

By: Wu

H.B. No. 1435

A BILL TO BE ENTITLED

AN ACT

relating to the commencement and prosecution of certain actions by county and district attorneys under the Deceptive Trade Practices-Consumer Protection Act.

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

SECTION 1. Section 17.42(e), Business & Commerce Code, is amended to read as follows:

(e) The fact that a consumer has signed a waiver under this section is not a defense to an action brought by a prosecuting [the] attorney ~~[general]~~ under Section 17.47.

SECTION 2. Section 17.45, Business & Commerce Code, is amended by adding Subdivision (14) to read as follows:

(14) "Prosecuting attorney" means:

(A) the consumer protection division of the attorney general's office;

(B) a district attorney; or

(C) a county attorney.

SECTION 3. Section 17.46(a), Business & Commerce Code, is amended to read as follows:

(a) False, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful and are subject to action by the consumer protection division or other prosecuting attorney, as applicable, under Sections 17.47, 17.58, 17.60, and 17.61 of this code.

SECTION 4. Sections 17.47(a), (c), (d), (e), and (h),
Business & Commerce Code, are amended to read as follows:

(a) Subject to Section 17.48, whenever a prosecuting attorney ~~[Whenever the consumer protection division]~~ has reason to believe that any person is engaging in, has engaged in, or is about to engage in any act or practice declared to be unlawful by this subchapter, and that proceedings would be in the public interest, the prosecuting attorney ~~[division]~~ may bring an action in the name of the state against the person to restrain by temporary restraining order, temporary injunction, or permanent injunction the use of such method, act, or practice.

Nothing herein shall require the prosecuting attorney ~~[consumer protection division]~~ to notify such person that court action is or may be under consideration. Provided, however, the prosecuting attorney ~~[consumer protection division]~~ shall, at least seven days prior to instituting such court action, contact such person to inform him in general of the alleged unlawful conduct. Cessation of unlawful conduct after such prior contact shall not render such court action moot under any circumstances, and such injunctive relief shall lie even if such person has ceased such unlawful conduct after such prior contact. Such prior contact shall not be required if, in the opinion of the prosecuting attorney ~~[consumer protection division]~~, there is good cause to believe that such person would evade service of process if prior contact were made or that such person would destroy relevant records if prior contact were made, or that such an emergency exists that immediate and irreparable injury, loss, or damage would occur as a result of

1 such delay in obtaining a temporary restraining order.

2 (c) In addition to the request for a temporary restraining
3 order, or permanent injunction in a proceeding brought under
4 Subsection (a) of this section, a prosecuting attorney [~~the~~
5 ~~consumer protection division~~] may request, and the trier of fact
6 may award, a civil penalty to be paid to the state or county, as
7 appropriate, in an amount of:

8 (1) not more than \$20,000 per violation; and

9 (2) if the act or practice that is the subject of the
10 proceeding was calculated to acquire or deprive money or other
11 property from a consumer who was 65 years of age or older when the
12 act or practice occurred, an additional amount of not more than
13 \$250,000.

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

26 (e) Any person who violates the terms of an injunction under
27 this section shall forfeit and pay to the state or county, as

1 appropriate, a civil penalty of not more than \$10,000 per
2 violation, not to exceed \$50,000. In determining whether or not an
3 injunction has been violated the court shall take into
4 consideration the maintenance of procedures reasonably adapted to
5 insure compliance with the injunction. For the purposes of this
6 section, the district court issuing the injunction shall retain
7 jurisdiction, and the cause shall be continued, and in these cases,
8 the prosecuting [~~consumer protection division, or the district or~~
9 ~~county~~] attorney [~~with prior notice to the consumer protection~~
10 ~~division, acting in the name of the state,~~] may petition for
11 recovery of civil penalties under this section.

12 (h) In bringing or participating in an action under this
13 subchapter, the prosecuting attorney [~~consumer protection~~
14 ~~division~~] acts in the name of the state and does not establish an
15 attorney-client relationship with another person, including a
16 person to whom the prosecuting attorney [~~consumer protection~~
17 ~~division~~] requests that the court award relief.

18 SECTION 5. Sections 17.48(b) and (d), Business & Commerce
19 Code, are amended to read as follows:

20 (b) A district or county attorney[, ~~with prior written~~
21 ~~notice to the consumer protection division,~~] may institute and
22 prosecute actions seeking injunctive relief and civil penalties
23 under this subchapter, after complying with the prior contact
24 provisions of Subsection (a) of Section 17.47 of this subchapter.
25 On request, the consumer protection division shall assist the
26 district or county attorney in any action taken under this
27 subchapter. If an action is prosecuted by a district or county

attorney alone, he shall make a full report to the consumer protection division including the final disposition of the matter. No district or county attorney may bring an action under this section against any licensed insurer or licensed insurance agent transacting business under the authority and jurisdiction of the State Board of Insurance unless first requested in writing to do so by the State Board of Insurance, the commissioner of insurance, or the consumer protection division pursuant to a request by the State Board of Insurance or commissioner of insurance.

(d) A district or county attorney is not required to obtain the permission of the consumer protection division to prosecute an action under this subchapter ~~[for a violation of Section 17.46(b)(28), if the district or county attorney provides prior written notice to the division as required by Subsection (b)]~~.

SECTION 6. The heading to Section 304.252, Business & Commerce Code, is amended to read as follows:

Sec. 304.252. ENFORCEMENT BY CERTAIN PROSECUTING ATTORNEYS ~~[ATTORNEY GENERAL]~~.

SECTION 7. Section 304.252(c), Business & Commerce Code, is amended to read as follows:

(c) A violation of Subchapter B, C, or D is subject to enforcement action ~~[by the attorney general's consumer protection division]~~ under Sections 17.47, 17.58, 17.60, and 17.61.

SECTION 8. Section 306.053, Business & Commerce Code, is amended to read as follows:

Sec. 306.053. DECEPTIVE TRADE PRACTICE; ENFORCEMENT. A violation of this chapter is a false, misleading, or deceptive act

1 or practice under Section 17.46 and is subject to action [~~only by~~
2 ~~the consumer protection division of the attorney general's office~~]
3 as provided by Section 17.46(a).

4 SECTION 9. Section 17.48(c), Business & Commerce Code, is
5 repealed.

6 SECTION 10. The changes in law made by this Act apply only
7 to a cause of action that accrues on or after the effective date of
8 this Act. A cause of action that accrued before the effective date
9 of this Act is governed by the law in effect immediately before the
10 effective date of this Act, and that law is continued in effect for
11 that purpose.

12 SECTION 11. This Act takes effect September 1, 2017.