

By: Kuempel

H.B. No. 3308

A BILL TO BE ENTITLED

AN ACT

relating to certain vehicle protection products.

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

SECTION 1. Section 17.45, Business & Commerce Code, is amended by adding Subdivisions (14), (15), and (16) to read as follows:

(14) "Vehicle protection product":

(A) means a product or system, including a written warranty:

(i) that is:

(a) installed on or applied to a vehicle; and

(b) designed to prevent loss or damage to a vehicle from a specific cause; and

(ii) under which, after installation or application of the product or system described by Subparagraph (i), if loss or damage results from the failure of the product or system to perform as represented in the warranty, the warrantor, to the extent agreed on as part of the warranty, is required to pay expenses to the person in this state who purchases or otherwise possesses the product or system for the loss of or damage to the vehicle; and

(B) may also include identity recovery, as defined by Section 1304.003, Occupations Code, if the product or

1 system described by Paragraph (A) is financed under Chapter 348 or
2 353, Finance Code.

3 (15) "Warrantor" means a person named under the terms
4 of a vehicle protection product warranty as the contractual obligor
5 to a person in this state who purchases or otherwise possesses a
6 vehicle protection product.

7 (16) "Loss of or damage to the vehicle," for purposes
8 of Subdivision (14)(A)(ii), may also include unreimbursed
9 incidental expenses that may be incurred by the warrantor,
10 including expenses for a replacement vehicle, temporary vehicle
11 rental expenses, and registration expenses for replacement
12 vehicles.

13 SECTION 2. Section 17.46(b), Business & Commerce Code, as
14 amended by Chapters 1023 (H.B. 1265) and 1080 (H.B. 2573), Acts of
15 the 84th Legislature, Regular Session, 2015, is reenacted and
16 amended to read as follows:

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

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

21 (2) causing confusion or misunderstanding as to the
22 source, sponsorship, approval, or certification of goods or
23 services;

24 (3) causing confusion or misunderstanding as to
25 affiliation, connection, or association with, or certification by,
26 another;

27 (4) using deceptive representations or designations

1 of geographic origin in connection with goods or services;

2 (5) representing that goods or services have
3 sponsorship, approval, characteristics, ingredients, uses,
4 benefits, or quantities which they do not have or that a person has
5 a sponsorship, approval, status, affiliation, or connection which
6 the person does not;

7 (6) representing that goods are original or new if
8 they are deteriorated, reconditioned, reclaimed, used, or
9 secondhand;

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

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

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

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

20 (11) making false or misleading statements of fact
21 concerning the reasons for, existence of, or amount of price
22 reductions;

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

26 (13) knowingly making false or misleading statements
27 of fact concerning the need for parts, replacement, or repair

1 service;

2 (14) misrepresenting the authority of a salesman,
3 representative or agent to negotiate the final terms of a consumer
4 transaction;

5 (15) basing a charge for the repair of any item in
6 whole or in part on a guaranty or warranty instead of on the value of
7 the actual repairs made or work to be performed on the item without
8 stating separately the charges for the work and the charge for the
9 warranty or guaranty, if any;

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

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

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

21 (A) the discount is authorized under an agreement
22 between the seller of the card and the provider of those goods and
23 services or the discount or card is offered to members of the
24 seller;

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

27 (C) the discount is not false, misleading, or

1 deceptive;

2 (19) using or employing a chain referral sales plan in
3 connection with the sale or offer to sell of goods, merchandise, or
4 anything of value, which uses the sales technique, plan,
5 arrangement, or agreement in which the buyer or prospective buyer
6 is offered the opportunity to purchase merchandise or goods and in
7 connection with the purchase receives the seller's promise or
8 representation that the buyer shall have the right to receive
9 compensation or consideration in any form for furnishing to the
10 seller the names of other prospective buyers if receipt of the
11 compensation or consideration is contingent upon the occurrence of
12 an event subsequent to the time the buyer purchases the merchandise
13 or goods;

14 (20) representing that a guaranty or warranty confers
15 or involves rights or remedies which it does not have or involve,
16 provided, however, that nothing in this subchapter shall be
17 construed to expand the implied warranty of merchantability as
18 defined in Sections 2.314 through 2.318 and Sections 2A.212 through
19 2A.216 to involve obligations in excess of those which are
20 appropriate to the goods;

21 (21) promoting a pyramid promotional scheme, as
22 defined by Section 17.461;

23 (22) representing that work or services have been
24 performed on, or parts replaced in, goods when the work or services
25 were not performed or the parts replaced;

26 (23) filing suit founded upon a written contractual
27 obligation of and signed by the defendant to pay money arising out

1 of or based on a consumer transaction for goods, services, loans, or
2 extensions of credit intended primarily for personal, family,
3 household, or agricultural use in any county other than in the
4 county in which the defendant resides at the time of the
5 commencement of the action or in the county in which the defendant
6 in fact signed the contract; provided, however, that a violation of
7 this subsection shall not occur where it is shown by the person
8 filing such suit that the person neither knew or had reason to know
9 that the county in which such suit was filed was neither the county
10 in which the defendant resides at the commencement of the suit nor
11 the county in which the defendant in fact signed the contract;

12 (24) failing to disclose information concerning goods
13 or services which was known at the time of the transaction if such
14 failure to disclose such information was intended to induce the
15 consumer into a transaction into which the consumer would not have
16 entered had the information been disclosed;

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

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

1 Texas as required by Section 8A of that Act;

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

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

6 (B) demanding an exorbitant or excessive price in
7 connection with the sale or lease of fuel, food, medicine, or
8 another necessity;

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

16 (29) [~~(28)~~] delivering or distributing a solicitation
17 in connection with a good or service that:

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

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

23 (30) [~~(29)~~] delivering or distributing a solicitation
24 in connection with a good or service that resembles a check or other
25 negotiable instrument or invoice, unless the portion of the
26 solicitation that resembles a check or other negotiable instrument
27 or invoice includes the following notice, clearly and conspicuously

1 printed in at least 18-point type:

2 "SPECIMEN-NON-NEGOTIABLE";

3 (31) [~~(30)~~] in the production, sale, distribution, or
4 promotion of a synthetic substance that produces and is intended to
5 produce an effect when consumed or ingested similar to, or in excess
6 of, the effect of a controlled substance or controlled substance
7 analogue, as those terms are defined by Section 481.002, Health and
8 Safety Code:

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

11 (B) causing confusion or misunderstanding as to
12 the effects the synthetic substance causes when consumed or
13 ingested; [~~or~~]

14 (32) [~~(31)~~] a licensed public insurance adjuster
15 directly or indirectly soliciting employment, as defined by Section
16 38.01, Penal Code, for an attorney, or a licensed public insurance
17 adjuster entering into a contract with an insured for the primary
18 purpose of referring the insured to an attorney without the intent
19 to actually perform the services customarily provided by a licensed
20 public insurance adjuster, provided that this subdivision may not
21 be construed to prohibit a licensed public insurance adjuster from
22 recommending a particular attorney to an insured; or

23 (33) a warrantor of a vehicle protection product
24 warranty using, in connection with the product, a name that
25 includes "casualty," "surety," "insurance," "mutual," or any other
26 word descriptive of an insurance business, including property or
27 casualty insurance, or a surety business.

1 SECTION 3. Subchapter A, Chapter 348, Finance Code, is
2 amended by adding Section 348.014 to read as follows:

3 Sec. 348.014. TRANSACTION CONDITIONED ON PURCHASE OF
4 VEHICLE PROTECTION PRODUCT PROHIBITED. (a) In this section,
5 "vehicle protection product" has the meaning assigned by Section
6 17.45, Business & Commerce Code.

7 (b) A retail seller may not require as a condition of a
8 retail installment transaction or the cash sale of a motor vehicle
9 that the buyer purchase a vehicle protection product that is not
10 installed on the vehicle at the time of the transaction.

11 (c) A violation of this section is a false, misleading, or
12 deceptive act or practice within the meaning of Section 17.46,
13 Business & Commerce Code, and is actionable in a public or private
14 suit brought under Subchapter E, Chapter 17, Business & Commerce
15 Code.

16 SECTION 4. Subchapter A, Chapter 353, Finance Code, is
17 amended by adding Section 353.017 to read as follows:

18 Sec. 353.017. TRANSACTION CONDITIONED ON PURCHASE OF
19 VEHICLE PROTECTION PRODUCT PROHIBITED. (a) In this section,
20 "vehicle protection product" has the meaning assigned by Section
21 17.45, Business & Commerce Code.

22 (b) A retail seller may not require as a condition of a
23 retail installment transaction or the cash sale of a commercial
24 vehicle that the buyer purchase a vehicle protection product that
25 is not installed on the vehicle at the time of the transaction.

26 (c) A violation of this section is a false, misleading, or
27 deceptive act or practice within the meaning of Section 17.46,

1 Business & Commerce Code, and is actionable in a public or private
2 suit brought under Subchapter E, Chapter 17, Business & Commerce
3 Code.

4 SECTION 5. Chapter 2306, Occupations Code, is repealed.

5 SECTION 6. (a) On the effective date of this Act:

6 (1) an action, including a disciplinary or
7 administrative proceeding, pending under Chapter 51 or 2306,
8 Occupations Code, on the effective date of this Act related to an
9 alleged violation of Chapter 2306, Occupations Code, as that
10 chapter existed immediately before the effective date of this Act,
11 is dismissed;

12 (2) the Vehicle Protection Product Warrantor Advisory
13 Board is abolished; and

14 (3) a registration issued under former Chapter 2306,
15 Occupations Code, expires.

16 (b) As soon as practicable after the effective date of this
17 Act, the Texas Commission of Licensing and Regulation shall repeal
18 all rules regarding the regulation of vehicle protection product
19 warrantors adopted under former Chapter 2306, Occupations Code.

20 (c) An administrative penalty assessed by the Texas
21 Commission of Licensing and Regulation or the executive director of
22 the Texas Department of Licensing and Regulation related to a
23 violation of Chapter 2306, Occupations Code, as that chapter
24 existed immediately before the effective date of this Act, may be
25 collected as provided by Chapter 51, Occupations Code.

26 (d) The repeal by this Act of Chapter 2306, Occupations
27 Code, does not affect the validity or terms of a vehicle protection

1 product warranty that was issued or renewed before the effective
2 date of this Act.

3 SECTION 7. Section 17.46(b), Business & Commerce Code, as
4 amended by this Act, applies only to a cause of action that accrues
5 on or after the effective date of this Act. A cause of action that
6 accrued before the effective date of this Act is governed by the law
7 in effect immediately before the effective date of this Act, and
8 that law is continued in effect for that purpose.

9 SECTION 8. Sections 348.014 and 353.017, Finance Code, as
10 added by this Act, apply only to a transaction for the purchase of a
11 motor vehicle or commercial vehicle, as applicable, that occurs on
12 or after the effective date of this Act. A transaction for the
13 purchase of a motor vehicle or commercial vehicle that occurs
14 before the effective date of this Act is governed by the law in
15 effect on the date the transaction occurred, and the former law is
16 continued in effect for that purpose.

17 SECTION 9. To the extent of any conflict, this Act prevails
18 over another Act of the 85th Legislature, Regular Session, 2017,
19 relating to nonsubstantive additions to and corrections in enacted
20 codes.

21 SECTION 10. This Act takes effect September 1, 2017.