material" means a product made from aluminum, an aluminum alloy or an aluminum byproduct. "Aluminum material" includes an aluminum beer keg but does not include other types of aluminum cans used to contain a food or beverage;

B. "bronze material" means:

(1) a cemetery vase, receptacle or memorial made from bronze;

(2) bronze statuary; or

(3) material readily identifiable as bronze;

C. "business day" means any calendar day except Sunday and the following holidays: New Year's day; President's day; Memorial day; Independence day; Labor day; Indigenous Peoples' day; Armistice day and Veterans' day; Thanksgiving day; Christmas day; Martin Luther King, Jr.'s birthday; and any other legal public holiday of the state of New Mexico or the United States;

D. "copper or brass material" means:

(1) insulated or noninsulated copper wire, hardware or cable of the type used by a public utility, commercial mobile radio service carrier or common carrier that consists of at least twenty-five percent copper; or

(2) a copper or brass item of a type commonly used in construction or by a public utility, commercial mobile radio service carrier or common carrier;

E. "department" means the regulation and licensing department;

F. "lead material" means:

(1) a lead-acid battery; or

(2) material readily identifiable as being made of or containing lead;

G. "peace officer" means any full-time salaried and commissioned or certified law enforcement officer of a police or sheriff's department that is part of or administered by the state or a political subdivision of the state;

H. "personal identification document" means:

(1) a driver's license;

(2) a military identification card; or

(3) a passport issued by the United States or by another country and recognized by the United States;

I. "regulated material" means:

(1) aluminum material;

(2) bronze material;

(3) copper or brass material;

(4) steel material;

(5) lead material;

(6) a utility access cover;

(7) a water meter cover;

(8) a road or bridge guard rail;

(9) a highway or street sign;

(10) a traffic directional or control sign or signal; or

(11) a catalytic converter that is not part of an entire motor vehicle;

J. "secondhand metal dealer" means a scrap metal processor in the business of operating or maintaining a scrap metal yard in a physical location in which scrap metal or cast-off regulated material is purchased for shipment, sale or transfer;

K. "steel material" means a product made from an alloy of iron, chromium, nickel or manganese, including stainless steel beer kegs; and

L. "superintendent" means the superintendent of regulation and licensing.

History: Laws 2008, ch. 29, § 2; 2012, ch. 29, § 2; 2012, ch. 33, § 2; 2016, ch. 51, § 1; 2019, ch. 123, § 3.

57-30-2.1. Issuance of registration; period of registration.

The department is authorized to issue registrations to secondhand metal dealers that buy or sell regulated material. Original and renewed registrations shall be valid for a period of three years from the date of issuance, unless the registration is suspended or revoked.

History: Laws 2012, ch. 29, § 13 and Laws 2012, ch. 33, § 13.

57-30-2.2. Secondhand metal dealers; registration required; application; fee.

A. A secondhand metal dealer shall not buy or sell regulated material without a valid registration issued by the department.

B. An application for registration shall be completed, under penalty of perjury, on a form designed and provided by the department and shall include:

(1) the full name and business address of the applicant;

(2) a list of all locations at which the applicant engages or will engage in the business of buying or selling regulated material; and

(3) any other information the department may require by rule.

C. An application for registration or for renewal of a registration shall be accompanied by a nonrefundable application fee in an amount not to exceed twenty-five dollars ($25.00).

History: Laws 2012, ch. 29, § 14 and Laws 2012, ch. 33, § 14.

57-30-2.3. Duties of secondhand metal dealers.

A. A secondhand metal dealer shall:

(1) maintain a valid registration, issued by the department, and comply with the requirements of the Sale of Recycled Metals Act and rules promulgated pursuant to that act;

(2) comply with all federal requirements for scrap metal dealers, including maintaining storm water permits;

(3) register for the metal theft alert system, maintained by the institute of scrap recycling industries or its successor organization; and

(4) keep all employees who are involved in the purchasing or receiving of regulated material apprised of alerts received on theft of regulated material in the geographic area.

B. A secondhand metal dealer who becomes aware that the dealer is in possession of regulated material that was stolen or unlawfully obtained shall not remove the material from the dealer's premises and shall report the same to a local law enforcement agency within twenty-four hours.

History: Laws 2012, ch. 29, § 15 and Laws 2012, ch. 33, § 15.

57-30-2.4. Restricted transactions; additional documentation required; required record for catalytic converters.

A. A secondhand metal dealer shall not knowingly purchase or otherwise receive any of the following without written documentation indicating that the seller or offeror is the rightful owner or has permission from the rightful owner and that the material was otherwise lawfully obtained:

(1) infrastructure grade regulated material that has been burned to remove insulation, unless the seller can produce written proof that the regulated material was lawfully burned;

(2) regulated material where the manufacturer's make, model, serial or personal identification number or other identifying marks engraved or etched upon the material have been conspicuously removed or altered;

(3) regulated material marked with the name, initials or otherwise identified as the property of an electrical company, a telephone company, a cable company, a water company or other utility company, a railroad or a governmental entity;

(4) a utility access cover;

(5) a water meter cover;

(6) a road or bridge guard rail;

(7) a highway or street sign;

(8) a traffic directional or control sign or signal;

(9) a metal beer keg that is clearly marked as being the property of the beer manufacturer; or

(10) a catalytic converter that is not part of an entire motor vehicle.

B. The department shall promulgate rules that more specifically describe the type of documentation required before a secondhand metal dealer may engage in a transaction described in this section.

C. A secondhand metal dealer shall not purchase or otherwise receive any regulated material that the secondhand metal dealer knows is not lawfully possessed by the person offering to sell or provide the regulated material.

D. A secondhand metal dealer shall not knowingly purchase or otherwise receive a catalytic converter unless:

(1) the seller or offeror presents a personal identification document; and

(2) the secondhand metal dealer makes a record of the transaction, to be maintained for at least three years from the date of the transaction, that shall include:

(a) a photocopy or digital image of the seller's or offeror's personal identification document;

(b) the date and time of the transaction;

(c) the name, address, telephone number and signature of the seller or offeror;

(d) the license plate number and vehicle identification number of the vehicle used to transport the catalytic converter to the secondhand metal dealer, if applicable;

(e) a photocopy or digital image of the legal document or affidavit demonstrating ownership by the seller or offeror; and

(f) photographs of the catalytic converter.

History: Laws 2012, ch. 29, § 16; 2012, ch. 33, § 16; 2022, ch. 56, § 51; 2023, ch. 193, § 1.

57-30-3. Notice to sellers.

A. A secondhand metal dealer shall at all times maintain in a prominent place in the dealer's place of business, in open view to a seller of regulated material, a notice in two-inch lettering that:

(1) includes the following language:

"A PERSON ATTEMPTING TO SELL REGULATED MATERIAL MUST PRESENT SUFFICIENT IDENTIFICATION AS REQUIRED BY STATE LAW.

WARNING: STATE LAW PROVIDES A CIVIL FINE FOR A PERSON WHO INTENTIONALLY PROVIDES A FALSE DOCUMENT OF IDENTIFICATION OR OTHER FALSE INFORMATION TO A SECONDHAND METAL DEALER WHILE ATTEMPTING TO SELL REGULATED MATERIAL."; and

(2) states the secondhand metal dealer's usual business hours.

B. The notice required by this section may be contained on a sign that contains another notice if the secondhand metal dealer is required to display another notice pursuant to applicable law.

History: Laws 2008, ch. 29, § 3.

57-30-4. Information provided by seller.

A. A person attempting to sell regulated material to a secondhand metal dealer shall:

(1) display to the secondhand metal dealer the person's personal identification document;

(2) sign a written statement provided by the secondhand metal dealer that the person is the legal owner of or is lawfully entitled to sell the regulated material offered for sale;

(3) provide to the secondhand metal dealer the year, make, model and license plate number of the motor vehicle used to transport the regulated material; and

(4) allow the secondhand metal dealer to take a photograph of the seller and the regulated material.

B. The secondhand metal dealer or the dealer's agent shall visually verify the accuracy of the personal identification document and vehicle identification presented by the seller at the time of the dealer's purchase of regulated material.

History: Laws 2008, ch. 29, § 4; 2012, ch. 29, § 3; 2012, ch. 33, § 3.

57-30-5. Record of purchase.

A. A secondhand metal dealer in this state shall keep an accurate and legible written record, in a form approved by the department, of each purchase made in the course of the dealer's business of:

(1) copper or brass material;

(2) bronze material;

(3) lead material;

(4) aluminum material in excess of ten pounds; or

(5) steel material in excess of one ton, except that a written record shall be kept of each purchase of a stainless steel beer keg.

B. The record shall be in English and shall include:

(1) the place and date of the purchase;

(2) the name and address of each person from whom the regulated material is purchased or obtained;

(3) the identifying number of the personal identification document of each person from whom the regulated material is purchased or obtained;

(4) the year, make, model and license plate number of the motor vehicle used to transport the regulated material;

(5) a description made in accordance with the custom of the trade of the type and quantity of regulated material purchased;

(6) the statement required by Paragraph (2) of Subsection A of Section 57-30-4 NMSA 1978; and

(7) the written documentation required for certain transactions pursuant to Section 57-30-2.4 NMSA 1978, if applicable.

C. A secondhand metal dealer may take a digital photograph, with a date and time stamp, of:

(1) the seller of the regulated material; and

(2) the regulated material in the form in which it was purchased or obtained by the secondhand metal dealer.

History: Laws 2008, ch. 29, § 5; 2012, ch. 29, § 4; 2012, ch. 33, § 4; 2016, ch. 51, § 2.

57-30-6. Preservation of records.

A secondhand metal dealer shall preserve each record required by Section 57-30-5 NMSA 1978 until the first anniversary of the date the record was made.

History: Laws 2008, ch. 29, § 6; 2012, ch. 29, § 5; 2012, ch. 33, § 5.

57-30-7. Inspection of records by peace officers; holds on property.

A. Upon request, a secondhand metal dealer shall produce to a peace officer during the dealer's usual business hours the requested record of purchase as required by Section 57-30-5 NMSA 1978.

B. If a peace officer determines, through an investigation or examination of the records kept by the secondhand metal dealer, that the dealer may be in possession of stolen property or property that constitutes evidence in a criminal investigation, the peace officer may place a hold on the property prohibiting the sale or removal of the property from the premises. The hold may remain in effect for up to five days or until the hold is lifted or the property is seized, whichever occurs earlier.

C. The inspecting peace officer shall inform the secondhand metal dealer of the person's status as a peace officer.

History: Laws 2008, ch. 29, § 7; 2012, ch. 29, § 6; 2012, ch. 33, § 6.

57-30-8. Furnishing of report to department.

A. As of January 1, 2014, a secondhand metal dealer shall, not later than the second business day after the date of the purchase or other acquisition of regulated material for which a record is required pursuant to Section 57-30-5 NMSA 1978, upload to the database maintained by the department a report containing the information required to be recorded pursuant to that section.

B. A local governmental entity may impose reporting requirements on secondhand metal dealers regarding the purchase or acquisition of catalytic converters but not other regulated material as long as the reporting requirements are no more stringent than the reporting requirements for regulated material pursuant to the provisions of the Sale of Recycled Metals Act.

History: Laws 2008, ch. 29, § 8; 2012, ch. 29, § 7; 2012, ch. 33, § 7; 2023, ch. 193, § 2.

57-30-9. Database.

The department shall establish and maintain an electronic database containing the records required to be preserved pursuant to Section 57-30-6 NMSA 1978, which database shall be accessible to law enforcement agencies and the department. Records received by the department pursuant to Section 57-30-8 NMSA 1978 shall be available in the database by the end of the second business day following receipt by the department.

History: Laws 2008, ch. 29, § 9; 2012, ch. 29, § 8; 2012, ch. 33, § 8.

57-30-10. Powers and duties of superintendent.

The superintendent has authority to promulgate reasonable regulations for the administration and enforcement of the Sale of Recycled Metals Act and is expressly authorized to make regulations regarding records of purchase of regulated material and the database required pursuant to that act.

History: Laws 2008, ch. 29, § 10; 2012, ch. 29, § 9; 2012, ch. 33, § 9.

57-30-11. Waiting period for disposal of regulated material.

A secondhand metal dealer shall not process or permit to be removed from the dealer's premises regulated material until at least twenty-four hours have elapsed since the dealer acquired the regulated material.

History: Laws 2008, ch. 29, § 11; 2012, ch. 29, § 10; 2012, ch. 33, § 10.

57-30-12. Prohibited acts.

A person shall not, with the intent to deceive:

A. display to a secondhand metal dealer a false or invalid personal identification document in connection with the person's attempted sale of regulated material;

B. make a false material statement or representation to a secondhand metal dealer in connection with:

(1) that person's execution of a written statement required by Subsection A of Section 57-30-4 NMSA 1978;

(2) the dealer's efforts to obtain the information required pursuant to Subsection B of Section 57-30-5 NMSA 1978; or

(3) the written documentation required for certain transactions pursuant to Section 16 [57-30-18 NMSA 1978] of this 2012 act; or

C. deliberately remove or alter a manufacturer's make, model, serial or personal identification number or other identifying marks engraved or etched upon property that is regulated material.

History: Laws 2008, ch. 29, § 12; 2012, ch. 29, § 11; 2012, ch. 33, § 11.

57-30-13. Civil penalty; suspension or revocation of registration.

A. A person who violates any provision of the Sale of Recycled Metals Act may be assessed a civil penalty by the superintendent not to exceed one thousand dollars ($1,000) per violation.

B. The superintendent may suspend or revoke the registration of a secondhand metal dealer when the superintendent finds that the dealer has intentionally violated a provision of the Sale of Recycled Metals Act.

C. Prior to the imposition of a civil penalty or the suspension or revocation of a registration, the superintendent shall provide notice and an opportunity to be heard pursuant to the pertinent notice and hearing provisions of the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978].

History: Laws 2008, ch. 29, § 13; 2012, ch. 29, § 12; 2012, ch. 33, § 12.

57-30-14. Applicability.

The provisions of the Sale of Recycled Metals Act shall not apply to a purchase of regulated material from a manufacturing, industrial or other commercial vendor that sells regulated material in the ordinary course of the vendor's business.

History: Laws 2008, ch. 29, § 15.

ARTICLE 31
Distributed Generation Disclosure

57-31-1. Short title.

Sections 1 through 5 [57-31-1 to 57-31-5 NMSA 1978] of this act may be cited as the "Distributed Generation Disclosure Act".

History: Laws 2017, ch. 102, § 1.

57-31-2. Definitions.

As used in the Distributed Generation Disclosure Act:

A. "annual percentage rate" means the cost of credit, expressed as a yearly rate, that relates the amount and timing of value received by the consumer to the amount and timing of payments made;

B. "business day" means any day Monday through Friday, unless such day falls on a legal holiday, in which case "business day" means the next day that is not a Saturday, Sunday or legal holiday;

C. "buyer" means a person that purchases a distributed energy generation system from a seller or marketer and includes a power purchaser;

D. "distributed energy generation system" means a device or system that is used to generate or store electricity, that has an electric delivery capacity, individually or in connection with other similar devices or systems, greater than one kilowatt or one kilowatt-hour, and that is used primarily for on-site consumption, but does not include an electric generator that is intended for occasional use;

E. "energized" means that a distributed energy generation system is installed and operational for its intended purposes of generating or storing electricity;

F. "interconnected" means that a distributed energy generation system is connected to the power grid and is able to transfer electricity to the power grid;

G. "lessee" means a person that leases a distributed energy generation system from the owner of the distributed energy generation system;

H. "person" means an individual person, corporation, trust, partnership, association, cooperative association, club, company, firm, joint venture or syndicate;

I. "power purchaser" means a buyer that agrees to purchase the power generated by a distributed energy generation system from the owner of the distributed energy generation system;

J. "renewable energy certificate" means a certificate or other record, in a format approved by the public regulation commission, that represents all the environmental attributes from one kilowatt-hour of electricity generation from a renewable energy resource; and

K. "seller or marketer" means a person acting through its officers, employees, brokers or agents that markets, sells or solicits the sale or lease of distributed energy generation systems or the sale of power to a power purchaser or negotiates or enters into agreements for the sale or lease of distributed energy generation systems or the sale of power to a power purchaser.

History: Laws 2017, ch. 102, § 2.

57-31-3. Distributed energy generation system disclosures; exception.

A. Beginning thirty days after publication in the New Mexico register of the form disclosure statements issued by the attorney general pursuant to Section 5 [57-31-5 NMSA 1978] of the Distributed Generation Disclosure Act, any agreement governing the financing, sale or lease of a distributed energy generation system, or the sale of power to a power purchaser, shall include a written statement with font no smaller than ten points and no more than four pages, unless a font larger than ten points is used, separate from the agreement and separately signed by the buyer or lessee, that includes the following provisions:

(1) the name, address, telephone number and email address of the buyer or lessee;

(2) the name, address, telephone number, email address and valid state contractor license number of the person responsible for installing the distributed energy generation system;

(3) the name, address, telephone number, email address and a valid state contractor license number of the distributed energy generation system maintenance provider, if different from the person responsible for installing the system;

(4) a provision notifying the buyer or lessee of the right to rescind the agreement for a period ending not less than three business days after the agreement is signed;

(5) a description of the distributed energy generation system design assumptions, including system size, estimated first-year production and estimated annual system production decreases, including the overall percentage degradation over the life of the distributed energy generation system;

(6) a description of any performance guarantees that a seller or marketer may include in an agreement;

(7) the purchase price of the distributed energy generation system, total projected lease or power purchase payments;

(8) a description of any one-time or recurring fees, including the circumstances triggering any late fees, estimated system removal fees, maintenance fees, Uniform Commercial Code [Chapter 55 NMSA 1978] notice removal and refiling fees, internet connection fees and automated clearing house fees;

(9) if the seller is financing or leasing the distributed energy generation system, the total amount financed, the total number of payments, the payment frequency, the amount of the payment expressed in dollars, the payment due dates and the applicable annual percentage rate; except that in the case of financing arrangements subject to state or federal lending disclosure requirements, disclosure of the annual percentage rate shall be made in accordance with the applicable state or federal lending disclosure requirements;

(10) if a seller or marketer uses a tax incentive or rebate in determining the price, a provision identifying each state and federal tax incentive or rebate used;

(11) a description of the ownership and transferability of any tax credits, rebates, incentives or renewable energy certificates in connection with the distributed energy generation system;

(12) a list of the following tax obligations that the buyer may be required to pay or incur as a result of the contract's provisions, including:

(a) the cost of any business personal property taxes assessed on the distributed energy generation system in the event of a power purchase agreement or lease;

(b) gross receipts taxes for any equipment purchased and services rendered;

(c) obligations of the power purchaser or lessee to transfer tax credits or tax incentives of the distributed energy generation system to any other person; and

(d) in the case of a commercial installation, a change in assessed property taxes in the event of a purchase of a distributed energy generation system;

(13) a disclosure regarding whether the warranty or maintenance obligations related to the distributed energy generation system may be sold or transferred to a third party;

(14) a disclosure regarding any restrictions pursuant to the agreement on the buyer's or lessee's ability to modify or transfer ownership of the distributed energy generation system, including whether any modification or transfer is subject to review or approval by a third party and the name, mailing address and telephone number of the entity responsible for approving the modification or transfer, if known to the seller or marketer at the time the agreement is made;

(15) a description of all options available to the buyer or lessee in connection with the continuation, termination or transfer of the agreement between the buyer or lessee and the seller or marketer in the event of the transfer of the real property to which the distributed energy generation system is affixed;

(16) a description of the assumptions used for any savings estimates that were provided to the buyer or lessee;

(17) a disclosure that states: "Actual utility rates may go up or down and actual savings may vary. For further information regarding rates, you may contact your local utility or the public regulation commission. Tax and other state and federal incentives are subject to change.";

(18) a disclosure notifying the buyer or the lessee of transferability of any warranty obligations to subsequent buyers or lessees; and

(19) a disclosure notifying the buyer or lessee that interconnection requirements, including time lines, are established by rules of the public regulation commission and may be obtained from either the public regulation commission or the local utility.

B. The seller or marketer shall provide the buyer or lessee with proof that, within thirty days of completion of installation or modification:

(1) all permits required for the installation or any modification of the distributed energy generation system were obtained prior to installation; and

(2) installation or any modification of the distributed energy generation system received the approval of an inspector authorized by the governmental authority having jurisdiction over the permitting and enforcement authority.

C. In the event that a seller or marketer causes a financing statement to be filed pursuant to the Uniform Commercial Code-Secured Transactions [Chapter 55, Article 9 NMSA 1978], the seller or marketer, or any successor in interest to the seller or marketer, shall provide to the buyer or lessee a copy of the filed financing statement within thirty calendar days of the filing.

D. If a promotional document or sales presentation related to a distributed energy generation system states that the system will result in certain financial savings for the buyer or lessee, the document or sales presentation shall provide the assumptions and calculations used to derive those savings.

E. If a promotional document or sales presentation related to a distributed energy generation system states that the system will result in certain energy savings in terms of production, the document or sales presentation shall provide the assumptions and calculations used to derive those energy savings and any comparative estimates. If historical information is used, it shall be accompanied by the following statement: "Historical data are not necessarily representative of future results.".

History: Laws 2017, ch. 102, § 3.

57-31-4. Additional requirements; exception.

A. Recurring payments under a distributed energy generation system lease or purchase agreement shall not begin until the distributed energy generation system is energized and interconnected.

B. The Distributed Generation Disclosure Act does not apply to an individual or company, acting through its officers, employees, brokers or agents, that markets, sells, solicits, negotiates or enters into an agreement for the sale, financing or lease of a distributed energy generation system as part of a transaction involving the sale or transfer of the real property to which the distributed energy generation system is or will be affixed.

C. The Distributed Generation Disclosure Act does not apply to third-party financial institutions that enter into an agreement for the financing of a distributed energy generation system.

History: Laws 2017, ch. 102, § 4.

57-31-5. Disclosure statement forms.

A. The attorney general shall adopt rules necessary to implement and enforce the provisions of the Distributed Generation Disclosure Act. The attorney general shall, by January 1, 2018, issue form disclosure statements that may be used to provide the disclosures required by the Distributed Generation Disclosure Act for agreements with buyers or lessees.

B. Disclosure statements provided in substantially the form issued by the attorney general shall be regarded as complying with the disclosure statements required by Subsection A of Section 3 [57-31-3 NMSA 1978] of the Distributed Generation Disclosure Act.

History: Laws 2017, ch. 102, § 5.

ARTICLE 32
Patients' Debt Collection Protection

57-32-1. Short title.

Sections 1 through 10 [57-32-1 to 57-32-10 NMSA 1978] of this act may be cited as the "Patients' Debt Collection Protection Act".

History: Laws 2021, ch. 31, § 1.

57-32-2. Definitions.

As used in the Patients' Debt Collection Protection Act:

A. "collection action" means any of the following:

(1) selling a person's medical debt to another party, including a medical debt collector, but not including medical debt as part of the assets and liabilities when selling a health care facility or third-party health care provider; or

(2) actions that require a legal or judicial process, including:

(a) placing a lien on a person's property;

(b) attaching or seizing a person's bank account or any other personal property;

(c) commencing a civil action against a person; or

(d) garnishing a person's wages;

B. "consumer" means a natural person;

C. "department" means the human services department [health care authority department];

D. "health care facility" means:

(1) a health facility required to be licensed by the department of health, except for:

(a) an adult day care facility;

(b) a boarding home not under the control of an institution of higher learning;

(c) a child care center; and

(d) a shelter care home; or

(2) a health facility that is an urgent care center or freestanding emergency room that is required to be licensed by the regulation and licensing department;

E. "health care services" means services for the diagnosis, prevention, treatment, cure or relief of a physical, dental, behavioral or mental health condition, substance use disorder, illness, injury or disease, which services include procedures, products, devices or medications;

F. "household income" means income calculated by using the methods used to calculate medicaid eligibility;

G. "indigent patient" means a patient with a household income that does not exceed two hundred percent of the federal poverty level;

H. "medical creditor" means a person that provides health care services and to whom the consumer owes money for those services or the person that provided health care services and to whom the consumer previously owed money if the medical debt has been purchased by one or more medical debt buyers;

I. "medical debt" means a debt arising from the receipt of health care services;

J. "medical debt buyer" means a person that is engaged in the business of purchasing medical debts for collection purposes, whether that person collects the debt or hires a third party for collection or an attorney for litigation in order to collect such debt;

K. "medical debt collector" means a person that regularly collects or attempts to collect, directly or indirectly, medical debts originally owed or due or asserted to be

owed or due to another person. A medical debt buyer is considered to be a medical debt collector for all purposes of the Patients' Debt Collection Protection Act;

L. "patient" means the person who received health care services or a parent or legal guardian of a minor or an adult under guardianship who received health care services;

M. "superintendent" means the superintendent of insurance; and

N. "third-party health care provider" means a licensed health care professional or an entity with revenues of at least twenty million dollars ($20,000,000) annually, when billing patients independently for health care services provided in a health care facility.

History: Laws 2021, ch. 31, § 2.

57-32-3. Requirement to provide screening for insurance and program eligibility.

A. In addition to any other actions required by applicable state or federal law or local government ordinance, health care facilities shall take the following steps before seeking payment for emergency or medically necessary care:

(1) offer to and, if requested, verify whether a patient has any health insurance;

(2) if the patient is uninsured, offer information about, offer to screen the patient for and, if requested, screen the patient for:

(a) all available public insurance;

(b) any other public programs that may assist with health care costs; and

(c) any financial assistance offered by the health care facility;

(3) offer to and, if requested, provide assistance with the application process for programs identified during the screening; and

(4) if a third-party health care provider will bill the patient, send the information gathered during the steps required pursuant to this subsection to the third-party health care provider.

B. In addition to any other actions required by applicable state or federal law or local government ordinance, a third-party health care provider shall not seek payment for emergency or medically necessary care until the third-party health care provider receives the information required pursuant to Paragraph (4) of Subsection A of this section.

C. The superintendent shall promulgate rules to establish minimum standards governing the requirements of this section and shall provide health care facilities and third-party health care providers with guidance on billing and screening best practices, based on health care facility type and size, that includes policies to prevent the disclosure of patients' personal information to third parties.

History: Laws 2021, ch. 31, § 3.

57-32-4. Indigent patients; patients' debt collection protections.

A. For patients who are determined to be indigent patients, charges for health care services and medical debt shall not be pursued through collection actions. All collection actions through which charges for health care services and medical debt are pursued shall be terminated upon the determination that a patient is an indigent patient. Health care facilities, third-party health care providers and medical creditors shall not hire or otherwise engage third parties to perform collection actions against or otherwise recover debts from indigent patients.

B. The superintendent shall promulgate rules to establish the process by which a patient is determined to be an indigent patient for purposes of this section. The rules shall take into account both permanent and temporary sources of income.

History: Laws 2021, ch. 31, § 4.

57-32-5. Department guidance on funding sources, billing and screening.

The department shall provide health care facilities and third-party health care providers with guidance on accessing available sources of funding for care that maximizes the use of funds in the following order of priority:

A. federal funds;

B. state funds; and

C. other available funds.

History: Laws 2021, ch. 31, § 5.

57-32-6. Billing information.

A. All bills sent from a health care facility, third-party health care provider or medical creditor to a patient shall include a complete and plain-language description of the date, amount and nature of all charges; if the patient is verified as having health insurance; if the health care facility screened the patient for programs that assist with health care

costs; and if the health care facility or third-party health care provider has billed or will bill insurance or public programs that may assist with health care costs for the services provided. Prior to initiating communication with a consumer or a collection action over medical debt, a medical debt collector shall have all billing information required in this subsection as allowed under the provisions of the federal Health Insurance Portability and Accountability Act of 1996.

B. In communications with a consumer about medical debt, including communication related to collection actions, a health care facility, third-party health care provider, medical creditor or medical debt collector shall inform the consumer of the availability of the information required pursuant to Subsection A of this section and offer to provide that information to the consumer; provided that the information required pursuant to this section need only be provided to a requester once every thirty days.

History: Laws 2021, ch. 31, § 6.

57-32-7. Receipts for payments.

A. Within thirty business days of receipt of a payment on a medical debt, the health care facility, third-party health care provider, medical creditor, medical debt collector or their agents receiving the payment shall send a receipt to the person who made the payment. The receipt may take the form of a billing statement. All receipts shall show:

(1) the amount paid;

(2) the date payment was received;

(3) the new balance after application of the payment;

(4) the interest rate and interest accrued since the consumer's last payment;

(5) the consumer's account number;

(6) the name of the current owner of the debt and, if different, the name of the medical creditor; and

(7) whether the payment is accepted as payment in full of the debt.

B. All health care facilities, third-party health care providers, medical creditors and medical debt collectors shall apply payments as of the date payment was received or, if received after business hours, the next business day, and use that date when assessing penalties or interest accumulation.

History: Laws 2021, ch. 31, § 7.

57-32-8. Indigent care reporting requirements.

A. Health care facilities and third-party health care providers shall annually report to the department how the following funds are used:

(1) indigent care funds and safety net care pool funds pursuant to the Indigent Hospital and County Health Care Act [Chapter 27, Article 5 NMSA 1978]; and

(2) funds raised to pay the cost of operating and maintaining county hospitals, pay contracting hospitals in accordance with health care facilities contracts or pay a county's transfer to the county-supported medicaid fund pursuant to the Hospital Funding Act [Chapter 4, Article 48B NMSA 1978].

B. A health care facility's or third-party health care provider's report to the department shall include:

(1) the number of indigent patients whose health care costs were paid directly from the funds described in Subsection A of this section and the total amount of funds expended for these health care costs; and

(2) as applicable, the health care facility's estimated annual amount and percentage of the health care facility's bad debt expense attributable to patients eligible under the health care facility's financial assistance policy and an explanation of the methodology used by the health care facility to estimate this amount and percentage.

C. A health care facility's or third-party health care provider's report shall be available to the public via a link from the homepage of the health care facility's or third-party health care provider's website.

History: Laws 2021, ch. 31, § 8.

57-32-9. Waiver of rights.

A. A consumer shall not be required to exhaust any administrative remedies provided by the provisions of the Patients' Debt Collection Protection Act or other applicable law before seeking legal or equitable relief.

B. A financial assistance policy or agreement between a patient and a health care facility, third-party health care provider, medical creditor or medical debt collector shall not contain any provision that, prior to a dispute arising, waives or has the practical effect of waiving the rights of a patient to resolve that dispute by obtaining:

(1) injunctive, declaratory or other equitable relief;

(2) multiple or minimum damages as specified by statute;

(3) attorney fees and costs as specified by statute or as available at common law; or

(4) a hearing at which that party can present evidence in person.

C. A provision in a financial assistance policy or other written agreement that violates the provisions of Subsection B of this section is void and unenforceable. A court may refuse to enforce other provisions of the financial assistance policy or other written agreement as equity may require.

D. A waiver by a patient or other consumer of any protection provided by or any right of the patient or other consumer pursuant to the Patients' Debt Collection Protection Act is void and shall not be enforced by any court or any other person.

History: Laws 2021, ch. 31, § 9.

57-32-10. Enforcement.

A. The attorney general shall enforce the provisions of the Patients' Debt Collection Protection Act and shall adopt rules in accordance with that act to provide for the protection of patients and their families and to assist market participants in interpreting that act.

B. The attorney general shall establish a complaint process whereby an aggrieved patient or a member of the public may file a complaint against a health care facility, third-party health care provider, medical creditor or medical debt collector that violates a provision of the Patients' Debt Collection Protection Act. All complaints shall be considered public records pursuant to the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978], with the exception of the complainant's name, address or protected personal identifier information defined in the Inspection of Public Records Act.

History: Laws 2021, ch. 31, § 10.