

1-1 By: Zaffirini S.B. No. 1500
1-2 (In the Senate - Filed March 8, 2017; March 20, 2017, read
1-3 first time and referred to Committee on Business & Commerce;
1-4 April 18, 2017, reported favorably by the following vote: Yeas 9,
1-5 Nays 0; April 18, 2017, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to certain vehicle protection products.
1-20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-21 SECTION 1. Section 17.45, Business & Commerce Code, is
1-22 amended by adding Subdivisions (14), (15), and (16) to read as
1-23 follows:

1-24 (14) "Vehicle protection product":
1-25 (A) means a product or system, including a
1-26 written warranty:

1-27 (i) that is:
1-28 (a) installed on or applied to a
1-29 vehicle; and

1-30 (b) designed to prevent loss or damage
1-31 to a vehicle from a specific cause; and

1-32 (ii) under which, after installation or
1-33 application of the product or system described by Subparagraph (i),
1-34 if loss or damage results from the failure of the product or system
1-35 to perform as represented in the warranty, the warrantor, to the
1-36 extent agreed on as part of the warranty, is required to pay
1-37 expenses to the person in this state who purchases or otherwise
1-38 possesses the product or system for the loss of or damage to the
1-39 vehicle; and

1-40 (B) may also include identity recovery, as
1-41 defined by Section 1304.003, Occupations Code, if the product or
1-42 system described by Paragraph (A) is financed under Chapter 348 or
1-43 353, Finance Code.

1-44 (15) "Warrantor" means a person named under the terms
1-45 of a vehicle protection product warranty as the contractual obligor
1-46 to a person in this state who purchases or otherwise possesses a
1-47 vehicle protection product.

1-48 (16) "Loss of or damage to the vehicle," for purposes
1-49 of Subdivision (14)(A)(ii), may also include unreimbursed
1-50 incidental expenses that may be incurred by the warrantor,
1-51 including expenses for a replacement vehicle, temporary vehicle
1-52 rental expenses, and registration expenses for replacement
1-53 vehicles.

1-54 SECTION 2. Section 17.46(b), Business & Commerce Code, as
1-55 amended by Chapters 1023 (H.B. 1265) and 1080 (H.B. 2573), Acts of
1-56 the 84th Legislature, Regular Session, 2015, is reenacted and
1-57 amended to read as follows:

1-58 (b) Except as provided in Subsection (d) of this section,
1-59 the term "false, misleading, or deceptive acts or practices"
1-60 includes, but is not limited to, the following acts:

1-61 (1) passing off goods or services as those of another;

- 2-1 (2) causing confusion or misunderstanding as to the
2-2 source, sponsorship, approval, or certification of goods or
2-3 services;
- 2-4 (3) causing confusion or misunderstanding as to
2-5 affiliation, connection, or association with, or certification by,
2-6 another;
- 2-7 (4) using deceptive representations or designations
2-8 of geographic origin in connection with goods or services;
- 2-9 (5) representing that goods or services have
2-10 sponsorship, approval, characteristics, ingredients, uses,
2-11 benefits, or quantities which they do not have or that a person has
2-12 a sponsorship, approval, status, affiliation, or connection which
2-13 the person does not;
- 2-14 (6) representing that goods are original or new if
2-15 they are deteriorated, reconditioned, reclaimed, used, or
2-16 secondhand;
- 2-17 (7) representing that goods or services are of a
2-18 particular standard, quality, or grade, or that goods are of a
2-19 particular style or model, if they are of another;
- 2-20 (8) disparaging the goods, services, or business of
2-21 another by false or misleading representation of facts;
- 2-22 (9) advertising goods or services with intent not to
2-23 sell them as advertised;
- 2-24 (10) advertising goods or services with intent not to
2-25 supply a reasonable expectable public demand, unless the
2-26 advertisements disclosed a limitation of quantity;
- 2-27 (11) making false or misleading statements of fact
2-28 concerning the reasons for, existence of, or amount of price
2-29 reductions;
- 2-30 (12) representing that an agreement confers or
2-31 involves rights, remedies, or obligations which it does not have or
2-32 involve, or which are prohibited by law;
- 2-33 (13) knowingly making false or misleading statements
2-34 of fact concerning the need for parts, replacement, or repair
2-35 service;
- 2-36 (14) misrepresenting the authority of a salesman,
2-37 representative or agent to negotiate the final terms of a consumer
2-38 transaction;
- 2-39 (15) basing a charge for the repair of any item in
2-40 whole or in part on a guaranty or warranty instead of on the value of
2-41 the actual repairs made or work to be performed on the item without
2-42 stating separately the charges for the work and the charge for the
2-43 warranty or guaranty, if any;
- 2-44 (16) disconnecting, turning back, or resetting the
2-45 odometer of any motor vehicle so as to reduce the number of miles
2-46 indicated on the odometer gauge;
- 2-47 (17) advertising of any sale by fraudulently
2-48 representing that a person is going out of business;
- 2-49 (18) advertising, selling, or distributing a card
2-50 which purports to be a prescription drug identification card issued
2-51 under Section [4151.152](#), Insurance Code, in accordance with rules
2-52 adopted by the commissioner of insurance, which offers a discount
2-53 on the purchase of health care goods or services from a third party
2-54 provider, and which is not evidence of insurance coverage, unless:
- 2-55 (A) the discount is authorized under an agreement
2-56 between the seller of the card and the provider of those goods and
2-57 services or the discount or card is offered to members of the
2-58 seller;
- 2-59 (B) the seller does not represent that the card
2-60 provides insurance coverage of any kind; and
- 2-61 (C) the discount is not false, misleading, or
2-62 deceptive;
- 2-63 (19) using or employing a chain referral sales plan in
2-64 connection with the sale or offer to sell of goods, merchandise, or
2-65 anything of value, which uses the sales technique, plan,
2-66 arrangement, or agreement in which the buyer or prospective buyer
2-67 is offered the opportunity to purchase merchandise or goods and in
2-68 connection with the purchase receives the seller's promise or
2-69 representation that the buyer shall have the right to receive

3-1 compensation or consideration in any form for furnishing to the
 3-2 seller the names of other prospective buyers if receipt of the
 3-3 compensation or consideration is contingent upon the occurrence of
 3-4 an event subsequent to the time the buyer purchases the merchandise
 3-5 or goods;

3-6 (20) representing that a guaranty or warranty confers
 3-7 or involves rights or remedies which it does not have or involve,
 3-8 provided, however, that nothing in this subchapter shall be
 3-9 construed to expand the implied warranty of merchantability as
 3-10 defined in Sections 2.314 through 2.318 and Sections 2A.212 through
 3-11 2A.216 to involve obligations in excess of those which are
 3-12 appropriate to the goods;

3-13 (21) promoting a pyramid promotional scheme, as
 3-14 defined by Section 17.461;

3-15 (22) representing that work or services have been
 3-16 performed on, or parts replaced in, goods when the work or services
 3-17 were not performed or the parts replaced;

3-18 (23) filing suit founded upon a written contractual
 3-19 obligation of and signed by the defendant to pay money arising out
 3-20 of or based on a consumer transaction for goods, services, loans, or
 3-21 extensions of credit intended primarily for personal, family,
 3-22 household, or agricultural use in any county other than in the
 3-23 county in which the defendant resides at the time of the
 3-24 commencement of the action or in the county in which the defendant
 3-25 in fact signed the contract; provided, however, that a violation of
 3-26 this subsection shall not occur where it is shown by the person
 3-27 filing such suit that the person neither knew or had reason to know
 3-28 that the county in which such suit was filed was neither the county
 3-29 in which the defendant resides at the commencement of the suit nor
 3-30 the county in which the defendant in fact signed the contract;

3-31 (24) failing to disclose information concerning goods
 3-32 or services which was known at the time of the transaction if such
 3-33 failure to disclose such information was intended to induce the
 3-34 consumer into a transaction into which the consumer would not have
 3-35 entered had the information been disclosed;

3-36 (25) using the term "corporation," "incorporated," or
 3-37 an abbreviation of either of those terms in the name of a business
 3-38 entity that is not incorporated under the laws of this state or
 3-39 another jurisdiction;

3-40 (26) selling, offering to sell, or illegally promoting
 3-41 an annuity contract under Chapter 22, Acts of the 57th Legislature,
 3-42 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil
 3-43 Statutes), with the intent that the annuity contract will be the
 3-44 subject of a salary reduction agreement, as defined by that Act, if
 3-45 the annuity contract is not an eligible qualified investment under
 3-46 that Act or is not registered with the Teacher Retirement System of
 3-47 Texas as required by Section 8A of that Act;

3-48 (27) taking advantage of a disaster declared by the
 3-49 governor under Chapter 418, Government Code, by:

3-50 (A) selling or leasing fuel, food, medicine, or
 3-51 another necessity at an exorbitant or excessive price; or

3-52 (B) demanding an exorbitant or excessive price in
 3-53 connection with the sale or lease of fuel, food, medicine, or
 3-54 another necessity;

3-55 (28) using the translation into a foreign language of
 3-56 a title or other word, including "attorney," "lawyer," "licensed,"
 3-57 "notary," and "notary public," in any written or electronic
 3-58 material, including an advertisement, a business card, a
 3-59 letterhead, stationery, a website, or an online video, in reference
 3-60 to a person who is not an attorney in order to imply that the person
 3-61 is authorized to practice law in the United States;

3-62 (29) [~~28~~] delivering or distributing a solicitation
 3-63 in connection with a good or service that:

3-64 (A) represents that the solicitation is sent on
 3-65 behalf of a governmental entity when it is not; or

3-66 (B) resembles a governmental notice or form that
 3-67 represents or implies that a criminal penalty may be imposed if the
 3-68 recipient does not remit payment for the good or service;

3-69 (30) [~~29~~] delivering or distributing a solicitation

4-1 in connection with a good or service that resembles a check or other
4-2 negotiable instrument or invoice, unless the portion of the
4-3 solicitation that resembles a check or other negotiable instrument
4-4 or invoice includes the following notice, clearly and conspicuously
4-5 printed in at least 18-point type:

4-6 "SPECIMEN-NON-NEGOTIABLE";

4-7 (31) [~~30~~] in the production, sale, distribution, or
4-8 promotion of a synthetic substance that produces and is intended to
4-9 produce an effect when consumed or ingested similar to, or in excess
4-10 of, the effect of a controlled substance or controlled substance
4-11 analogue, as those terms are defined by Section 481.002, Health and
4-12 Safety Code:

4-13 (A) making a deceptive representation or
4-14 designation about the synthetic substance; or

4-15 (B) causing confusion or misunderstanding as to
4-16 the effects the synthetic substance causes when consumed or
4-17 ingested; [~~or~~]

4-18 (32) [~~31~~] a licensed public insurance adjuster
4-19 directly or indirectly soliciting employment, as defined by Section
4-20 38.01, Penal Code, for an attorney, or a licensed public insurance
4-21 adjuster entering into a contract with an insured for the primary
4-22 purpose of referring the insured to an attorney without the intent
4-23 to actually perform the services customarily provided by a licensed
4-24 public insurance adjuster, provided that this subdivision may not
4-25 be construed to prohibit a licensed public insurance adjuster from
4-26 recommending a particular attorney to an insured; or

4-27 (33) a warrantor of a vehicle protection product
4-28 warranty using, in connection with the product, a name that
4-29 includes "casualty," "surety," "insurance," "mutual," or any other
4-30 word descriptive of an insurance business, including property or
4-31 casualty insurance, or a surety business.

4-32 SECTION 3. Subchapter A, Chapter 348, Finance Code, is
4-33 amended by adding Section 348.014 to read as follows:

4-34 Sec. 348.014. TRANSACTION CONDITIONED ON PURCHASE OF
4-35 VEHICLE PROTECTION PRODUCT PROHIBITED. (a) In this section,
4-36 "vehicle protection product" has the meaning assigned by Section
4-37 17.45, Business & Commerce Code.

4-38 (b) A retail seller may not require as a condition of a
4-39 retail installment transaction or the cash sale of a motor vehicle
4-40 that the buyer purchase a vehicle protection product that is not
4-41 installed on the vehicle at the time of the transaction.

4-42 (c) A violation of this section is a false, misleading, or
4-43 deceptive act or practice within the meaning of Section 17.46,
4-44 Business & Commerce Code, and is actionable in a public or private
4-45 suit brought under Subchapter E, Chapter 17, Business & Commerce
4-46 Code.

4-47 SECTION 4. Subchapter A, Chapter 353, Finance Code, is
4-48 amended by adding Section 353.017 to read as follows:

4-49 Sec. 353.017. TRANSACTION CONDITIONED ON PURCHASE OF
4-50 VEHICLE PROTECTION PRODUCT PROHIBITED. (a) In this section,
4-51 "vehicle protection product" has the meaning assigned by Section
4-52 17.45, Business & Commerce Code.

4-53 (b) A retail seller may not require as a condition of a
4-54 retail installment transaction or the cash sale of a commercial
4-55 vehicle that the buyer purchase a vehicle protection product that
4-56 is not installed on the vehicle at the time of the transaction.

4-57 (c) A violation of this section is a false, misleading, or
4-58 deceptive act or practice within the meaning of Section 17.46,
4-59 Business & Commerce Code, and is actionable in a public or private
4-60 suit brought under Subchapter E, Chapter 17, Business & Commerce
4-61 Code.

4-62 SECTION 5. Chapter 2306, Occupations Code, is repealed.

4-63 SECTION 6. (a) On the effective date of this Act:

4-64 (1) an action, including a disciplinary or
4-65 administrative proceeding, pending under Chapter 51 or 2306,
4-66 Occupations Code, on the effective date of this Act related to an
4-67 alleged violation of Chapter 2306, Occupations Code, as that
4-68 chapter existed immediately before the effective date of this Act,
4-69 is dismissed;

5-1 (2) the Vehicle Protection Product Warrantor Advisory
5-2 Board is abolished; and

5-3 (3) a registration issued under former Chapter 2306,
5-4 Occupations Code, expires.

5-5 (b) As soon as practicable after the effective date of this
5-6 Act, the Texas Commission of Licensing and Regulation shall repeal
5-7 all rules regarding the regulation of vehicle protection product
5-8 warrantors adopted under former Chapter 2306, Occupations Code.

5-9 (c) An administrative penalty assessed by the Texas
5-10 Commission of Licensing and Regulation or the executive director of
5-11 the Texas Department of Licensing and Regulation related to a
5-12 violation of Chapter 2306, Occupations Code, as that chapter
5-13 existed immediately before the effective date of this Act, may be
5-14 collected as provided by Chapter 51, Occupations Code.

5-15 (d) The repeal by this Act of Chapter 2306, Occupations
5-16 Code, does not affect the validity or terms of a vehicle protection
5-17 product warranty that was issued or renewed before the effective
5-18 date of this Act.

5-19 SECTION 7. Section 17.46(b), Business & Commerce Code, as
5-20 amended by this Act, applies only to a cause of action that accrues
5-21 on or after the effective date of this Act. A cause of action that
5-22 accrued before the effective date of this Act is governed by the law
5-23 in effect immediately before the effective date of this Act, and
5-24 that law is continued in effect for that purpose.

5-25 SECTION 8. Sections 348.014 and 353.017, Finance Code, as
5-26 added by this Act, apply only to a transaction for the purchase of a
5-27 motor vehicle or commercial vehicle, as applicable, that occurs on
5-28 or after the effective date of this Act. A transaction for the
5-29 purchase of a motor vehicle or commercial vehicle that occurs
5-30 before the effective date of this Act is governed by the law in
5-31 effect on the date the transaction occurred, and the former law is
5-32 continued in effect for that purpose.

5-33 SECTION 9. To the extent of any conflict, this Act prevails
5-34 over another Act of the 85th Legislature, Regular Session, 2017,
5-35 relating to nonsubstantive additions to and corrections in enacted
5-36 codes.

5-37 SECTION 10. This Act takes effect September 1, 2017.

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