

By: Darby, Geren, Anderson of Dallas, Pitts,
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H.B. No. 8

Substitute the following for H.B. No. 8:

By: Quintanilla

C.S.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 is not binding or enforceable against a subsequent owner
25 or subsequent purchaser of an interest in real property and is void.

26 (b) For purposes of this subchapter, the following payments
27 are not considered private transfer fee obligations:

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

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

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

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

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

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

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

26 (4) rent, reimbursement, a fee, a charge, or another
27 type of payment to a lessor under a lease, including a fee for

consent to an assignment, sublease, encumbrance, or transfer of a lease;

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

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

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

(A) an association as defined by Section 82.003 or 221.002;

(B) a property owners' association as defined by Section 202.001 or 209.002; or

(C) a property owners' association as defined by Section 202.001 that does not require an owner of property governed

by the association to be a member of the association;

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

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

(A) supporting or maintaining only the encumbered property;

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

(C) providing activities or infrastructure to support quality of life, including cultural, educational, charitable, recreational, environmental, and conservation activities and infrastructure, that benefit only the encumbered property.

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

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

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

(d) An organization may provide a direct benefit under Subsection (b)(9) if the organization provides activities or infrastructure as described by Subsection (b)(9)(C) to the general

public for a fee. The organization may provide activities and infrastructure as described by Subsection (b)(9)(C) to another organization exempt from federal taxation under Section 501(c)(3) or 501(c)(4), Internal Revenue Code of 1986, at no charge for de minimis usage without violating the requirements of this section.

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

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

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

- (1) be printed in at least 14-point boldface type;
- (2) state the amount of the private transfer fee and the method of determination, if applicable;
- (3) state the date or any circumstance under which the private transfer fee obligation expires, if any;
- (4) state the purpose for which the money from the private transfer fee obligation will be used;
- (5) notwithstanding Subsection (b), state the name of each payee and each payee's contact information;
- (6) state the name and address of the payee of record

1 to whom the payment of the fee must be sent;

2 (7) include the acknowledged signature of each payee
3 or authorized representative of each payee; and

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

6 (d) A person required to file a notice under this section
7 shall:

8 (1) refile the notice described by this section on or
9 before January 31 of each year in which a private transfer fee may
10 be collected or received; and

11 (2) amend the notice to reflect any change in the name
12 or address of any payee included in the notice not later than the
13 30th day after the date the change occurs.

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

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

18 (2) the legal description of the property subject to
19 the private transfer fee obligation.

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

22 (1) payment of the private transfer fee may not be a
23 requirement for the conveyance of an interest in the property to a
24 purchaser;

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

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

1 Sec. 5.204. ADDITIONAL COMPLIANCE REQUIREMENT: TIMELY
2 ACCEPTANCE OF FEES PAID UNDER EXISTING PRIVATE TRANSFER FEE
3 OBLIGATIONS. (a) The payee of record on the date a private
4 transfer fee is paid under a private transfer fee obligation
5 subject to Section 5.203 must accept the payment on or before the
6 30th day after the date the payment is made.

7 (b) If the payee of record fails to comply with Subsection
8 (a):

9 (1) the payment must be returned to the purchaser;

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

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

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

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

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

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

27 (1) damages resulting from the imposition of the

private transfer fee obligation, including the amount of any private transfer fee paid; and

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

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

(b) In addition to instituting an action for injunctive or declaratory relief under Subsection (a), the attorney general may institute an action for civil penalties against a payee for a violation of this chapter. Except as provided by Subsection (c), a civil penalty assessed under this section may not exceed an amount equal to two times the amount of the private transfer fee charged or collected by the payee in violation of this subchapter.

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

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

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

SECTION 2. Section 17.46(b), Business & Commerce Code, is

1 amended to read as follows:

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

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

6 (2) causing confusion or misunderstanding as to the
7 source, sponsorship, approval, or certification of goods or
8 services;

9 (3) causing confusion or misunderstanding as to
10 affiliation, connection, or association with, or certification by,
11 another;

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

14 (5) representing that goods or services have
15 sponsorship, approval, characteristics, ingredients, uses,
16 benefits, or quantities which they do not have or that a person has
17 a sponsorship, approval, status, affiliation, or connection which
18 he does not;

19 (6) representing that goods are original or new if
20 they are deteriorated, reconditioned, reclaimed, used, or
21 secondhand;

22 (7) representing that goods or services are of a
23 particular standard, quality, or grade, or that goods are of a
24 particular style or model, if they are of another;

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

27 (9) advertising goods or services with intent not to

1 sell them as advertised;

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

5 (11) making false or misleading statements of fact
6 concerning the reasons for, existence of, or amount of price
7 reductions;

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

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

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

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

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

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

27 (18) advertising, selling, or distributing a card

1 which purports to be a prescription drug identification card issued
2 under Section 4151.152, Insurance Code, in accordance with rules
3 adopted by the commissioner of insurance, which offers a discount
4 on the purchase of health care goods or services from a third party
5 provider, and which is not evidence of insurance coverage, unless:

6 (A) the discount is authorized under an agreement
7 between the seller of the card and the provider of those goods and
8 services or the discount or card is offered to members of the
9 seller;

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

12 (C) the discount is not false, misleading, or
13 deceptive;

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

26 (20) representing that a guarantee or warranty confers
27 or involves rights or remedies which it does not have or involve,

1 provided, however, that nothing in this subchapter shall be
2 construed to expand the implied warranty of merchantability as
3 defined in Sections 2.314 through 2.318 and Sections 2A.212 through
4 2A.216 to involve obligations in excess of those which are
5 appropriate to the goods;

6 (21) promoting a pyramid promotional scheme, as
7 defined by Section 17.461;

8 (22) representing that work or services have been
9 performed on, or parts replaced in, goods when the work or services
10 were not performed or the parts replaced;

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

24 (24) failing to disclose information concerning goods
25 or services which was known at the time of the transaction if such
26 failure to disclose such information was intended to induce the
27 consumer into a transaction into which the consumer would not have

entered had the information been disclosed;

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

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

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

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

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

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

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

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this

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1 Act does not receive the vote necessary for immediate effect, this
2 Act takes effect September 1, 2011.