

By: Madden

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 \$10,000 [~~\$20,000~~] per violation, not to exceed a total of:

(A) \$250,000, if the person against whom or which an action under Subsection (a) is brought:

(i) has assets of less than \$25 million; and

(ii) is not owned or controlled by a person with assets of \$25 million or more; or

(B) \$1 million, if the person against whom or which an action under Subsection (a) is brought:

(i) has assets of \$25 million or more; or

(ii) is owned or controlled by a person with assets of \$25 million or more; and

(2) if the act or practice that is the subject of the

1 proceeding was calculated to acquire or deprive money or other
2 property from a consumer who was 65 years of age or older when the
3 act or practice occurred, an additional civil penalty [~~amount~~] of
4 not more than \$250,000.

5 (d) The court may make such additional orders or judgments
6 as are necessary to compensate identified [~~identifiable~~] persons
7 for actual damages or to restore money or property, real or
8 personal, which may have been acquired by means of any unlawful act
9 or practice. Damages may not include any damages incurred beyond a
10 point two years prior to the institution of the action by the
11 consumer protection division. Orders of the court may also include
12 the appointment of a receiver or a sequestration of assets if a
13 person who has been ordered by a court to make restitution under
14 this section has failed to do so within three months after the order
15 to make restitution has become final and nonappealable.

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

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

26 (1) require the person to file on the prescribed forms
27 a statement or report in writing, under oath or otherwise, as to all

1 the facts and circumstances concerning the alleged violation and
2 such other data and information as the consumer protection division
3 deems necessary;

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

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

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

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

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

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

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

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

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

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