

By: Martinez Fischer

H.B. No. 4915

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the deceptive trade practice of excluding mandatory
3 fees or charges from an advertised, displayed, or offered price.

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, or another
26 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, or another necessity;

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

11 (29) delivering or distributing a solicitation in
12 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) delivering or distributing a solicitation in
19 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) 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;

9 (32) a licensed public insurance adjuster directly or
10 indirectly soliciting employment, as defined by Section 38.01,
11 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;

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; [~~or~~]

27 (34) a warrantor of a vehicle protection product

1 warranty using, in connection with the product, a name that
2 includes "casualty," "surety," "insurance," "mutual," or any other
3 word descriptive of an insurance business, including property or
4 casualty insurance, or a surety business; or

5 (35) advertising, displaying, or offering a price for
6 a good or service that does not include all mandatory fees or
7 charges other than taxes.

8 SECTION 2. The change in law made by this Act applies only
9 to 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 3. This Act takes effect September 1, 2023.