

1-1 By: Wu, et al. (Senate Sponsor - Eltife) H.B. No. 1265
 1-2 (In the Senate - Received from the House May 18, 2015;
 1-3 May 19, 2015, read first time and referred to Committee on State
 1-4 Affairs; May 21, 2015, rereferred to Committee on Business and
 1-5 Commerce; May 24, 2015, reported adversely, with favorable
 1-6 Committee Substitute by the following vote: Yeas 6, Nays 0;
 1-7 May 24, 2015, sent to printer.)

1-8 COMMITTEE VOTE

| | Yea | Nay | Absent | PNV |
|------|-----|-----|--------|-----|
| 1-9 | | | | |
| 1-10 | X | | | |
| 1-11 | X | | | |
| 1-12 | X | | | |
| 1-13 | | | X | |
| 1-14 | | | X | |
| 1-15 | X | | | |
| 1-16 | | | X | |
| 1-17 | X | | | |
| 1-18 | X | | | |

1-19 COMMITTEE SUBSTITUTE FOR H.B. No. 1265 By: Eltife

1-20 A BILL TO BE ENTITLED
 1-21 AN ACT

1-22 relating to a deceptive act or practice involving a solicitation in
 1-23 connection with a good or service or involving the production,
 1-24 sale, distribution, or promotion of certain synthetic substances.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. Section 17.46(b), Business & Commerce Code, is
 1-27 amended to read as follows:

1-28 (b) Except as provided in Subsection (d) of this section,
 1-29 the term "false, misleading, or deceptive acts or practices"
 1-30 includes, but is not limited to, the following acts:

1-31 (1) passing off goods or services as those of another;

1-32 (2) causing confusion or misunderstanding as to the
 1-33 source, sponsorship, approval, or certification of goods or
 1-34 services;

1-35 (3) causing confusion or misunderstanding as to
 1-36 affiliation, connection, or association with, or certification by,
 1-37 another;

1-38 (4) using deceptive representations or designations
 1-39 of geographic origin in connection with goods or services;

1-40 (5) representing that goods or services have
 1-41 sponsorship, approval, characteristics, ingredients, uses,
 1-42 benefits, or quantities which they do not have or that a person has
 1-43 a sponsorship, approval, status, affiliation, or connection which
 1-44 he does not;

1-45 (6) representing that goods are original or new if
 1-46 they are deteriorated, reconditioned, reclaimed, used, or
 1-47 secondhand;

1-48 (7) representing that goods or services are of a
 1-49 particular standard, quality, or grade, or that goods are of a
 1-50 particular style or model, if they are of another;

1-51 (8) disparaging the goods, services, or business of
 1-52 another by false or misleading representation of facts;

1-53 (9) advertising goods or services with intent not to
 1-54 sell them as advertised;

1-55 (10) advertising goods or services with intent not to
 1-56 supply a reasonable expectable public demand, unless the
 1-57 advertisements disclosed a limitation of quantity;

1-58 (11) making false or misleading statements of fact
 1-59 concerning the reasons for, existence of, or amount of price
 1-60 reductions;

- 2-1 (12) representing that an agreement confers or
2-2 involves rights, remedies, or obligations which it does not have or
2-3 involve, or which are prohibited by law;
- 2-4 (13) knowingly making false or misleading statements
2-5 of fact concerning the need for parts, replacement, or repair
2-6 service;
- 2-7 (14) misrepresenting the authority of a salesman,
2-8 representative or agent to negotiate the final terms of a consumer
2-9 transaction;
- 2-10 (15) basing a charge for the repair of any item in
2-11 whole or in part on a guaranty or warranty instead of on the value of
2-12 the actual repairs made or work to be performed on the item without
2-13 stating separately the charges for the work and the charge for the
2-14 warranty or guaranty, if any;
- 2-15 (16) disconnecting, turning back, or resetting the
2-16 odometer of any motor vehicle so as to reduce the number of miles
2-17 indicated on the odometer gauge;
- 2-18 (17) advertising of any sale by fraudulently
2-19 representing that a person is going out of business;
- 2-20 (18) advertising, selling, or distributing a card
2-21 which purports to be a prescription drug identification card issued
2-22 under Section 4151.152, Insurance Code, in accordance with rules
2-23 adopted by the commissioner of insurance, which offers a discount
2-24 on the purchase of health care goods or services from a third party
2-25 provider, and which is not evidence of insurance coverage, unless:
- 2-26 (A) the discount is authorized under an agreement
2-27 between the seller of the card and the provider of those goods and
2-28 services or the discount or card is offered to members of the
2-29 seller;
- 2-30 (B) the seller does not represent that the card
2-31 provides insurance coverage of any kind; and
- 2-32 (C) the discount is not false, misleading, or
2-33 deceptive;
- 2-34 (19) using or employing a chain referral sales plan in
2-35 connection with the sale or offer to sell of goods, merchandise, or
2-36 anything of value, which uses the sales technique, plan,
2-37 arrangement, or agreement in which the buyer or prospective buyer
2-38 is offered the opportunity to purchase merchandise or goods and in
2-39 connection with the purchase receives the seller's promise or
2-40 representation that the buyer shall have the right to receive
2-41 compensation or consideration in any form for furnishing to the
2-42 seller the names of other prospective buyers if receipt of the
2-43 compensation or consideration is contingent upon the occurrence of
2-44 an event subsequent to the time the buyer purchases the merchandise
2-45 or goods;
- 2-46 (20) representing that a guaranty [~~guarantee~~] or
2-47 warranty confers or involves rights or remedies which it does not
2-48 have or involve, provided, however, that nothing in this subchapter
2-49 shall be construed to expand the implied warranty
2-50 of merchantability as defined in Sections 2.314 through 2.318 and
2-51 Sections 2A.212 through 2A.216 to involve obligations in excess of
2-52 those which are appropriate to the goods;
- 2-53 (21) promoting a pyramid promotional scheme, as
2-54 defined by Section 17.461;
- 2-55 (22) representing that work or services have been
2-56 performed on, or parts replaced in, goods when the work or services
2-57 were not performed or the parts replaced;
- 2-58 (23) filing suit founded upon a written contractual
2-59 obligation of and signed by the defendant to pay money arising out
2-60 of or based on a consumer transaction for goods, services, loans, or
2-61 extensions of credit intended primarily for personal, family,
2-62 household, or agricultural use in any county other than in the
2-63 county in which the defendant resides at the time of the
2-64 commencement of the action or in the county in which the defendant
2-65 in fact signed the contract; provided, however, that a violation of
2-66 this subsection shall not occur where it is shown by the person
2-67 filing such suit he neither knew or had reason to know that the
2-68 county in which such suit was filed was neither the county in which
2-69 the defendant resides at the commencement of the suit nor the county

3-1 in which the defendant in fact signed the contract;
3-2 (24) failing to disclose information concerning goods
3-3 or services which was known at the time of the transaction if such
3-4 failure to disclose such information was intended to induce the
3-5 consumer into a transaction into which the consumer would not have
3-6 entered had the information been disclosed;

3-7 (25) using the term "corporation," "incorporated," or
3-8 an abbreviation of either of those terms in the name of a business
3-9 entity that is not incorporated under the laws of this state or
3-10 another jurisdiction;

3-11 (26) selling, offering to sell, or illegally promoting
3-12 an annuity contract under Chapter 22, Acts of the 57th Legislature,
3-13 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil
3-14 Statutes), with the intent that the annuity contract will be the
3-15 subject of a salary reduction agreement, as defined by that Act, if
3-16 the annuity contract is not an eligible qualified investment under
3-17 that Act or is not registered with the Teacher Retirement System of
3-18 Texas as required by Section 8A of that Act; [✗]

3-19 (27) taking advantage of a disaster declared by the
3-20 governor under Chapter 418, Government Code, by:

3-21 (A) selling or leasing fuel, food, medicine, or
3-22 another necessity at an exorbitant or excessive price; or

3-23 (B) demanding an exorbitant or excessive price in
3-24 connection with the sale or lease of fuel, food, medicine, or
3-25 another necessity;

3-26 (28) delivering or distributing a solicitation in
3-27 connection with a good or service that:

3-28 (A) represents that the solicitation is sent on
3-29 behalf of a governmental entity when it is not; or

3-30 (B) resembles a governmental notice or form that
3-31 represents or implies that a criminal penalty may be imposed if the
3-32 recipient does not remit payment for the good or service;

3-33 (29) delivering or distributing a solicitation in
3-34 connection with a good or service that resembles a check or other
3-35 negotiable instrument or invoice, unless the portion of the
3-36 solicitation that resembles a check or other negotiable instrument
3-37 or invoice includes the following notice, clearly and conspicuously
3-38 printed in at least 18-point type:

3-39 "SPECIMEN-NON-NEGOTIABLE";

3-40 (30) in the production, sale, distribution, or
3-41 promotion of a synthetic substance that produces and is intended to
3-42 produce an effect when consumed or ingested similar to, or in excess
3-43 of, the effect of a controlled substance or controlled substance
3-44 analogue, as those terms are defined by Section 481.002, Health and
3-45 Safety Code:

3-46 (A) making a deceptive representation or
3-47 designation about the synthetic substance; or

3-48 (B) causing confusion or misunderstanding as to
3-49 the effects the synthetic substance causes when consumed or
3-50 ingested; or

3-51 (31) a licensed public insurance adjuster directly or
3-52 indirectly soliciting employment, as defined by Section 38.01,
3-53 Penal Code, for an attorney, or a licensed public insurance
3-54 adjuster entering into a contract with an insured for the primary
3-55 purpose of referring the insured to an attorney without the intent
3-56 to actually perform the services customarily provided by a licensed
3-57 public insurance adjuster, provided that this subdivision may not
3-58 be construed to prohibit a licensed public insurance adjuster from
3-59 recommending a particular attorney to an insured.

3-60 SECTION 2. The change in law made by this Act applies only
3-61 to a cause of action that accrues on or after the effective date of
3-62 this Act. A cause of action that accrued before the effective date
3-63 of this Act is governed by the law in effect immediately before the
3-64 effective date of this Act, and that law is continued in effect for
3-65 that purpose.

3-66 SECTION 3. This Act takes effect September 1, 2015.

3-67 * * * * *