

By: Wu, Murphy, Alvarado, Ashby, Villalba,
et al.

H.B. No. 1265

A BILL TO BE ENTITLED

1 AN ACT

2 relating to a deceptive act or practice involving a solicitation in
3 connection with a good or service.

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 quaranty [~~guarantee~~] or
8 warranty confers or involves rights or remedies which it does not
9 have or involve, provided, however, that nothing in this subchapter
10 shall be construed to expand the implied warranty
11 of merchantability as defined in Sections 2.314 through 2.318 and
12 Sections 2A.212 through 2A.216 to involve obligations in excess of
13 those which are 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) in the production, sale, distribution, or
3 promotion of a synthetic substance that produces and is intended to
4 produce an effect when consumed or ingested similar to, or in excess
5 of, the effect of a controlled substance or controlled substance
6 analogue, as those terms are defined by Section 481.002, Health and
7 Safety Code:

8 (A) making a deceptive representation or
9 designation about the synthetic substance; or

10 (B) causing confusion or misunderstanding as to
11 the effects the synthetic substance causes when consumed or
12 ingested.

13 (30) A public adjuster license holder may not directly
14 or indirectly solicit, as described by Chapter 38, Penal Code,
15 employment for an attorney or enter into a contract with an insured
16 for the primary purpose of referring an insured to an attorney and
17 without the intent to actually perform the services customarily
18 provided by a licensed public insurance adjuster. This section may
19 not be construed to prohibit a license holder from recommending a
20 particular attorney to an insured.

21 SECTION 2. The change in law made by this Act applies only
22 to a cause of action that accrues on or after the effective date of
23 this Act. A cause of action that accrued before the effective date
24 of this Act is governed by the law in effect immediately before the
25 effective date of this Act, and that law is continued in effect for
26 that purpose.

27 SECTION 3. This Act takes effect September 1, 2015.