

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.

The 1991 amendment, effective June 14, 1991, in Subsection A, added the language beginning with "unless the alleged misrepresentation" at the end of the first sentence and added the second sentence; added Subsections C and E; redesignated Subsection C as Subsection D and Subsection D as Subsection F;

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and made a minor stylistic change in Subsection B.

The 1995 amendment, effective June 16, 1995, substituted "Subsections C and D of this section" for "this subsection" in the introductory paragraph of Subsection B; in Subsection C, substituted the language beginning "the flat rate manual" for "the vehicle is a new vehicle and the cost of the alteration or chassis repair is less than three hundred dollars (\$300)" and deleted the former second sentence, defining "new vehicle"; and deleted "to another private party" following "vehicle" and "private" following "purchasing" in Subsection D.

Unfair Practices Act. - See 57-12-1 NMSA 1978 and notes thereto.

"Altered" construed. - Within the context of Subsection B, goods are "altered" if, as measured against the reasonable expectations of the consumer, the characteristics or value of the motor vehicle are affected in a meaningful way. *Hale v. Basin Motor Co.*, 110 N.M. 314, 795 P.2d 1006 (1990).

"Due to wreck damage" construed. - The phrase "due to wreck damage" in Subsection B(2) modifies only "chassis repair" and not "alteration." *Hale v. Basin Motor Co.*, 110 N.M. 314, 795 P.2d 1006 (1990).

Alteration found. - Evidence showing that right front fender was replaced, right door frame was straightened, holes were drilled in the door panel to pull out a dent, sheet metal in the damaged area was ground down and resurfaced with body filler, and the damaged area was repainted was sufficient to support finding that vehicle was altered within the meaning of Subsection B. *Hale v. Basin Motor Co.*, 110 N.M. 314, 795 P.2d 1006 (1990).

Law reviews. - For article, "Consumer Class Actions Under the New Mexico Unfair Practices Act," see 4 N.M. L. Rev. 49 (1973).