

By: Guillen

H.B. No. 3322

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the use of certain words to imply that a person who is
3 not an attorney is authorized to practice immigration law and the
4 prosecution of a cause of action arising from that practice and
5 educational requirements for a notary public appointment;
6 authorizing a fee; affecting the prosecution of a criminal offense.

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

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

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

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

16 (2) causing confusion or misunderstanding as to the
17 source, sponsorship, approval, or certification of goods or
18 services;

19 (3) causing confusion or misunderstanding as to
20 affiliation, connection, or association with, or certification by,
21 another;

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

24 (5) representing that goods or services have

1 sponsorship, approval, characteristics, ingredients, uses,
2 benefits, or quantities which they do not have or that a person has
3 a sponsorship, approval, status, affiliation, or connection which
4 the person does not;

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

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

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

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

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

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

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

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

27 (14) misrepresenting the authority of a salesman,

1 representative or agent to negotiate the final terms of a consumer
2 transaction;

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

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

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

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

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

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

25 (C) the discount is not false, misleading, or
26 deceptive;

27 (19) using or employing a chain referral sales plan in

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

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

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

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

24 (23) filing suit founded upon a written contractual
25 obligation of and signed by the defendant to pay money arising out
26 of or based on a consumer transaction for goods, services, loans, or
27 extensions of credit intended primarily for personal, family,

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

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

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

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

27 (27) taking advantage of a disaster declared by the

1 governor under Chapter 418, Government Code, by:

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

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

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

15 (29) [~~(28)~~] delivering or distributing a solicitation
16 in connection with a good or service that:

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

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

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

1 "SPECIMEN-NON-NEGOTIABLE";

2 (31) [~~(30)~~] 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; or

13 (32) [~~(31)~~] a licensed public insurance adjuster
14 directly or indirectly soliciting employment, as defined by Section
15 38.01, Penal Code, for an attorney, or a licensed public insurance
16 adjuster entering into a contract with an insured for the primary
17 purpose of referring the insured to an attorney without the intent
18 to actually perform the services customarily provided by a licensed
19 public insurance adjuster, provided that this subdivision may not
20 be construed to prohibit a licensed public insurance adjuster from
21 recommending a particular attorney to an insured.

22 SECTION 2. Subchapter A, Chapter 406, Government Code, is
23 amended by adding Section 406.0045 to read as follows:

24 Sec. 406.0045. REQUIRED EDUCATIONAL COURSE. (a) An
25 applicant for an initial appointment as a notary public shall
26 complete an educational course approved by the secretary of state.
27 The educational course may be an online, self-study, or classroom

1 course.

2 (b) The secretary of state shall adopt rules necessary to
3 implement the educational course requirement imposed by Subsection

4 (a). The rules must:

5 (1) establish the standards for an educational course;

6 (2) establish the procedures for approving an
7 educational course; and

8 (3) set a nonrefundable vendor application and renewal
9 fee for a vendor of an educational course in an amount sufficient to
10 administer this section.

11 (c) The secretary of state may provide an educational course
12 to satisfy the requirements of Subsection (a).

13 (d) A fee received by the secretary of state under
14 Subsection (b)(3) must be appropriated to and used by the secretary
15 of state to administer this section.

16 SECTION 3. Section 406.005, Government Code, is amended by
17 adding Subsection (c) to read as follows:

18 (c) An application for an initial appointment under this
19 section must include a statement that the applicant has completed
20 an educational course required by Section 406.0045.

21 SECTION 4. Section 406.006, Government Code, is amended to
22 read as follows:

23 Sec. 406.006. QUALIFICATION. An individual qualifies by:

24 (1) properly completing the application form;

25 (2) executing the statement;

26 (3) providing the bond, if required;

27 (4) paying the required filing fees; ~~and~~

1 (5) meeting the eligibility requirements; and
2 (6) providing a statement of completion of an
3 educational course if required by Section 406.0045.

4 SECTION 5. Section 406.007(a), Government Code, is amended
5 to read as follows:

6 (a) The applicant must submit to the secretary of state:

7 (1) a fee of \$10 for approving and filing the bond of
8 the notary public, if required; and

9 (2) a fee of \$1 to be appropriated to and used by the
10 secretary of state ~~[only]~~ for:

11 (A) hiring an investigator;

12 (B) administering and managing an educational
13 course under Section 406.0045(c); and

14 (C) [~~for~~] preparing and distributing the
15 materials required to be distributed under Section 406.008.

16 SECTION 6. Section 406.011, Government Code, is amended by
17 adding Subsection (c) to read as follows:

18 (c) Section 406.0045 does not apply to a notary public
19 applying for reappointment under this section.

20 SECTION 7. Section 406.017, Government Code, is amended by
21 amending Subsection (a) and adding Subsection (a-1) to read as
22 follows:

23 (a) A person commits an offense if the person is a notary
24 public and the person:

25 (1) states or implies that the person is an attorney
26 licensed to practice law in this state;

27 (2) solicits or accepts compensation to prepare

1 documents for or otherwise represent the interest of another in a
2 judicial or administrative proceeding, including a proceeding
3 relating to immigration or admission to the United States, United
4 States citizenship, or related matters;

5 (3) solicits or accepts compensation to obtain relief
6 of any kind on behalf of another from any officer, agency, or
7 employee of this state or the United States;

8 (4) uses the phrase "notario" or "notario publico" to
9 advertise the services of a notary public, whether by signs,
10 pamphlets, stationery, or other written communication or by radio
11 or television; or

12 (5) advertises the services of a notary public in a
13 language other than English, whether by signs, pamphlets,
14 stationery, or other written communication or by radio or
15 television, if the person does not post or otherwise include with
16 the advertisement a notice that complies with Subsection (b).

17 (a-1) A person does not violate this section by offering or
18 providing language translation or typing services and accepting
19 compensation.

20 SECTION 8. The change in law made by this Act to Section
21 17.46(b), Business & Commerce Code, applies only to a cause of
22 action that accrues on or after the effective date of this Act. A
23 cause of action that accrued before the effective date of this Act
24 is governed by the law in effect immediately before the effective
25 date of this Act, and that law is continued in effect for that
26 purpose.

27 SECTION 9. The changes in law made by this Act to Chapter

1 406, Government Code, apply only to an application for a notary
2 public appointment received and qualified on or after September 1,
3 2018. An application received and qualified before September 1,
4 2018, is governed by the law as it existed immediately before the
5 effective date of this Act, and that law is continued in effect for
6 that purpose.

7 SECTION 10. The change in law made by this Act to Section
8 406.017, Government Code, applies only to an offense committed on
9 or after the effective date of this Act. An offense committed before
10 the effective date of this Act is governed by the law in effect when
11 the offense was committed, and the former law is continued in effect
12 for that purpose. For purposes of this section, an offense was
13 committed before the effective date of this Act if any element of
14 the offense occurred before that date.

15 SECTION 11. To the extent of any conflict, this Act prevails
16 over another Act of the 85th Legislature, Regular Session, 2017,
17 relating to nonsubstantive additions to and corrections in enacted
18 codes.

19 SECTION 12. This Act takes effect January 1, 2018.