

By: Kolkhorst

S.B. No. 680

1 AN ACT

2 relating to clarifying electricity as a necessity during a declared  
3 disaster under the Deceptive Trade Practices Act.

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

5 SECTION 1. Section 17.46(b), Business & Commerce Code, is  
6 amended to read as follows:

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

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

11 (2) causing confusion or misunderstanding as to the  
12 source, sponsorship, approval, or certification of goods or  
13 services;

14 (3) causing confusion or misunderstanding as to  
15 affiliation, connection, or association with, or certification by,  
16 another;

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

19 (5) representing that goods or services have  
20 sponsorship, approval, characteristics, ingredients, uses,  
21 benefits, or quantities which they do not have or that a person has  
22 a sponsorship, approval, status, affiliation, or connection which  
23 the person does not;

24 (6) representing that goods are original or new if

1 they are deteriorated, reconditioned, reclaimed, used, or  
2 secondhand;

3 (7) representing that goods or services are of a  
4 particular standard, quality, or grade, or that goods are of a  
5 particular style or model, if they are of another;

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

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

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

13 (11) making false or misleading statements of fact  
14 concerning the reasons for, existence of, or amount of price  
15 reductions;

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

19 (13) knowingly making false or misleading statements  
20 of fact concerning the need for parts, replacement, or repair  
21 service;

22 (14) misrepresenting the authority of a salesman,  
23 representative or agent to negotiate the final terms of a consumer  
24 transaction;

25 (15) basing a charge for the repair of any item in  
26 whole or in part on a guaranty or warranty instead of on the value of  
27 the actual repairs made or work to be performed on the item without

1 stating separately the charges for the work and the charge for the  
2 warranty or guaranty, if any;

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

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

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

14 (A) the discount is authorized under an agreement  
15 between the seller of the card and the provider of those goods and  
16 services or the discount or card is offered to members of the  
17 seller;

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

20 (C) the discount is not false, misleading, or  
21 deceptive;

22 (19) using or employing a chain referral sales plan in  
23 connection with the sale or offer to sell of goods, merchandise, or  
24 anything of value, which uses the sales technique, plan,  
25 arrangement, or agreement in which the buyer or prospective buyer  
26 is offered the opportunity to purchase merchandise or goods and in  
27 connection with the purchase receives the seller's promise or

1 representation that the buyer shall have the right to receive  
2 compensation or consideration in any form for furnishing to the  
3 seller the names of other prospective buyers if receipt of the  
4 compensation or consideration is contingent upon the occurrence of  
5 an event subsequent to the time the buyer purchases the merchandise  
6 or goods;

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

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

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

19           (23) filing suit founded upon a written contractual  
20 obligation of and signed by the defendant to pay money arising out  
21 of or based on a consumer transaction for goods, services, loans, or  
22 extensions of credit intended primarily for personal, family,  
23 household, or agricultural use in any county other than in the  
24 county in which the defendant resides at the time of the  
25 commencement of the action or in the county in which the defendant  
26 in fact signed the contract; provided, however, that a violation of  
27 this subsection shall not occur where it is shown by the person

1 filing such suit that the person neither knew or had reason to know  
2 that the county in which such suit was filed was neither the county  
3 in which the defendant resides at the commencement of the suit nor  
4 the county in which the defendant in fact signed the contract;

5 (24) failing to disclose information concerning goods  
6 or services which was known at the time of the transaction if such  
7 failure to disclose such information was intended to induce the  
8 consumer into a transaction into which the consumer would not have  
9 entered had the information been disclosed;

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

14 (26) selling, offering to sell, or illegally promoting  
15 an annuity contract under Chapter 22, Acts of the 57th Legislature,  
16 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil  
17 Statutes), with the intent that the annuity contract will be the  
18 subject of a salary reduction agreement, as defined by that Act, if  
19 the annuity contract is not an eligible qualified investment under  
20 that Act;

21 (27) subject to Section 17.4625, taking advantage of a  
22 disaster declared by the governor under Chapter 418, Government  
23 Code, or by the president of the United States by:

24 (A) selling or leasing fuel, food, medicine,  
25 lodging, building materials, construction tools, electricity, or  
26 another necessity at an exorbitant or excessive price; or

27 (B) demanding an exorbitant or excessive price in

1 connection with the sale or lease of fuel, food, medicine, lodging,  
2 building materials, construction tools, electricity, or another  
3 necessity;

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

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

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

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

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

25 "SPECIMEN-NON-NEGOTIABLE";

26 (31) in the production, sale, distribution, or  
27 promotion of a synthetic substance that produces and is intended to

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

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

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

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

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

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

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

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

6           (c)(1) It is the intent of the legislature that in  
7 construing Subsection (a) of this section in suits brought under  
8 Section 17.47 of this subchapter the courts to the extent possible  
9 will be guided by Subsection (b) of this section and the  
10 interpretations given by the Federal Trade Commission and federal  
11 courts to Section 5(a)(1) of the Federal Trade Commission Act [15  
12 U.S.C.A. Sec. 45(a)(1)].

13           (2) In construing this subchapter the court shall not  
14 be prohibited from considering relevant and pertinent decisions of  
15 courts in other jurisdictions.

16           (d) For the purposes of the relief authorized in Subdivision  
17 (1) of Subsection (a) of Section 17.50 of this subchapter, the term  
18 "false, misleading, or deceptive acts or practices" is limited to  
19 the acts enumerated in specific subdivisions of Subsection (b) of  
20 this section.

21           SECTION 2. The changes in law made by this Act apply only to  
22 an act or practice that occurs on or after the effective date of  
23 this Act. An act or practice that occurs before the effective date  
24 of this Act is governed by the law in effect on the date the act or  
25 practice occurred, and the former law is continued in effect for  
26 that purpose.

27           SECTION 3. This Act takes effect immediately if it receives



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1 a vote of two-thirds of all the members elected to each house, as  
2 provided by Section 39, Article III, Texas Constitution. If this  
3 Act does not receive the vote necessary for immediate effect, this  
4 Act takes effect September 1, 2021.