

By: Muñoz, Jr.

H.B. No. 296

A BILL TO BE ENTITLED

1 AN ACT
2 relating to a deceptive act or practice related to the sale,
3 marketing, packaging, or advertising of nitrous oxide.

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

5 SECTION 1. Section 17.46(b), Business & Commerce Code, as
6 amended by Chapters 1023 (H.B. 1265) and 1080 (H.B. 2573), Acts of
7 the 84th Legislature, Regular Session, 2015, is reenacted and
8 amended to read as follows:

9 (b) Except as provided in Subsection (d) of this section,
10 the term "false, misleading, or deceptive acts or practices"
11 includes, but is not limited to, the following acts:

12 (1) passing off goods or services as those of another;
13 (2) causing confusion or misunderstanding as to the
14 source, sponsorship, approval, or certification of goods or
15 services;

16 (3) causing confusion or misunderstanding as to
17 affiliation, connection, or association with, or certification by,
18 another;

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

21 (5) representing that goods or services have
22 sponsorship, approval, characteristics, ingredients, uses,
23 benefits, or quantities which they do not have or that a person has
24 a sponsorship, approval, status, affiliation, or connection which

1 the person does not;

2 (6) representing that goods are original or new if
3 they are deteriorated, reconditioned, reclaimed, used, or
4 secondhand;

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

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

10 (9) advertising goods or services with intent not to
11 sell them as advertised;

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

15 (11) making false or misleading statements of fact
16 concerning the reasons for, existence of, or amount of price
17 reductions;

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

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

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

27 (15) basing a charge for the repair of any item in

1 whole or in part on a guaranty or warranty instead of on the value of
2 the actual repairs made or work to be performed on the item without
3 stating separately the charges for the work and the charge for the
4 warranty or guaranty, if any;

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

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

10 (18) advertising, selling, or distributing a card
11 which purports to be a prescription drug identification card issued
12 under Section [4151.152](#), Insurance Code, in accordance with rules
13 adopted by the commissioner of insurance, which offers a discount
14 on the purchase of health care goods or services from a third party
15 provider, and which is not evidence of insurance coverage, unless:

16 (A) the discount is authorized under an agreement
17 between the seller of the card and the provider of those goods and
18 services or the discount or card is offered to members of the
19 seller;

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

22 (C) the discount is not false, misleading, or
23 deceptive;

24 (19) using or employing a chain referral sales plan in
25 connection with the sale or offer to sell of goods, merchandise, or
26 anything of value, which uses the sales technique, plan,
27 arrangement, or agreement in which the buyer or prospective buyer

1 is offered the opportunity to purchase merchandise or goods and in
2 connection with the purchase receives the seller's promise or
3 representation that the buyer shall have the right to receive
4 compensation or consideration in any form for furnishing to the
5 seller the names of other prospective buyers if receipt of the
6 compensation or consideration is contingent upon the occurrence of
7 an event subsequent to the time the buyer purchases the merchandise
8 or goods;

9 (20) representing that a guaranty or warranty confers
10 or involves rights or remedies which it does not have or involve,
11 provided, however, that nothing in this subchapter shall be
12 construed to expand the implied warranty of merchantability as
13 defined in Sections 2.314 through 2.318 and Sections 2A.212 through
14 2A.216 to involve obligations in excess of those which are
15 appropriate to the goods;

16 (21) promoting a pyramid promotional scheme, as
17 defined by Section [17.461](#);

18 (22) representing that work or services have been
19 performed on, or parts replaced in, goods when the work or services
20 were not performed or the parts replaced;

21 (23) filing suit founded upon a written contractual
22 obligation of and signed by the defendant to pay money arising out
23 of or based on a consumer transaction for goods, services, loans, or
24 extensions of credit intended primarily for personal, family,
25 household, or agricultural use in any county other than in the
26 county in which the defendant resides at the time of the
27 commencement of the action or in the county in which the defendant

1 in fact signed the contract; provided, however, that a violation of
2 this subsection shall not occur where it is shown by the person
3 filing such suit that the person neither knew or had reason to know
4 that the county in which such suit was filed was neither the county
5 in which the defendant resides at the commencement of the suit nor
6 the county in which the defendant in fact signed the contract;

7 (24) failing to disclose information concerning goods
8 or services which was known at the time of the transaction if such
9 failure to disclose such information was intended to induce the
10 consumer into a transaction into which the consumer would not have
11 entered had the information been disclosed;

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

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

24 (27) taking advantage of a disaster declared by the
25 governor under Chapter [418](#), Government Code, by:

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

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

4 (28) using the translation into a foreign language of
5 a title or other word, including "attorney," "lawyer," "licensed,"
6 "notary," and "notary public," in any written or electronic
7 material, including an advertisement, a business card, a
8 letterhead, stationery, a website, or an online video, in reference
9 to a person who is not an attorney in order to imply that the person
10 is authorized to practice law in the United States;

11 (29) [~~(28)~~] delivering or distributing a solicitation
12 in connection with a good or service that:

13 (A) represents that the solicitation is sent on
14 behalf of a governmental entity when it is not; or

15 (B) resembles a governmental notice or form that
16 represents or implies that a criminal penalty may be imposed if the
17 recipient does not remit payment for the good or service;

18 (30) [~~(29)~~] delivering or distributing a solicitation
19 in connection with a good or service that resembles a check or other
20 negotiable instrument or invoice, unless the portion of the
21 solicitation that resembles a check or other negotiable instrument
22 or invoice includes the following notice, clearly and conspicuously
23 printed in at least 18-point type:

24 "SPECIMEN-NON-NEGOTIABLE";

25 (31) [~~(30)~~] in the production, sale, distribution, or
26 promotion of a synthetic substance that produces and is intended to
27 produce an effect when consumed or ingested similar to, or in excess

1 of, the effect of a controlled substance or controlled substance
2 analogue, as those terms are defined by Section 481.002, Health and
3 Safety Code:

4 (A) making a deceptive representation or
5 designation about the synthetic substance; or

6 (B) causing confusion or misunderstanding as to
7 the effects the synthetic substance causes when consumed or
8 ingested;

9 (32) in the sale, marketing, packaging, or advertising
10 of nitrous oxide, representing that the nitrous oxide is intended
11 for a purpose or for use other than as:

12 (A) a pesticide subject to Chapter 76,
13 Agriculture Code, or to the Federal Environmental Pesticide Control
14 Act of 1972 (7 U.S.C. Section 136 et seq.);

15 (B) a food, drug, or cosmetic subject to Chapter
16 431 or to the Federal Food, Drug, and Cosmetic Act (21 U.S.C.
17 Section 301 et seq.); or

18 (C) a beverage subject to the Federal Alcohol
19 Administration Act (27 U.S.C. Section 201 et seq.); or

20 (33) [~~31~~] a licensed public insurance adjuster
21 directly or indirectly soliciting employment, as defined by Section
22 38.01, Penal Code, for an attorney, or a licensed public insurance
23 adjuster entering into a contract with an insured for the primary
24 purpose of referring the insured to an attorney without the intent
25 to actually perform the services customarily provided by a licensed
26 public insurance adjuster, provided that this subdivision may not
27 be construed to prohibit a licensed public insurance adjuster from

1 recommending a particular attorney to an insured.

2 SECTION 2. The change in law made by this Act applies only
3 to a cause of action that accrues on or after the effective date of
4 this Act. A cause of action that accrued before the effective date
5 of this Act is governed by the law in effect immediately before the
6 effective date of this Act, and that law is continued in effect for
7 that purpose.

8 SECTION 3. To the extent of any conflict, this Act prevails
9 over another Act of the 85th Legislature, Regular Session, 2017,
10 relating to nonsubstantive additions to and corrections in enacted
11 codes.

12 SECTION 4. This Act takes effect September 1, 2017.