

By: Smithee

H.B. No. 3357

A BILL TO BE ENTITLED

1 AN ACT

2 relating to defining as a deceptive trade practice representing the
3 franchise tax as a fee, charge, reimbursement, or other item on an
4 invoice or mailing to a consumer.

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

6 SECTION 1. Section 17.46(b), Business & Commerce Code, is
7 amended to 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 4151.152, Insurance Code, in accordance with rules
12 adopted by the commissioner of insurance, which offers a discount
13 on the purchase of health care goods or services from a third party
14 provider, and which is not evidence of insurance coverage, unless:

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (27) taking advantage of a disaster declared by the
23 governor under Chapter 418, Government Code, by:

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

26 (B) demanding an exorbitant or excessive price in
27 connection with the sale or lease of fuel, food, medicine, or

1 another necessity; or

2 (28) for an entity that is subject to the franchise tax
3 imposed under Chapter 171, Tax Code, representing, directly or by
4 implication, a fee, charge, assessment, reimbursement, or other
5 similar item on an invoice or in a mailing or other communication to
6 a consumer as a mandated charge or assessment related to the tax, as
7 full or partial reimbursement for the tax, or as a pass-through of
8 all or part of the tax, provided that any action under this
9 subsection may be brought only by the Attorney General.

10 SECTION 2. This Act takes effect immediately if it receives
11 a vote of two-thirds of all the members elected to each house, as
12 provided by Section 39, Article III, Texas Constitution. If this
13 Act does not receive the vote necessary for immediate effect, this
14 Act takes effect September 1, 2007.