

By: Miles

S.B. No. 1643

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the deceptive trade practice of charging exorbitant or
3 excessive prices for necessities during a declared disaster.

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 324 (S.B. 1488), 858 (H.B. 2552), and 967 (S.B.
7 2065), Acts of the 85th Legislature, Regular Session, 2017, is
8 reenacted and 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) subject to Section 17.4625, taking advantage of a
25 disaster declared by the governor under Chapter [418](#), Government
26 Code, by:

27 (A) selling or leasing fuel, food, medicine, or

1 another necessity at an exorbitant or excessive price; or

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

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

13 (29) delivering or distributing a solicitation in
14 connection with a good or service that:

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

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

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

26 "SPECIMEN-NON-NEGOTIABLE";

27 (31) in the production, sale, distribution, or

1 promotion of a synthetic substance that produces and is intended to
2 produce an effect when consumed or ingested similar to, or in excess
3 of, the effect of a controlled substance or controlled substance
4 analogue, as those terms are defined by Section 481.002, Health and
5 Safety Code:

6 (A) making a deceptive representation or
7 designation about the synthetic substance; or

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

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

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

23 (A) is not appropriately licensed under Chapter
24 455, Occupations Code, or is not in compliance with the applicable
25 licensing and other requirements of that chapter; or

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

1 establishments; or

2 (34) [~~(33)~~] a warrantor of a vehicle protection
3 product warranty using, in connection with the product, a name that
4 includes "casualty," "surety," "insurance," "mutual," or any other
5 word descriptive of an insurance business, including property or
6 casualty insurance, or a surety business.

7 SECTION 2. Subchapter E, Chapter 17, Business & Commerce
8 Code, is amended by adding Section 17.4625 to read as follows:

9 Sec. 17.4625. PRICE GOUGING DURING DECLARED DISASTER. (a)
10 For purposes of Section 17.46(b)(27), the price of a necessity is
11 considered exorbitant or excessive if the price is 20 percent or
12 more than:

13 (1) the average price at which the necessity is sold or
14 leased, or offered for sale or lease, by the seller or lessor in the
15 usual course of business during the 60 days immediately before the
16 date of the proclamation or executive order of the governor
17 declaring the disaster; or

18 (2) the price at which the necessity is generally
19 available in the trade area in the 60 days immediately before the
20 date of the declared disaster if the seller or lessor did not sell
21 or offer the necessity before that date.

22 (b) Notwithstanding Subsection (a), the price of a
23 necessity is not considered exorbitant or excessive for purposes of
24 Section 17.46(b)(27) if:

25 (1) the increase in price is directly attributable to
26 an increase in the cost of the necessity imposed on the seller or
27 lessor by a supplier of the necessity; and

1 (2) the price is not more than 20 percent above the
2 total of the cost to the seller or lessor plus the markup
3 customarily applied by that seller or lessor for the necessity.

4 SECTION 3. To the extent of any conflict, this Act prevails
5 over another Act of the 86th Legislature, Regular Session, 2019,
6 relating to nonsubstantive additions to and corrections in enacted
7 codes.

8 SECTION 4. The changes in law made by this Act apply only to
9 an act or practice that occurs on or after the effective date of
10 this Act. An act or practice that occurs before the effective date
11 of this Act is governed by the law in effect on the date the act or
12 practice occurred, and the former law is continued in effect for
13 that purpose.

14 SECTION 5. This Act takes effect September 1, 2019.