

By: Leibowitz

H.B. No. 3101

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the deceptive trade practice of charging for certain
3 preventable adverse health care events.

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

5 SECTION 1. Section 17.46(b), Business & Commerce Code, is
6 amended to read as follows:

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

- 10 (1) passing off goods or services as those of another;
- 11 (2) causing confusion or misunderstanding as to the
12 source, sponsorship, approval, or certification of goods or
13 services;
- 14 (3) causing confusion or misunderstanding as to
15 affiliation, connection, or association with, or certification by,
16 another;
- 17 (4) using deceptive representations or designations
18 of geographic origin in connection with goods or services;
- 19 (5) representing that goods or services have
20 sponsorship, approval, characteristics, ingredients, uses,
21 benefits, or quantities which they do not have or that a person has
22 a sponsorship, approval, status, affiliation, or connection which
23 he does not;
- 24 (6) representing that goods are original or new if

1 they are deteriorated, reconditioned, reclaimed, used, or
2 secondhand;

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

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

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

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

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

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

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

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

25 (15) basing a charge for the repair of any item in
26 whole or in part on a guaranty or warranty instead of on the value of
27 the actual repairs made or work to be performed on the item without

1 stating separately the charges for the work and the charge for the
2 warranty or guaranty, if any;

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

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

8 (18) advertising, selling, or distributing a card
9 which purports to be a prescription drug identification card issued
10 under Section 4151.152, Insurance Code, in accordance with rules
11 adopted by the commissioner of insurance, which offers a discount
12 on the purchase of health care goods or services from a third party
13 provider, and which is not evidence of insurance coverage, unless:

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

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

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

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

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

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

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

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

19 (23) filing suit founded upon a written contractual
20 obligation of and signed by the defendant to pay money arising out
21 of or based on a consumer transaction for goods, services, loans, or
22 extensions of credit intended primarily for personal, family,
23 household, or agricultural use in any county other than in the
24 county in which the defendant resides at the time of the
25 commencement of the action or in the county in which the defendant
26 in fact signed the contract; provided, however, that a violation of
27 this subsection shall not occur where it is shown by the person

1 filing such suit he neither knew or had reason to know that the
2 county in which such suit was filed was neither the county in which
3 the defendant resides at the commencement of the suit nor the county
4 in which the defendant in fact signed the contract;

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

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

14 (26) selling, offering to sell, or illegally promoting
15 an annuity contract under Chapter 22, Acts of the 57th Legislature,
16 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil
17 Statutes), with the intent that the annuity contract will be the
18 subject of a salary reduction agreement, as defined by that Act, if
19 the annuity contract is not an eligible qualified investment under
20 that Act or is not registered with the Teacher Retirement System of
21 Texas as required by Section 8A of 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) an act of a health care provider resulting in a
3 preventable adverse event, as described by Section 17.463.

4 SECTION 2. Subchapter E, Chapter 17, Business & Commerce
5 Code, is amended by adding Section 17.463 to read as follows:

6 Sec. 17.463. PREVENTABLE ADVERSE HEALTH CARE EVENT. (a) In
7 this section:

8 (1) "Health care provider" means a person or facility
9 licensed, certified, or otherwise authorized by the laws of this
10 state to administer health care, for profit or otherwise, in the
11 ordinary course of business or professional practice.

12 (2) "Serious disability" means:

13 (A) a physical or mental impairment that
14 substantially limits one or more major life activities of an
15 individual such as seeing, hearing, speaking, walking, or
16 breathing, or a loss of a bodily function, if the impairment or loss
17 lasts more than seven days or is still present at the time of
18 discharge from an inpatient health care facility; or

19 (B) loss of a body part.

20 (3) "Serious injury" means a bodily injury that
21 results in:

22 (A) death;

23 (B) permanent and serious impairment of an
24 important bodily function; or

25 (C) permanent and significant disfigurement.

26 (b) For purposes of this section, a preventable adverse
27 health care event is any of the following events that occur during

1 the provision of a health care service by a health care provider to
2 a patient:

3 (1) surgery performed on the wrong body part that is
4 not consistent with the documented informed consent for that
5 patient, excluding a situation requiring prompt action that occurs
6 in the course of surgery or an urgent situation that precludes
7 obtaining informed consent;

8 (2) surgery performed on the wrong patient;

9 (3) the wrong surgical procedure performed on the
10 patient that is not consistent with the documented informed consent
11 for that patient, excluding a situation requiring prompt action
12 that occurs in the course of surgery or an urgent situation that
13 precludes obtaining informed consent;

14 (4) the unintended retention of a foreign object in
15 the patient after surgery or another procedure;

16 (5) death during or immediately after surgery if the
17 patient would be classified as a normal, healthy patient under
18 guidelines published by a national association of
19 anesthesiologists;

20 (6) death or serious disability caused by the use of a
21 contaminated drug, device, or biologic provided by a health care
22 provider if the contamination is the result of a generally
23 detectable contaminant in drugs, devices, or biologics, regardless
24 of the source of the contamination or product;

25 (7) an infant being discharged from a health care
26 facility to the wrong person;

27 (8) death or serious disability associated with the

1 patient's disappearance from a health care facility for more than
2 four hours, excluding the death or serious disability of an adult
3 patient who has decision-making capacity;

4 (9) abduction of the patient from a health care
5 facility;

6 (10) sexual assault of the patient within or on the
7 grounds of a health care facility; and

8 (11) death or serious injury resulting from a physical
9 assault of the patient that occurs within or on the grounds of a
10 health care facility.

11 (c) Notwithstanding any other law, an action which alleges a
12 claim to relief under Section 17.50 of this subchapter in relation
13 to a preventable adverse event is not a health care liability claim
14 subject to Chapter 74, Civil Practice and Remedies Code. In an
15 action described by this subsection, the consumer bringing the
16 claim for relief is not required to demonstrate that the consumer
17 relied on the preventable adverse event to the consumer's
18 detriment.

19 SECTION 3. The change in law made by this Act applies only
20 to a cause of action that accrues on or after the effective date of
21 this Act. A cause of action that accrues before the effective date
22 of this Act is governed by the law in effect immediately before that
23 date, and that law is continued in effect for that purpose.

24 SECTION 4. This Act takes effect immediately if it receives
25 a vote of two-thirds of all the members elected to each house, as
26 provided by Section 39, Article III, Texas Constitution. If this
27 Act does not receive the vote necessary for immediate effect, this

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1 Act takes effect September 1, 2009.