

By: Johnson, Hernandez

H.B. No. 2573

A BILL TO BE ENTITLED

AN ACT

relating to a deceptive trade practice related to the use of certain words to imply that a person who is not an attorney is authorized to practice law and the prosecution of a cause of action arising from that practice.

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

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

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

- (1) passing off goods or services as those of another;
- (2) causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- (3) causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another;
- (4) using deceptive representations or designations of geographic origin in connection with goods or services;
- (5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which

1 the person [~~he~~] 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 [~~guarantee~~] or  
10 warranty confers or involves rights or remedies which it does not  
11 have or involve, provided, however, that nothing in this subchapter  
12 shall be construed to expand the implied warranty of  
13 merchantability as defined in Sections 2.314 through 2.318 and  
14 Sections 2A.212 through 2A.216 to involve obligations in excess of  
15 those which are 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 ~~[he]~~ neither knew or had reason to  
4 know that the county in which such suit was filed was neither the  
5 county in which the defendant resides at the commencement of the  
6 suit nor the county in which the defendant in fact signed the  
7 contract;

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

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

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

25 (27) taking advantage of a disaster declared by the  
26 governor under Chapter 418, Government 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; or

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

11 SECTION 2. Section 17.48, Business & Commerce Code, is  
12 amended by adding Subsections (c) and (d) to read as follows:

13 (c) In an action prosecuted by a district or county attorney  
14 under this subchapter for a violation of Section 17.46(b)(28),  
15 three-fourths of any civil penalty awarded by a court must be paid  
16 to the county where the court is located.

17 (d) A district or county attorney is not required to obtain  
18 the permission of the consumer protection division to prosecute an  
19 action under this subchapter for a violation of Section  
20 17.46(b)(28), if the district or county attorney provides prior  
21 written notice to the division as required by Subsection (b).

22 SECTION 3. The change in law made by this Act applies only  
23 to a cause of action that accrues on or after the effective date of  
24 this Act. A cause of action that accrued before the effective date  
25 of this Act is governed by the law in effect immediately before the  
26 effective date of this Act, and that law is continued in effect for  
27 that purpose.

1       SECTION 4.   This Act takes effect September 1, 2015.