

2006 New Mexico Statutes - Section 57-12-6 — Misrepresentation of motor vehicles; penalty. Section 57-12-10 – Private Remedies. Section 57-12-11 – Civil Penalty. Section 57-12-13 -- Regulations

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 [Chapter 57, Article 12 NMSA 1978], 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.

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.

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 [Chapter 57, Article 12 NMSA 1978], 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.

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 [Chapter 57, Article 12 NMSA 1978].