



August 23, 2012

NEW MEXICO ATTORNEY GENERAL TO REPEAL RULE ON NEGOTIATING A SALE IN A LANGUAGE OTHER THAN ENGLISH

The New Mexico Attorney General recently stated its intention to repeal its rule on Negotiating a Sale in a Language other than English, N.M. Admin. Code § 12.2.9, pending further review. The notice of repeal will be filed and formally effective August 30, 2012. We understand the NMAG will not take any action under the authority of the rule pending its formal repeal.

Currently, the rule requires a seller to furnish a buyer with a summary translation of any receipt or contract pertaining to the sale of goods or services at the time of its execution that is in the same language as that principally used in the oral sales presentation or negotiations. Failure to do so is an unfair and deceptive business trade practice under New Mexico's Unfair Practices Act. The stated objective of the rule is to deter unfair and deceptive practices that result in economic harm to consumers in transactions that are negotiated in a language other than English and are finalized in an English-written agreement without a translation of the material terms and conditions in the same language used in the oral sales presentation or negotiations. In August of 2011, the NMAG issued a letter regarding the scope and interpretation of the rule, clarifying that the rule applies to (i) the collection of debts and (ii) any and all forms of businesses, including banks, engaging in trade or commerce in New Mexico.

In May of 2012, the NMAG had proposed amending the rule to require, among other things, a person engaging in a business transaction in New Mexico that principally uses a language other than English and executes an English language written agreement, to furnish the consumer with a written summary of the material terms and conditions of the parties' agreement at the time of its execution, translated in the same language as that principally used in the transaction. The proposed stated objective of the rule is to provide a guide to any person that offers, solicits the purchase of, and sells or leases goods and services in New Mexico, or that extends credit, or that engages in the collection of debts, where the language principally used in the transaction is not English. Additionally, the rule is intended to deter unfair and deceptive or unconscionable trade

practices in New Mexico in transactions that are presented, negotiated, discussed or conducted where the language principally used is a language other than English, but that are finalized in an English language written document. The proposed rule would have defined "material terms and conditions" to mean those terms and conditions to which a reasonable person would attach importance in making his or her choice of action regarding a transaction, or that the business or its agent, employee or representative knows or has reason to know that the consumer regards, or is likely to regard, as important in determining his or her choice of action in the transaction.

Although the New Mexico rule is being repealed, persons conducting business in English and other languages may nonetheless be regulated by other laws that specifically require translations of English-language documents under certain circumstances and/or federal and state statutes prohibiting unfair and deceptive acts and practices. *See, e.g.,* Cal. Civ. Code § 1632 (regarding disclosures required with respect to contracts negotiated primarily in specified languages other than English). □

✦ *Margaret Stolar and Charles Gall*

Darrell L. Dreher
ddreher@dtlaw.com

Judith M. Scheiderer
jscheiderer@dtlaw.com

Elizabeth L. Anstaett
eanstaett@dtlaw.com

Charles V. Gall
cgall@dtlaw.com

Susan L. Ostrander
sostrander@dtlaw.com

DREHER TOMKIES SCHEIDERER LLP

2750 Huntington Center

41 S. High Street

Columbus, Ohio 43215

Telephone: (614) 628-8000 Facsimile: (614) 628-1600

WWW.DTLAW.COM

To see all previously sent ALERTS, visit our website at www.dtlaw.com

To decline future ALERTS, please contact us at ALERTS@DTLAW.COM. This ALERT has been prepared for informational purposes only. It does not constitute legal advice and does not create an attorney-client relationship.

Michael C. Tomkies
mtomkies@dtlaw.com

Margaret M. Stolar
mstolar@dtlaw.com

Robin R. De Leo
robin@dreher-la.com

Vanessa A. Nelson
vnelson@dtlaw.com

Kathleen L. Caress
kcaress@dtlaw.com