

By: Averitt

S.B. No. 803

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to a deceptive trade practice of taking advantage of a  
3 disaster or abnormal disruption of the market.

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

5 SECTION 1. Section 17.46, Business & Commerce Code, is  
6 amended by amending Subsection (b) and adding Subsection (e) to  
7 read as follows:

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

11 (1) passing off goods or services as those of another;

12 (2) causing confusion or misunderstanding as to the  
13 source, sponsorship, approval, or certification of goods or  
14 services;

15 (3) causing confusion or misunderstanding as to  
16 affiliation, connection, or association with, or certification by,  
17 another;

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

20 (5) representing that goods or services have  
21 sponsorship, approval, characteristics, ingredients, uses,  
22 benefits, or quantities which they do not have or that a person has  
23 a sponsorship, approval, status, affiliation, or connection which  
24 he does not;

1           (6) representing that goods are original or new if  
2 they are deteriorated, reconditioned, reclaimed, used, or  
3 secondhand;

4           (7) representing that goods or services are of a  
5 particular standard, quality, or grade, or that goods are of a  
6 particular style or model, if they are of another;

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

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

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

14           (11) making false or misleading statements of fact  
15 concerning the reasons for, existence of, or amount of price  
16 reductions;

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

20           (13) knowingly making false or misleading statements  
21 of fact concerning the need for parts, replacement, or repair  
22 service;

23           (14) misrepresenting the authority of a salesman,  
24 representative or agent to negotiate the final terms of a consumer  
25 transaction;

26           (15) basing a charge for the repair of any item in  
27 whole or in part on a guaranty or warranty instead of on the value of

1 the actual repairs made or work to be performed on the item without  
2 stating separately the charges for the work and the charge for the  
3 warranty or guaranty, if any;

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

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

9 (18) advertising, selling, or distributing a card  
10 which purports to be a prescription drug identification card issued  
11 under Section 19A, Article 21.07-6, Insurance Code, in accordance  
12 with rules adopted by the commissioner of insurance, which offers a  
13 discount on the purchase of health care goods or services from a  
14 third party provider, and which is not evidence of insurance  
15 coverage, unless:

16 (A) the discount is authorized under an agreement  
17 between the seller of the card and the provider of those goods and  
18 services or the discount or card is offered to members of the  
19 seller;

20 (B) the seller does not represent that the card  
21 provides insurance coverage of any kind; and

22 (C) the discount is not false, misleading, or  
23 deceptive;

24 (19) using or employing a chain referral sales plan in  
25 connection with the sale or offer to sell of goods, merchandise, or  
26 anything of value, which uses the sales technique, plan,  
27 arrangement, or agreement in which the buyer or prospective buyer

1 is offered the opportunity to purchase merchandise or goods and in  
2 connection with the purchase receives the seller's promise or  
3 representation that the buyer shall have the right to receive  
4 compensation or consideration in any form for furnishing to the  
5 seller the names of other prospective buyers if receipt of the  
6 compensation or consideration is contingent upon the occurrence of  
7 an event subsequent to the time the buyer purchases the merchandise  
8 or goods;

9 (20) representing that a guarantee or warranty confers  
10 or involves rights or remedies which it does not have or involve,  
11 provided, however, that nothing in this subchapter shall be  
12 construed to expand the implied warranty of merchantability as  
13 defined in Sections 2.314 through 2.318 and Sections 2A.212 through  
14 2A.216 to involve obligations in excess of those which are  
15 appropriate to the goods;

16 (21) promoting a pyramid promotional scheme, as  
17 defined by Section 17.461;

18 (22) representing that work or services have been  
19 performed on, or parts replaced in, goods when the work or services  
20 were not performed or the parts replaced;

21 (23) filing suit founded upon a written contractual  
22 obligation of and signed by the defendant to pay money arising out  
23 of or based on a consumer transaction for goods, services, loans, or  
24 extensions of credit intended primarily for personal, family,  
25 household, or agricultural use in any county other than in the  
26 county in which the defendant resides at the time of the  
27 commencement of the action or in the county in which the defendant

1 in fact signed the contract; provided, however, that a violation of  
2 this subsection shall not occur where it is shown by the person  
3 filing such suit he neither knew or had reason to know that the  
4 county in which such suit was filed was neither the county in which  
5 the defendant resides at the commencement of the suit nor the county  
6 in which the defendant in fact signed the contract;

7 (24) failing to disclose information concerning goods  
8 or services which was known at the time of the transaction if such  
9 failure to disclose such information was intended to induce the  
10 consumer into a transaction into which the consumer would not have  
11 entered had the information been disclosed;

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

16 (26) selling, offering to sell, or illegally promoting  
17 an annuity contract under Chapter 22, Acts of the 57th Legislature,  
18 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil  
19 Statutes), with the intent that the annuity contract will be the  
20 subject of a salary reduction agreement, as defined by that Act, if  
21 the annuity contract is not an eligible qualified investment under  
22 that Act; or

23 (27) taking advantage of a disaster declared by the  
24 governor under Chapter 418, Government Code, or of an abnormal  
25 disruption of the market by:

26 (A) selling or leasing fuel, food, medicine, or  
27 another necessity at an exorbitant or excessive price; or

1 (B) demanding an exorbitant or excessive price in  
2 connection with the sale or lease of fuel, food, medicine, or  
3 another necessity.

4 (e) For the purposes of Subsection (b)(27) of this section:

5 (1) it is prima facie evidence that a price is  
6 exorbitant or excessive if the price grossly exceeds the price  
7 charged for the same or a similar necessity:

8 (A) by the defendant in the usual course of  
9 business immediately before the beginning of the disaster or  
10 abnormal disruption of the market; or

11 (B) by other sellers or lessors of goods or  
12 services in the trade area; and

13 (2) the defendant may rebut prima facie evidence under  
14 Subdivision (1) of this subsection by showing that additional costs  
15 in connection with the necessity that were not in the defendant's  
16 control were imposed on the defendant.

17 SECTION 2. This Act takes effect immediately if it receives  
18 a vote of two-thirds of all the members elected to each house, as  
19 provided by Section 39, Article III, Texas Constitution. If this  
20 Act does not receive the vote necessary for immediate effect, this  
21 Act takes effect September 1, 2005.