

By: Scott

H.B. No. 2163

A BILL TO BE ENTITLED

AN ACT

relating to including barratry as a deceptive trade practice.

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;

(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 guarantee 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 he neither knew or had reason to know that the  
2 county in which such suit was filed was neither the county in which  
3 the defendant resides at the commencement of the suit nor the county  
4 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 or is not registered with the Teacher Retirement System of  
21 Texas as required by Section 8A of that Act; [~~or~~]

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

24 (A) selling or leasing fuel, food, medicine, or  
25 another necessity at an exorbitant or excessive price; or

26 (B) demanding an exorbitant or excessive price in  
27 connection with the sale or lease of fuel, food, medicine, or

1 another necessity; or

2 (28) committing an act of barratry.

3 (b-1) For purposes of Subsection (b)(28), "barratry" means  
4 any act described as an offense under Section 38.12, Penal Code,  
5 that is committed by an attorney, regardless of whether a criminal  
6 conviction has been sought or obtained under that section.

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

13 SECTION 3. This Act takes effect September 1, 2011.