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H.B. No. 8

A BILL TO BE ENTITLED

AN ACT

relating to prohibiting certain private transfer fees and the
preservation of private real property rights; providing penalties.

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

SECTION 1. Chapter 5, Property Code, is amended by adding
Subchapter G to read as follows:

SUBCHAPTER G. CERTAIN PRIVATE TRANSFER FEES PROHIBITED;

PRESERVATION OF PRIVATE REAL PROPERTY RIGHTS

Sec. 5.201. DEFINITIONS. In this subchapter:

(1) "Encumbered property" means all property,
including the property of a subsequent purchaser, subject to the
same private transfer fee obligation.

(2) "Lender" means a lending institution, including a
bank, trust company, banking association, savings and loan
association, mortgage company, investment bank, credit union, life
insurance company, and governmental agency, that customarily
provides financing or an affiliate of a lending institution.

(3) "Payee" means a person who claims the right to
receive or collect a private transfer fee payable under a private
transfer fee obligation and who may or may not have a pecuniary
interest in the obligation.

(4) "Private transfer fee" means an amount of money,
regardless of the method of determining the amount, that is payable
on the transfer of an interest in real property or payable for a

1 right to make or accept a transfer.

2 (5) "Private transfer fee obligation" means an
3 obligation to pay a private transfer fee created under:

4 (A) a declaration or other covenant recorded in
5 the real property records in the county in which the property
6 subject to the private transfer fee obligation is located;

7 (B) a contractual agreement or promise; or

8 (C) an unrecorded contractual agreement or
9 promise.

10 (6) "Subsequent owner" means a person who acquires
11 real property by transfer from a person other than the person who is
12 the seller of the property on the date the private transfer fee
13 obligation is created.

14 (7) "Subsequent purchaser" means a person who
15 purchases real property from a person other than the person who is
16 the seller on the date the private transfer fee obligation is
17 created. The term includes a lender who provides a mortgage loan to
18 a subsequent purchaser to purchase the property.

19 (8) "Transfer" means the sale, gift, conveyance,
20 assignment, inheritance, or other transfer of an ownership interest
21 in real property.

22 Sec. 5.202. CERTAIN PRIVATE TRANSFER FEE OBLIGATIONS VOID.

23 (a) Except as provided by this subchapter, a private transfer fee
24 obligation created on or after the effective date of this
25 subchapter is not binding or enforceable against a subsequent owner
26 or subsequent purchaser of an interest in real property and is void.

27 (b) For purposes of this subchapter, the following payments

1 are not considered private transfer fee obligations:

2 (1) consideration paid by a purchaser to a seller for
3 an interest in real property transferred, including, as applicable,
4 a mineral interest transferred, including additional consideration
5 paid to a seller for the property's appreciation, development, or
6 sale after the interest in the property has been transferred to the
7 purchaser, if the additional consideration is paid only once and
8 that payment does not bind successors in interest to the property to
9 any private transfer fee obligation;

10 (2) a commission paid to a licensed real estate broker
11 under a written agreement between a seller or purchaser and the
12 broker, including an additional commission for the property's
13 appreciation, development, or sale after the interest in property
14 is transferred to the purchaser;

15 (3) interest, a fee, a charge, or another type of
16 payment to a lender under a loan secured by a mortgage on the
17 property, including:

18 (A) a fee payable for the lender's consent to an
19 assumption of the loan or transfer of the property subject to the
20 mortgage;

21 (B) a fee or charge payable for an estoppel
22 letter or certificate;

23 (C) a shared appreciation interest or profit
24 participation; or

25 (D) other consideration payable in connection
26 with the loan;

27 (4) rent, reimbursement, a fee, a charge, or another

1 type of payment to a lessor under a lease, including a fee for
2 consent to an assignment, sublease, encumbrance, or transfer of a
3 lease;

4 (5) consideration paid to the holder of an option to
5 purchase an interest in property, or to the holder of a right of
6 first refusal or first offer to purchase an interest in property,
7 for waiving, releasing, or not exercising the option or right when
8 the property is transferred to another person;

9 (6) a fee payable to or imposed by a governmental
10 entity in connection with recording the transfer of the property;

11 (7) dues, a fee, a charge, an assessment, a fine, a
12 contribution, or another type of payment under a declaration or
13 other covenant or under law, including a fee or charge payable for a
14 change of ownership entered in the records of an association to
15 which this subdivision applies or an estoppel letter or resale
16 certificate issued under Section 207.003 by an association to which
17 this subdivision applies or the person identified under Section
18 209.004(a)(6), provided that no portion of the fee or charge is
19 required to be passed through to a third party designated or
20 identifiable in the declaration or other covenant or law or in a
21 document referenced in the declaration or other covenant or law,
22 unless paid to:

23 (A) an association as defined by Section 82.003
24 or 221.002 or the person or entity managing the association as
25 provided by Section 82.116(a)(5) or 221.032(b)(11), as applicable;

26 (B) a property owners' association as defined by
27 Section 202.001 or 209.002 or the person or entity described by

1 Section 209.004(a)(6); or

2 (C) a property owners' association as defined by
3 Section 202.001 that does not require an owner of property governed
4 by the association to be a member of the association or the person
5 or entity described by Section 209.004(a)(6);

6 (8) dues, a fee, a charge, an assessment, a fine, a
7 contribution, or another type of payment for the transfer of a club
8 membership related to the property;

9 (9) dues, a fee, a charge, an assessment, a fine, a
10 contribution, or another type of payment paid to an organization
11 exempt from federal taxation under Section 501(c)(3) or 501(c)(4),
12 Internal Revenue Code of 1986, only if the organization uses the
13 payments to directly benefit the encumbered property by:

14 (A) supporting or maintaining only the
15 encumbered property;

16 (B) constructing or repairing improvements only
17 to the encumbered property; or

18 (C) providing activities or infrastructure to
19 support quality of life, including cultural, educational,
20 charitable, recreational, environmental, and conservation
21 activities and infrastructure, that directly benefit the
22 encumbered property; or

23 (10) a fee payable to or imposed by the Veterans' Land
24 Board for consent to an assumption or transfer of a contract of sale
25 and purchase.

26 (c) The benefit described by Subsection (b)(9)(C) may
27 collaterally benefit a community composed of:

1 (1) property that is adjacent to the encumbered
2 property; or

3 (2) property a boundary of which is not more than 1,000
4 yards from a boundary of the encumbered property.

5 (d) Notwithstanding Subsection (c), an organization may
6 provide a direct benefit under Subsection (b)(9) if:

7 (1) the organization provides to the general public
8 activities or infrastructure described by Subsection (b)(9)(C);

9 (2) the provision of activities or infrastructure
10 substantially benefits the encumbered property; and

11 (3) the governing body of the organization:

12 (A) is controlled by owners of the encumbered
13 property; and

14 (B) approves payments for activities or
15 infrastructure at least annually.

16 (e) An organization may provide activities and
17 infrastructure described by Subsection (b)(9)(C) to another
18 organization exempt from federal taxation under Section 501(c)(3)
19 or 501(c)(4), Internal Revenue Code of 1986, at no charge for de
20 minimis usage without violating the requirements of this section.

21 Sec. 5.203. NOTICE REQUIREMENTS FOR CONTINUATION OF
22 EXISTING PRIVATE TRANSFER FEE OBLIGATIONS. (a) A person who
23 receives a private transfer fee under a private transfer fee
24 obligation created before the effective date of this subchapter
25 must, on or before January 31, 2012, file for record a "Notice of
26 Private Transfer Fee Obligation" as provided by this section in the
27 real property records of each county in which the property is

1 located.

2 (b) Multiple payees of a single private transfer fee under a
3 private transfer fee obligation must designate one payee as the
4 payee of record for the fee.

5 (c) A notice under Subsection (a) must:

6 (1) be printed in at least 14-point boldface type;

7 (2) state the amount of the private transfer fee and
8 the method of determination, if applicable;

9 (3) state the date or any circumstance under which the
10 private transfer fee obligation expires, if any;

11 (4) state the purpose for which the money from the
12 private transfer fee obligation will be used;

13 (5) notwithstanding Subsection (b), state the name of
14 each payee and each payee's contact information;

15 (6) state the name and address of the payee of record
16 to whom the payment of the fee must be sent;

17 (7) include the acknowledged signature of each payee
18 or authorized representative of each payee; and

19 (8) state the legal description of the property
20 subject to the private transfer fee obligation.

21 (d) A person required to file a notice under this section
22 shall:

23 (1) refile the notice described by this section not
24 earlier than the 30th day before the third anniversary of the
25 original filing date described by Subsection (a) and within a
26 similar 30-day period every third year thereafter; and

27 (2) amend the notice to reflect any change in the name

1 or address of any payee included in the notice not later than the
2 30th day after the date the change occurs.

3 (e) A person who amends a notice under Subsection (d)(2)
4 must include:

5 (1) the recording information of the original notice
6 filed as required by this section; and

7 (2) the legal description of the property subject to
8 the private transfer fee obligation.

9 (f) If a person required to file a notice under this section
10 fails to comply with this section:

11 (1) payment of the private transfer fee may not be a
12 requirement for the conveyance of an interest in the property to a
13 purchaser;

14 (2) the property is not subject to further obligation
15 under the private transfer fee obligation; and

16 (3) the private transfer fee obligation is void.

17 Sec. 5.204. ADDITIONAL COMPLIANCE REQUIREMENT: TIMELY
18 ACCEPTANCE OF FEES PAID UNDER EXISTING PRIVATE TRANSFER FEE
19 OBLIGATIONS. (a) The payee of record on the date a private
20 transfer fee is paid under a private transfer fee obligation
21 subject to Section 5.203 must accept the payment on or before the
22 30th day after the date the payment is tendered to the payee.

23 (b) If the payee of record fails to comply with Subsection
24 (a):

25 (1) the payment must be returned to the remitter;

26 (2) payment of the private transfer fee may not be a
27 requirement for the conveyance of an interest in the property to a

1 purchaser;

2 (3) the property is not subject to further obligation
3 under the private transfer fee obligation; and

4 (4) the private transfer fee obligation is void.

5 Sec. 5.205. DISCLOSURE OF EXISTING TRANSFER FEE OBLIGATION
6 REQUIRED IN CONTRACT FOR SALE. A seller of real property that may
7 be subject to a private transfer fee obligation shall provide
8 written notice to a potential purchaser stating that the obligation
9 may be governed by this subchapter.

10 Sec. 5.206. WAIVER VOID. A provision that purports to waive
11 a purchaser's rights under this subchapter is void.

12 Sec. 5.207. LIABILITY FOR IMPOSING PRIVATE TRANSFER FEE
13 OBLIGATION. A person who imposes or enters into an agreement
14 imposing a private transfer fee obligation in the person's favor in
15 violation of this subchapter is liable for:

16 (1) damages resulting from the imposition of the
17 private transfer fee obligation, including the amount of any
18 private transfer fee paid; and

19 (2) attorney's fees, expenses, and costs incurred in
20 an action to recover the private transfer fee paid or to quiet title
21 to the real property.

22 Sec. 5.208. INJUNCTIVE OR DECLARATORY RELIEF; PROVIDING
23 PENALTIES. (a) The attorney general may institute an action for
24 injunctive or declaratory relief to restrain a violation of this
25 subchapter.

26 (b) In addition to instituting an action for injunctive or
27 declaratory relief under Subsection (a), the attorney general may

1 institute an action for civil penalties against a payee for a
2 violation of this chapter. Except as provided by Subsection (c), a
3 civil penalty assessed under this section may not exceed an amount
4 equal to two times the amount of the private transfer fee charged or
5 collected by the payee in violation of this subchapter.

6 (c) If the court in which an action under Subsection (b) is
7 pending finds that a payee violated this subchapter with a
8 frequency that constitutes a pattern or practice, the court may
9 assess a civil penalty not to exceed \$250,000.

10 (d) The comptroller shall deposit to the credit of the
11 general revenue fund all money collected under this section.

12 Sec. 5.209. DECEPTIVE TRADE PRACTICE. A person commits a
13 false, misleading, or deceptive act or practice within the meaning
14 of Section 17.46, Business & Commerce Code, by violating this
15 subchapter.

16 Sec. 5.210. PROPERTY OWNERS' ASSOCIATION COVENANTS
17 RELATING TO PRIVATE TRANSFER FEE OBLIGATIONS. (a) In this section:

18 (1) "Dedictory instrument," "property owners'
19 association," and "restrictive covenant" have the meanings
20 assigned by Section 202.001.

21 (2) "Development period" means a period stated in a
22 dedictory instrument during which a declarant reserves a right to:

23 (A) facilitate the development, construction,
24 and marketing of a subdivision; and

25 (B) direct the size, shape, and composition of
26 the subdivision.

27 (b) A restrictive covenant requiring a private transfer fee

1 obligation is void, unless the covenant is amended in accordance
2 with Subsections (c) and (d), if the covenant does not comply with a
3 rule or regulation regarding qualification of subdivision property
4 for an insured or guaranteed mortgage loan that is adopted by the
5 United States Department of Housing and Urban Development, Consumer
6 Financial Protection Bureau, Federal Housing Finance Agency,
7 United States Department of Veterans Affairs, Texas Veterans' Land
8 Board, or other federal or state agency, as applicable.

9 (c) A restrictive covenant requiring a private transfer fee
10 obligation may be amended to comply with a rule or regulation
11 described by Subsection (b) by:

12 (1) a developer or builder during the development
13 period; or

14 (2) the governing body of a property owners'
15 association.

16 (d) An amendment under Subsection (c) must:

17 (1) specifically reference this section;

18 (2) indicate that the amendment is adopted under
19 authority of this section; and

20 (3) be filed in the real property records of the county
21 in which the property is located.

22 SECTION 2. Section 17.46(b), Business & Commerce Code, is
23 amended to read as follows:

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

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

1 (2) causing confusion or misunderstanding as to the
2 source, sponsorship, approval, or certification of goods or
3 services;

4 (3) causing confusion or misunderstanding as to
5 affiliation, connection, or association with, or certification by,
6 another;

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

9 (5) representing that goods or services have
10 sponsorship, approval, characteristics, ingredients, uses,
11 benefits, or quantities which they do not have or that a person has
12 a sponsorship, approval, status, affiliation, or connection which
13 he does not;

14 (6) representing that goods are original or new if
15 they are deteriorated, reconditioned, reclaimed, used, or
16 secondhand;

17 (7) representing that goods or services are of a
18 particular standard, quality, or grade, or that goods are of a
19 particular style or model, if they are of another;

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

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

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

27 (11) making false or misleading statements of fact

1 concerning the reasons for, existence of, or amount of price
2 reductions;

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

6 (13) knowingly making false or misleading statements
7 of fact concerning the need for parts, replacement, or repair
8 service;

9 (14) misrepresenting the authority of a salesman,
10 representative or agent to negotiate the final terms of a consumer
11 transaction;

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

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

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

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

1 (A) the discount is authorized under an agreement
2 between the seller of the card and the provider of those goods and
3 services or the discount or card is offered to members of the
4 seller;

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

7 (C) the discount is not false, misleading, or
8 deceptive;

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

21 (20) representing that a guarantee or warranty confers
22 or involves rights or remedies which it does not have or involve,
23 provided, however, that nothing in this subchapter shall be
24 construed to expand the implied warranty of merchantability as
25 defined in Sections 2.314 through 2.318 and Sections 2A.212 through
26 2A.216 to involve obligations in excess of those which are
27 appropriate to the goods;

1 (21) promoting a pyramid promotional scheme, as
2 defined by Section 17.461;

3 (22) representing that work or services have been
4 performed on, or parts replaced in, goods when the work or services
5 were not performed or the parts replaced;

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

19 (24) failing to disclose information concerning goods
20 or services which was known at the time of the transaction if such
21 failure to disclose such information was intended to induce the
22 consumer into a transaction into which the consumer would not have
23 entered had the information been disclosed;

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

1 (26) selling, offering to sell, or illegally promoting
2 an annuity contract under Chapter 22 (S.B. 17), Acts of the 57th
3 Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's
4 Texas Civil Statutes), with the intent that the annuity contract
5 will be the subject of a salary reduction agreement, as defined by
6 that Act, if the annuity contract is not an eligible qualified
7 investment under that Act or is not registered with the Teacher
8 Retirement System of Texas as required by Section 8A of that Act;
9 [~~or~~]

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

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

14 (B) demanding an exorbitant or excessive price in
15 connection with the sale or lease of fuel, food, medicine, or
16 another necessity; or

17 (28) receiving a private transfer fee in violation of
18 Subchapter G, Chapter 5, Property Code.

19 SECTION 3. Section 5.017, Property Code, is repealed.

20 SECTION 4. Section 5.205, Property Code, as added by this
21 Act, applies only to a contract for the sale of real property
22 entered into on or after January 1, 2012. A contract for the sale of
23 real property entered into before January 1, 2012, is governed by
24 the law in effect immediately before the effective date of this Act,
25 and the former law is continued in effect for that purpose.

26 SECTION 5. This Act takes effect immediately if it receives
27 a vote of two-thirds of all the members elected to each house, as

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1 provided by Section 39, Article III, Texas Constitution. If this
2 Act does not receive the vote necessary for immediate effect, this
3 Act takes effect September 1, 2011.