

AN ACT

relating to a deceptive act or practice involving a solicitation in connection with a good or service or involving the production, sale, distribution, or promotion of certain synthetic substances.

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 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;

3 (28) delivering or distributing a solicitation in  
4 connection with a good or service that:

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

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

10 (29) delivering or distributing a solicitation in  
11 connection with a good or service that resembles a check or other  
12 negotiable instrument or invoice, unless the portion of the  
13 solicitation that resembles a check or other negotiable instrument  
14 or invoice includes the following notice, clearly and conspicuously  
15 printed in at least 18-point type:

16 "SPECIMEN-NON-NEGOTIABLE";

17 (30) in the production, sale, distribution, or  
18 promotion of a synthetic substance that produces and is intended to  
19 produce an effect when consumed or ingested similar to, or in excess  
20 of, the effect of a controlled substance or controlled substance  
21 analogue, as those terms are defined by Section [481.002](#), Health and  
22 Safety Code:

23 (A) making a deceptive representation or  
24 designation about the synthetic substance; or

25 (B) causing confusion or misunderstanding as to  
26 the effects the synthetic substance causes when consumed or  
27 ingested; or

1           (31) a licensed public insurance adjuster directly or  
2 indirectly soliciting employment, as defined by Section 38.01,  
3 Penal Code, for an attorney, or a licensed public insurance  
4 adjuster entering into a contract with an insured for the primary  
5 purpose of referring the insured to an attorney without the intent  
6 to actually perform the services customarily provided by a licensed  
7 public insurance adjuster, provided that this subdivision may not  
8 be construed to prohibit a licensed public insurance adjuster from  
9 recommending a particular attorney to an insured.

10           SECTION 2. The change in law made by this Act applies only  
11 to a cause of action that accrues on or after the effective date of  
12 this Act. A cause of action that accrued before the effective date  
13 of this Act is governed by the law in effect immediately before the  
14 effective date of this Act, and that law is continued in effect for  
15 that purpose.

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

H.B. No. 1265

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President of the Senate

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Speaker of the House

I certify that H.B. No. 1265 was passed by the House on May 15, 2015, by the following vote: Yeas 115, Nays 0, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1265 on May 29, 2015, by the following vote: Yeas 144, Nays 0, 2 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 1265 was passed by the Senate, with amendments, on May 27, 2015, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor