

By: Huffman, Nelson

S.B. No. 1226

A BILL TO BE ENTITLED

1 AN ACT
2 relating to prostitution and trafficking of persons and to certain
3 criminal and civil consequences of that conduct.

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; ~~or~~

9 (32) ~~[(31)]~~ a licensed public insurance adjuster
10 directly or indirectly soliciting employment, as defined by Section
11 38.01, Penal Code, for an attorney, or a licensed public insurance
12 adjuster entering into a contract with an insured for the primary
13 purpose of referring the insured to an attorney without the intent
14 to actually perform the services customarily provided by a licensed
15 public insurance adjuster, provided that this subdivision may not
16 be construed to prohibit a licensed public insurance adjuster from
17 recommending a particular attorney to an insured; or

18 (33) owning, operating, maintaining, or advertising a
19 massage establishment, as defined by Section 455.001, Occupations
20 Code, that:

21 (A) is not appropriately licensed under Chapter
22 455, Occupations Code, or is not in compliance with the applicable
23 licensing and other requirements of that chapter; or

24 (B) is not in compliance with an applicable local
25 ordinance relating to the licensing or regulation of massage
26 establishments.

27 SECTION 2. Section 125.004, Civil Practice and Remedies

1 Code, is amended by adding Subsections (a-1), (a-2), and (e) to read
2 as follows:

3 (a-1) Proof in the form of a person's arrest or the
4 testimony of a law enforcement agent that an activity described by
5 Section 125.0015(a)(6) or (7) is committed at a place licensed as a
6 massage establishment under Chapter 455, Occupations Code, or
7 advertised as offering massage therapy or massage services is prima
8 facie evidence that the defendant knowingly tolerated the activity.

9 (a-2) Proof that an activity described by Section
10 125.0015(a)(18) is committed at a place maintained by the defendant
11 is prima facie evidence that the defendant:

12 (1) knowingly tolerated the activity; and

13 (2) did not make a reasonable attempt to abate the
14 activity.

15 (e) Evidence of a previous suit filed under this chapter
16 that resulted in a judgment against a landowner with respect to an
17 activity described by Section 125.0015 at the landowner's property
18 is admissible in a subsequent suit filed under this chapter to
19 demonstrate that the landowner:

20 (1) knowingly tolerated the activity; and

21 (2) did not make a reasonable attempt to abate the
22 activity.

23 SECTION 3. Section 411.042(b), Government Code, is amended
24 to read as follows:

25 (b) The bureau of identification and records shall:

26 (1) procure and file for record photographs, pictures,
27 descriptions, fingerprints, measurements, and other pertinent

1 information of all persons arrested for or charged with a criminal
2 offense or convicted of a criminal offense, regardless of whether
3 the conviction is probated;

4 (2) collect information concerning the number and
5 nature of offenses reported or known to have been committed in the
6 state and the legal steps taken in connection with the offenses, and
7 other information useful in the study of crime and the
8 administration of justice, including information that enables the
9 bureau to create a statistical breakdown of:

10 (A) offenses in which family violence was
11 involved;

12 (B) offenses under Sections 22.011 and 22.021,
13 Penal Code; and

14 (C) offenses under Sections 20A.02, 43.02(a),
15 43.02(b), 43.03, and 43.05, Penal Code;

16 (3) make ballistic tests of bullets and firearms and
17 chemical analyses of bloodstains, cloth, materials, and other
18 substances for law enforcement officers of the state;

19 (4) cooperate with identification and crime records
20 bureaus in other states and the United States Department of
21 Justice;

22 (5) maintain a list of all previous background checks
23 for applicants for any position regulated under Chapter 1702,
24 Occupations Code, who have undergone a criminal history background
25 check under Section 411.119, if the check indicates a Class B
26 misdemeanor or equivalent offense or a greater offense;

27 (6) collect information concerning the number and

1 nature of protective orders and magistrate's orders of emergency
2 protection and all other pertinent information about all persons
3 subject to active orders, including pertinent information about
4 persons subject to conditions of bond imposed for the protection of
5 the victim in any family violence, sexual assault or abuse,
6 stalking, or trafficking case. Information in the law enforcement
7 information system relating to an active order shall include:

8 (A) the name, sex, race, date of birth, personal
9 descriptors, address, and county of residence of the person to whom
10 the order is directed;

11 (B) any known identifying number of the person to
12 whom the order is directed, including the person's social security
13 number or driver's license number;

14 (C) the name and county of residence of the
15 person protected by the order;

16 (D) the residence address and place of employment
17 or business of the person protected by the order, unless that
18 information is excluded from the order under Section 85.007, Family
19 Code, or Article 17.292(e), Code of Criminal Procedure;

20 (E) the child-care facility or school where a
21 child protected by the order normally resides or which the child
22 normally attends, unless that information is excluded from the
23 order under Section 85.007, Family Code, or Article 17.292(e), Code
24 of Criminal Procedure;

25 (F) the relationship or former relationship
26 between the person who is protected by the order and the person to
27 whom the order is directed;

1 (G) the conditions of bond imposed on the person
2 to whom the order is directed, if any, for the protection of a
3 victim in any family violence, sexual assault or abuse, stalking,
4 or trafficking case;

5 (H) any minimum distance the person subject to
6 the order is required to maintain from the protected places or
7 persons; and

8 (I) the date the order expires;

9 (7) grant access to criminal history record
10 information in the manner authorized under Subchapter F;

11 (8) collect and disseminate information regarding
12 offenders with mental impairments in compliance with Chapter 614,
13 Health and Safety Code; and

14 (9) record data and maintain a state database for a
15 computerized criminal history record system and computerized
16 juvenile justice information system that serves:

17 (A) as the record creation point for criminal
18 history record information and juvenile justice information
19 maintained by the state; and

20 (B) as the control terminal for the entry of
21 records, in accordance with federal law and regulations, federal
22 executive orders, and federal policy, into the federal database
23 maintained by the Federal Bureau of Investigation.

24 SECTION 4. Section 169.004(c), Health and Safety Code, is
25 amended to read as follows:

26 (c) A first offender prostitution prevention program
27 established under this chapter shall:

1 (1) notify the criminal justice division of the
2 governor's office before or on implementation of the program; and

3 (2) submit to the division an annual report that
4 concerns [~~provide information regarding~~] the performance of the
5 program and includes:

6 (A) the number of participants in the program;

7 (B) a sample or overview of the curriculum;

8 (C) information regarding the program
9 administrators;

10 (D) a statement of the program's effectiveness
11 for the most recent state fiscal year; and

12 (E) any other information requested by the
13 division [~~to the division on request~~].

14 SECTION 5. Section 43.03, Penal Code, is amended to read as
15 follows:

16 Sec. 43.03. PROMOTION OF PROSTITUTION. (a) A person
17 commits an offense if, acting other than as a prostitute receiving
18 compensation for personally rendered prostitution services, the
19 actor [~~he or she~~] knowingly:

20 (1) receives money or other property pursuant to an
21 agreement to participate in the proceeds of prostitution; [~~or~~]

22 (2) solicits another to engage in sexual conduct with
23 another person for compensation; or

24 (3) provides a person or premises for prostitution
25 purposes.

26 (b) An offense under this section is a Class A misdemeanor,
27 except that the offense is:

1 (1) a state jail felony if the actor has been
2 previously convicted of an offense under this section; or

3 (2) a felony of the second degree if the actor engages
4 in conduct described by Subsection (a) [~~(a)(1) or (2)~~] involving a
5 person younger than 18 years of age engaging in prostitution,
6 regardless of whether the actor knows the age of the person at the
7 time the actor commits the offense.

8 SECTION 6. Chapter [93](#), Property Code, is amended by adding
9 Section 93.013 to read as follows:

10 Sec. 93.013. CERTAIN UNLAWFUL USES OF PREMISES; TERMINATION
11 OF TENANT'S RIGHT OF POSSESSION. (a) Notwithstanding a provision
12 in a lease to the contrary, a tenant's right of possession
13 terminates and the landlord has a right to recover possession of the
14 leased premises if the tenant is using the premises or allowing the
15 premises to be used for the purposes of prostitution, promotion of
16 prostitution, aggravated promotion of prostitution, or compelling
17 prostitution, as prohibited by the Penal Code, or trafficking of
18 persons as described by Section [20A.02](#), Penal Code.

19 (b) A landlord who reasonably believes a tenant is using the
20 leased premises or allowing the leased premises to be used for a
21 purpose described by Subsection (a) may file a forcible detainer
22 suit under Chapter [24](#) seeking possession of the premises and unpaid
23 rent, including rent for any period of occupancy after the tenant's
24 right of possession terminates.

25 (c) Notwithstanding Section [24.005](#) or [91.001](#) or any other
26 law or a provision in the lease to the contrary, the landlord is not
27 required for purposes of a forcible detainer suit authorized by

1 this section:

2 (1) to give a notice of proposed eviction or a notice
3 of termination before giving notice to vacate; or

4 (2) to give the tenant more than three days' notice to
5 vacate before filing the suit.

6 (d) A pending suit brought by the attorney general or a
7 district, county, or city attorney under Chapter 125, Civil
8 Practice and Remedies Code, alleging that a common nuisance is
9 being maintained on the leased premises with respect to an activity
10 described by Subsection (a) is prima facie evidence that the
11 tenant's right of possession has terminated and the landlord has a
12 right to recover possession of the premises under Subsection (a).

13 (e) A final, nonappealable determination by a court under
14 Chapter 125, Civil Practice and Remedies Code, that a common
15 nuisance is being maintained on the leased premises with respect to
16 an activity described by Subsection (a) creates an irrebuttable
17 presumption that the tenant's right of possession has terminated
18 and the landlord has a right to recover possession of the premises
19 under Subsection (a).

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

26 SECTION 8. Section 43.03, Penal Code, as amended by this
27 Act, applies only to an offense committed on or after the effective

1 date of this Act. An offense committed before the effective date of
2 this Act is governed by the law in effect on the date the offense was
3 committed, and the former law is continued in effect for that
4 purpose. For purposes of this section, an offense was committed
5 before the effective date of this Act if any element of the offense
6 occurred before that date.

7 SECTION 9. Section 93.013, Property Code, as added by this
8 Act, applies only to a lease entered into or renewed on or after the
9 effective date of this Act. A lease entered into or renewed before
10 the effective date of this Act is governed by the law applicable to
11 the lease immediately before the effective date of this Act, and
12 that law is continued in effect for that purpose.

13 SECTION 10. To the extent of any conflict, this Act prevails
14 over another Act of the 85th Legislature, Regular Session, 2017,
15 relating to nonsubstantive additions to and corrections in enacted
16 codes.

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