

By: Wu

H.B. No. 1265

A BILL TO BE ENTITLED

AN ACT

relating to a deceptive act or practice related to an unsolicited advertisement of goods and services sent by mail.

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

SECTION 1. Section 17.46, Business & Commerce Code, is amended by amending Subsection (b) and adding Subsection (b-1) 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 he does not;

1 (6) representing that goods are original or new if
2 they are deteriorated, reconditioned, reclaimed, used, or
3 secondhand;

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

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

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

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

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

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

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

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

26 (15) basing a charge for the repair of any item in
27 whole or in part on a guaranty or warranty instead of on the value of

1 the actual repairs made or work to be performed on the item without
2 stating separately the charges for the work and the charge for the
3 warranty or guaranty, if any;

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

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

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

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

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

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

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

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

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

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

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

20 (23) filing suit founded upon a written contractual
21 obligation of and signed by the defendant to pay money arising out
22 of or based on a consumer transaction for goods, services, loans, or
23 extensions of credit intended primarily for personal, family,
24 household, or agricultural use in any county other than in the
25 county in which the defendant resides at the time of the
26 commencement of the action or in the county in which the defendant
27 in fact signed the contract; provided, however, that a violation of

1 this subsection shall not occur where it is shown by the person
2 filing such suit he neither knew or had reason to know that the
3 county in which such suit was filed was neither the county in which
4 the defendant resides at the commencement of the suit nor the county
5 in which the defendant in fact signed the contract;

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

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

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

23 (27) taking advantage of a disaster declared by the
24 governor under Chapter 418, Government Code, by:

25 (A) selling or leasing fuel, food, medicine, 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, or
2 another necessity; or

3 (28) mailing an unrequested solicitation in
4 connection with a good or service that:

5 (A) simulates or resembles a check or other
6 negotiable instrument or invoice;

7 (B) falsely suggests that the solicitation is
8 sent on behalf of a governmental entity; or

9 (C) resembles a governmental notice or form that
10 states or suggests a criminal penalty may be imposed if the
11 recipient does not remit payment for the good or service.

12 (b-1) It is an affirmative defense to an action brought for
13 a violation of Subsection (b)(28) that the following notice is
14 printed in at least 14-point boldfaced type at the top and bottom of
15 each page of the mailed document:

16 "THIS IS AN ADVERTISEMENT. You are under no obligation to
17 make a purchase, remit a payment, or take any other action."

18 SECTION 2. The change in law made by this Act applies only
19 to a cause of action that accrues on or after the effective date of
20 this Act. A cause of action that accrued before the effective date
21 of this Act is governed by the law in effect immediately before the
22 effective date of this Act, and that law is continued in effect for
23 that purpose.

24 SECTION 3. This Act takes effect September 1, 2015.