

By: Martinez Fischer

H.B. No. 1826

A BILL TO BE ENTITLED

AN ACT

relating to the deceptive trade practice of charging exorbitant or excessive prices for necessities during a declared disaster.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 17.45, Business & Commerce Code, is amended by adding Subdivisions (18) and (19) to read as follows:

(18) "Disinfectant cleaning supplies" includes sanitizing wipes, sanitizing spray, hand sanitizer, and bleach products.

(19) "Personal protective equipment" includes disposable gloves, face shields, face masks, and surgical masks.

SECTION 2. Section 17.46(b), Business & Commerce Code, as amended by Chapters 324 (S.B. 1488), 858 (H.B. 2552), and 967 (S.B. 2065), Acts of the 85th Legislature, Regular Session, 2017, is reenacted and amended to read as follows:

(b) Except as provided in Subsection (d) of this section, the term "false, misleading, or deceptive acts or practices" includes, but is not limited to, the following acts:

(1) passing off goods or services as those 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,

1 another;

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

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

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

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

15 (8) disparaging the goods, services, or business of
16 another by false or misleading representation of facts;

17 (9) advertising goods or services with intent not to
18 sell them as advertised;

19 (10) advertising goods or services with intent not to
20 supply a reasonable expectable public demand, unless the
21 advertisements disclosed a limitation of quantity;

22 (11) making false or misleading statements of fact
23 concerning the reasons for, existence of, or amount of price
24 reductions;

25 (12) representing that an agreement confers or
26 involves rights, remedies, or obligations which it does not have or
27 involve, or which are prohibited by law;

1 (13) knowingly making false or misleading statements
2 of fact concerning the need for parts, replacement, or repair
3 service;

4 (14) misrepresenting the authority of a salesman,
5 representative or agent to negotiate the final terms of a consumer
6 transaction;

7 (15) basing a charge for the repair of any item in
8 whole or in part on a guaranty or warranty instead of on the value of
9 the actual repairs made or work to be performed on the item without
10 stating separately the charges for the work and the charge for the
11 warranty or guaranty, if any;

12 (16) disconnecting, turning back, or resetting the
13 odometer of any motor vehicle so as to reduce the number of miles
14 indicated on the odometer gauge;

15 (17) advertising of any sale by fraudulently
16 representing that a person is going out of business;

17 (18) advertising, selling, or distributing a card
18 which purports to be a prescription drug identification card issued
19 under Section [4151.152](#), Insurance Code, in accordance with rules
20 adopted by the commissioner of insurance, which offers a discount
21 on the purchase of health care goods or services from a third party
22 provider, and which is not evidence of insurance coverage, unless:

23 (A) the discount is authorized under an agreement
24 between the seller of the card and the provider of those goods and
25 services or the discount or card is offered to members of the
26 seller;

27 (B) the seller does not represent that the card

1 provides insurance coverage of any kind; and

2 (C) the discount is not false, misleading, or
3 deceptive;

4 (19) using or employing a chain referral sales plan in
5 connection with the sale or offer to sell of goods, merchandise, or
6 anything of value, which uses the sales technique, plan,
7 arrangement, or agreement in which the buyer or prospective buyer
8 is offered the opportunity to purchase merchandise or goods and in
9 connection with the purchase receives the seller's promise or
10 representation that the buyer shall have the right to receive
11 compensation or consideration in any form for furnishing to the
12 seller the names of other prospective buyers if receipt of the
13 compensation or consideration is contingent upon the occurrence of
14 an event subsequent to the time the buyer purchases the merchandise
15 or goods;

16 (20) representing that a guaranty or warranty confers
17 or involves rights or remedies which it does not have or involve,
18 provided, however, that nothing in this subchapter shall be
19 construed to expand the implied warranty of merchantability as
20 defined in Sections 2.314 through 2.318 and Sections 2A.212 through
21 2A.216 to involve obligations in excess of those which are
22 appropriate to the goods;

23 (21) promoting a pyramid promotional scheme, as
24 defined by Section 17.461;

25 (22) representing that work or services have been
26 performed on, or parts replaced in, goods when the work or services
27 were not performed or the parts replaced;

1 (23) filing suit founded upon a written contractual
2 obligation of and signed by the defendant to pay money arising out
3 of or based on a consumer transaction for goods, services, loans, or
4 extensions of credit intended primarily for personal, family,
5 household, or agricultural use in any county other than in the
6 county in which the defendant resides at the time of the
7 commencement of the action or in the county in which the defendant
8 in fact signed the contract; provided, however, that a violation of
9 this subsection shall not occur where it is shown by the person
10 filing such suit that the person neither knew or had reason to know
11 that the county in which such suit was filed was neither the county
12 in which the defendant resides at the commencement of the suit nor
13 the county in which the defendant in fact signed the contract;

14 (24) failing to disclose information concerning goods
15 or services which was known at the time of the transaction if such
16 failure to disclose such information was intended to induce the
17 consumer into a transaction into which the consumer would not have
18 entered had the information been disclosed;

19 (25) using the term "corporation," "incorporated," or
20 an abbreviation of either of those terms in the name of a business
21 entity that is not incorporated under the laws of this state or
22 another jurisdiction;

23 (26) selling, offering to sell, or illegally promoting
24 an annuity contract under Chapter 22, Acts of the 57th Legislature,
25 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil
26 Statutes), with the intent that the annuity contract will be the
27 subject of a salary reduction agreement, as defined by that Act, if

1 the annuity contract is not an eligible qualified investment under
2 that Act or is not registered with the Teacher Retirement System of
3 Texas as required by Section 8A of that Act;

4 (27) subject to Section 17.4625, taking advantage of a
5 disaster declared by the governor under Chapter 418, Government
6 Code, or by the president of the United States by:

7 (A) selling or leasing fuel, food, medicine,
8 lodging, building materials, construction tools, disinfectant
9 cleaning supplies, personal protective equipment, or another
10 necessity at an exorbitant or excessive price; or

11 (B) demanding an exorbitant or excessive price in
12 connection with the sale or lease of fuel, food, medicine, lodging,
13 building materials, construction tools, disinfectant cleaning
14 supplies, personal protective equipment, or another necessity;

15 (28) using the translation into a foreign language of
16 a title or other word, including "attorney," "immigration
17 consultant," "immigration expert," "lawyer," "licensed," "notary,"
18 and "notary public," in any written or electronic material,
19 including an advertisement, a business card, a letterhead,
20 stationery, a website, or an online video, in reference to a person
21 who is not an attorney in order to imply that the person is
22 authorized to practice law in the United States;

23 (29) delivering or distributing a solicitation in
24 connection with a good or service that:

25 (A) represents that the solicitation is sent on
26 behalf of a governmental entity when it is not; or

27 (B) resembles a governmental notice or form that

1 represents or implies that a criminal penalty may be imposed if the
2 recipient does not remit payment for the good or service;

3 (30) delivering or distributing a solicitation in
4 connection with a good or service that resembles a check or other
5 negotiable instrument or invoice, unless the portion of the
6 solicitation that resembles a check or other negotiable instrument
7 or invoice includes the following notice, clearly and conspicuously
8 printed in at least 18-point type:

9 "SPECIMEN-NON-NEGOTIABLE";

10 (31) in the production, sale, distribution, or
11 promotion of a synthetic substance that produces and is intended to
12 produce an effect when consumed or ingested similar to, or in excess
13 of, the effect of a controlled substance or controlled substance
14 analogue, as those terms are defined by Section 481.002, Health and
15 Safety Code:

16 (A) making a deceptive representation or
17 designation about the synthetic substance; or

18 (B) causing confusion or misunderstanding as to
19 the effects the synthetic substance causes when consumed or
20 ingested;

21 (32) a licensed public insurance adjuster directly or
22 indirectly soliciting employment, as defined by Section 38.01,
23 Penal Code, for an attorney, or a licensed public insurance
24 adjuster entering into a contract with an insured for the primary
25 purpose of referring the insured to an attorney without the intent
26 to actually perform the services customarily provided by a licensed
27 public insurance adjuster, provided that this subdivision may not

1 be construed to prohibit a licensed public insurance adjuster from
2 recommending a particular attorney to an insured; [~~or~~]

3 (33) owning, operating, maintaining, or advertising a
4 massage establishment, as defined by Section 455.001, Occupations
5 Code, that:

6 (A) is not appropriately licensed under Chapter
7 455, Occupations Code, or is not in compliance with the applicable
8 licensing and other requirements of that chapter; or

9 (B) is not in compliance with an applicable local
10 ordinance relating to the licensing or regulation of massage
11 establishments; or

12 (34) a warrantor of a vehicle protection product
13 warranty using, in connection with the product, a name that
14 includes "casualty," "surety," "insurance," "mutual," or any other
15 word descriptive of an insurance business, including property or
16 casualty insurance, or a surety business.

17 SECTION 3. To the extent of any conflict, this Act prevails
18 over another Act of the 87th Legislature, Regular Session, 2021,
19 relating to nonsubstantive additions to and corrections in enacted
20 codes.

21 SECTION 5. The changes in law made by this Act apply only to
22 an act or practice that occurs on or after the effective date of
23 this Act. An act or practice that occurs before the effective date
24 of this Act is governed by the law in effect on the date the act or
25 practice occurred, and the former law is continued in effect for
26 that purpose.

27 SECTION 6. This Act takes effect September 1, 2021.