

By: Kolkhorst

H.B. No. 2392

A BILL TO BE ENTITLED

AN ACT

relating to actions brought under the Deceptive Trade Practices-Consumer Protection Act; providing penalties.

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

SECTION 1. Section 17.47, Business & Commerce Code, is amended by amending Subsection (c) and (d) and adding Subsection (g) to read as follows:

(c) In addition to the request for a temporary restraining order, or permanent injunction in a proceeding brought under Subsection (a) ~~[of this section]~~, the consumer protection division may request, and the trier of fact may award:

(1) a civil penalty to be paid to the state in an amount of ~~[÷~~

~~[(1)]~~ not less than \$1,000 or more than \$20,000 ~~[\$2,000]~~ per violation~~[, not to exceed a total of \$10,000]; and [or]~~

(2) ~~[not more than \$10,000 per violation, not to exceed a total of \$100,000,]~~ if ~~[the consumer protection division determines that]~~ the act or practice that is the subject of the proceeding was calculated to acquire or deprive money or other property from a consumer who was 65 years of age or older when the act or practice occurred, an additional civil penalty to be paid to the state in an amount of not more than \$100,000 per violation.

(d) The attorney general, acting in the public interest, may request or the court may make such additional orders or judgments as

are necessary to compensate identifiable persons for actual damages or to restore money or property, real or personal, which may have been acquired by means of any unlawful act or practice. Damages may not include any damages incurred beyond a point two years prior to the institution of the action by the consumer protection division. Orders of the court may also include the appointment of a receiver or a sequestration of assets if a person who has been ordered by a court to make restitution under this section has failed to do so within three months after the order to make restitution has become final and nonappealable.

(g) The attorney general, by bringing an action under this chapter, acts in the name of the state and does not establish an attorney-client relationship with any person or persons, including any person to whom the attorney general asks the court to award relief.

SECTION 2. Section 17.505, Business & Commerce Code, is amended by adding Subsections (f) and (g) to read as follows:

(f) A person filing a class action suit under Section 17.50 shall give notice of the suit to the attorney general by sending the attorney general, by registered or certified mail:

(1) a copy of any notice required by Subsection (a), at the same time notice is given to the person against whom the suit is filed; and

(2) a true copy of the petition not later than the 30th day after the date the petition is filed and not later than the 10th day before a hearing on class certification or proposed settlement in the action.

1 (g) The attorney general, as a representative of the public,
2 may intervene in a class action suit filed under Section 17.50 by
3 filing a notice of intervention with the court before which the
4 action is pending and serving copies of the notice on all parties to
5 the action. The court shall abate the suit for 60 days if the court
6 finds that notice was not provided to the attorney general as
7 required by Subsection (f).

8 SECTION 3. The change in law made by this Act to Subsection
9 (c), Section 17.47, Business & Commerce Code, applies only to a
10 cause of action that accrues on or after the effective date of this
11 Act. A cause of action that accrues before the effective date of
12 this Act is governed by the law as it existed immediately before the
13 effective date of this Act, and that law is continued in effect for
14 that purpose.

15 SECTION 4. The change in law made by this Act to Section
16 17.505, Business & Commerce Code, applies only to a class action
17 suit filed under Section 17.50, Business & Commerce Code, on or
18 after the effective date of this Act. A class action suit filed
19 before the effective date of this Act is governed by the law as it
20 existed immediately before the effective date of this Act, and that
21 law is continued in effect for that purpose.

22 SECTION 5. This Act takes effect September 1, 2003.