

By: Madden

H.B. No. 2846

Substitute the following for H.B. No. 2846:

By: Workman

C.S.H.B. No. 2846

A BILL TO BE ENTITLED

AN ACT

relating to certain procedures and civil penalties under the Deceptive Trade Practices-Consumer Protection Act.

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

SECTION 1. Sections 17.47(c) and (d), Business & Commerce Code, are amended to read as follows:

(c) In addition to the request for a temporary restraining order, or permanent injunction in a proceeding brought under Subsection (a) of this section, the consumer protection division may request, and the trier of fact may award, a civil penalty to be paid to the state in an amount of:

(1) not more than the lesser of:

(A) \$10,000 [~~\$20,000~~] per violation;

(B) \$10,000 plus three times the amount of actual damages caused by the violations; or

(C) 25 percent of the net worth of the person against whom or which an action under Subsection (a) is brought; and

(2) if the act or practice that is the subject of the proceeding was calculated to acquire or deprive money or other property from a consumer who was 65 years of age or older when the act or practice occurred, an additional amount of not more than \$250,000.

(d) The court may make such additional orders or judgments as are necessary to compensate identified [~~identifiable~~] persons

1 for actual damages or to restore money or property, real or
2 personal, that was [~~which may have been~~] acquired from identified
3 persons by means of any unlawful act or practice. An award under
4 this subsection [~~Damages~~] may not include any damages incurred, or
5 money or property acquired, beyond a point two years prior to the
6 institution of the action by the consumer protection division.
7 Orders of the court may also include the appointment of a receiver
8 or a sequestration of assets if a person [~~who has been ordered by a~~
9 ~~court to make restitution under this section~~] has failed to comply
10 with an order under this subsection [~~do so~~] within three months
11 after the order [~~to make restitution~~] has become final and
12 nonappealable.

13 SECTION 2. Section 17.60, Business & Commerce Code, is
14 amended to read as follows:

15 Sec. 17.60. REPORTS AND EXAMINATIONS. (a) Whenever the
16 consumer protection division has reason to believe that a person is
17 engaging in, has engaged in, or is about to engage in any act or
18 practice declared to be unlawful by this subchapter, or when it
19 reasonably believes it to be in the public interest to conduct an
20 investigation to ascertain whether any person is engaging in, has
21 engaged in, or is about to engage in any such act or practice, an
22 authorized member of the division may issue a directive to:

23 (1) require the person to file on the prescribed forms
24 a statement or report in writing, under oath or otherwise, as to all
25 the facts and circumstances concerning the alleged violation and
26 such other data and information as the consumer protection division
27 deems necessary;

1 (2) examine under oath any person in connection with
2 this alleged violation;

3 (3) examine any merchandise or sample of merchandise
4 deemed necessary and proper; and

5 (4) pursuant to an order of the appropriate court,
6 impound any sample of merchandise that is produced in accordance
7 with this subchapter and retain it in the possession of the division
8 until the completion of all proceedings in connection with which
9 the merchandise is produced.

10 (b) The consumer protection division may not require a
11 person to comply with a directive for action under Subsection
12 (a)(1), (2), or (3) before the 31st day after the date the person is
13 issued the directive.

14 (c) Before the 31st day after the date a person is issued a
15 directive for action under Subsection (a)(1), (2), or (3), the
16 person may file a petition, stating good cause, to extend the period
17 in which the person must comply with the directive or to modify or
18 set aside the directive. The petition may be filed in the district
19 court in the county where the parties reside or a district court of
20 Travis County. The period in which a person may file the petition
21 may be extended by a written agreement between the person and the
22 consumer protection division.

23 (d) A person who files a petition as provided by Subsection
24 (c) shall comply with the directive as ordered by the court.

25 SECTION 3. Section 17.61(g), Business & Commerce Code, is
26 amended to read as follows:

27 (g) At any time before the return date specified in the

1 demand, or within 30 [~~20~~] days after the demand has been served,
2 whichever period is longer [~~shorter~~], a petition to extend the
3 return date for, or to modify or set aside the demand, stating good
4 cause, may be filed in the district court in the county where the
5 parties reside, or a district court of Travis County. The period in
6 which a person may file the petition may be extended by a written
7 agreement between the person and the consumer protection division.
8 A person who files a petition under this subsection shall comply
9 with the demand as ordered by the court.

10 SECTION 4. The changes in law made by this Act apply only to
11 a violation of the Deceptive Trade Practices-Consumer Protection
12 Act that occurs on or after the effective date of this Act. A
13 violation of the Deceptive Trade Practices-Consumer Protection Act
14 that occurs before the effective date of this Act is governed by the
15 law in effect on the date the violation occurred, and the former law
16 is continued in effect for that purpose. For purposes of this
17 section, a violation occurs before the effective date of this Act if
18 any element of the violation occurs before that date.

19 SECTION 5. This Act takes effect September 1, 2011.