

1-1 By: Bernal, Guillen (Senate Sponsor - Campbell) H.B. No. 1152
 1-2 (In the Senate - Received from the House May 13, 2019;
 1-3 May 14, 2019, read first time and referred to Committee on State
 1-4 Affairs; May 19, 2019, reported favorably by the following vote:
 1-5 Yeas 9, Nays 0; May 19, 2019, 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 the deceptive trade practice of charging exorbitant or
 1-20 excessive prices for necessities during a declared disaster.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Section 17.45, Business & Commerce Code, is
 1-23 amended by adding Subdivision (17) to read as follows:

1-24 (17) "Building materials" includes lumber, windows,
 1-25 and other materials used in the construction or repair of
 1-26 improvements to real property.

1-27 SECTION 2. Section 17.46(b), Business & Commerce Code, as
 1-28 amended by Chapters 324 (S.B. 1488), 858 (H.B. 2552), and 967 (S.B.
 1-29 2065), Acts of the 85th Legislature, Regular Session, 2017, is
 1-30 reenacted and amended to read as follows:

1-31 (b) Except as provided in Subsection (d) of this section,
 1-32 the term "false, misleading, or deceptive acts or practices"
 1-33 includes, but is not limited to, the following acts:

1-34 (1) passing off goods or services as those of another;

1-35 (2) causing confusion or misunderstanding as to the
 1-36 source, sponsorship, approval, or certification of goods or
 1-37 services;

1-38 (3) causing confusion or misunderstanding as to
 1-39 affiliation, connection, or association with, or certification by,
 1-40 another;

1-41 (4) using deceptive representations or designations
 1-42 of geographic origin in connection with goods or services;

1-43 (5) representing that goods or services have
 1-44 sponsorship, approval, characteristics, ingredients, uses,
 1-45 benefits, or quantities which they do not have or that a person has
 1-46 a sponsorship, approval, status, affiliation, or connection which
 1-47 the person does not;

1-48 (6) representing that goods are original or new if
 1-49 they are deteriorated, reconditioned, reclaimed, used, or
 1-50 secondhand;

1-51 (7) representing that goods or services are of a
 1-52 particular standard, quality, or grade, or that goods are of a
 1-53 particular style or model, if they are of another;

1-54 (8) disparaging the goods, services, or business of
 1-55 another by false or misleading representation of facts;

1-56 (9) advertising goods or services with intent not to
 1-57 sell them as advertised;

1-58 (10) advertising goods or services with intent not to
 1-59 supply a reasonable expectable public demand, unless the
 1-60 advertisements disclosed a limitation of quantity;

1-61 (11) making false or misleading statements of fact

2-1 concerning the reasons for, existence of, or amount of price
2-2 reductions;

2-3 (12) representing that an agreement confers or
2-4 involves rights, remedies, or obligations which it does not have or
2-5 involve, or which are prohibited by law;

2-6 (13) knowingly making false or misleading statements
2-7 of fact concerning the need for parts, replacement, or repair
2-8 service;

2-9 (14) misrepresenting the authority of a salesman,
2-10 representative or agent to negotiate the final terms of a consumer
2-11 transaction;

2-12 (15) basing a charge for the repair of any item in
2-13 whole or in part on a guaranty or warranty instead of on the value of
2-14 the actual repairs made or work to be performed on the item without
2-15 stating separately the charges for the work and the charge for the
2-16 warranty or guaranty, if any;

2-17 (16) disconnecting, turning back, or resetting the
2-18 odometer of any motor vehicle so as to reduce the number of miles
2-19 indicated on the odometer gauge;

2-20 (17) advertising of any sale by fraudulently
2-21 representing that a person is going out of business;

2-22 (18) advertising, selling, or distributing a card
2-23 which purports to be a prescription drug identification card issued
2-24 under Section 4151.152, Insurance Code, in accordance with rules
2-25 adopted by the commissioner of insurance, which offers a discount
2-26 on the purchase of health care goods or services from a third party
2-27 provider, and which is not evidence of insurance coverage, unless:

2-28 (A) the discount is authorized under an agreement
2-29 between the seller of the card and the provider of those goods and
2-30 services or the discount or card is offered to members of the
2-31 seller;

2-32 (B) the seller does not represent that the card
2-33 provides insurance coverage of any kind; and

2-34 (C) the discount is not false, misleading, or
2-35 deceptive;

2-36 (19) using or employing a chain referral sales plan in
2-37 connection with the sale or offer to sell of goods, merchandise, or
2-38 anything of value, which uses the sales technique, plan,
2-39 arrangement, or agreement in which the buyer or prospective buyer
2-40 is offered the opportunity to purchase merchandise or goods and in
2-41 connection with the purchase receives the seller's promise or
2-42 representation that the buyer shall have the right to receive
2-43 compensation or consideration in any form for furnishing to the
2-44 seller the names of other prospective buyers if receipt of the
2-45 compensation or consideration is contingent upon the occurrence of
2-46 an event subsequent to the time the buyer purchases the merchandise
2-47 or goods;

2-48 (20) representing that a guaranty or warranty confers
2-49 or involves rights or remedies which it does not have or involve,
2-50 provided, however, that nothing in this subchapter shall be
2-51 construed to expand the implied warranty of merchantability as
2-52 defined in Sections 2.314 through 2.318 and Sections 2A.212 through
2-53 2A.216 to involve obligations in excess of those which are
2-54 appropriate to the goods;

2-55 (21) promoting a pyramid promotional scheme, as
2-56 defined by Section 17.461;

2-57 (22) representing that work or services have been
2-58 performed on, or parts replaced in, goods when the work or services
2-59 were not performed or the parts replaced;

2-60 (23) filing suit founded upon a written contractual
2-61 obligation of and signed by the defendant to pay money arising out
2-62 of or based on a consumer transaction for goods, services, loans, or
2-63 extensions of credit intended primarily for personal, family,
2-64 household, or agricultural use in any county other than in the
2-65 county in which the defendant resides at the time of the
2-66 commencement of the action or in the county in which the defendant
2-67 in fact signed the contract; provided, however, that a violation of
2-68 this subsection shall not occur where it is shown by the person
2-69 filing such suit that the person neither knew or had reason to know

3-1 that the county in which such suit was filed was neither the county
3-2 in which the defendant resides at the commencement of the suit nor
3-3 the county in which the defendant in fact signed the contract;
3-4 (24) failing to disclose information concerning goods
3-5 or services which was known at the time of the transaction if such
3-6 failure to disclose such information was intended to induce the
3-7 consumer into a transaction into which the consumer would not have
3-8 entered had the information been disclosed;
3-9 (25) using the term "corporation," "incorporated," or
3-10 an abbreviation of either of those terms in the name of a business
3-11 entity that is not incorporated under the laws of this state or
3-12 another jurisdiction;
3-13 (26) selling, offering to sell, or illegally promoting
3-14 an annuity contract under Chapter 22, Acts of the 57th Legislature,
3-15 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil
3-16 Statutes), with the intent that the annuity contract will be the
3-17 subject of a salary reduction agreement, as defined by that Act, if
3-18 the annuity contract is not an eligible qualified investment under
3-19 that Act or is not registered with the Teacher Retirement System of
3-20 Texas as required by Section 8A of that Act;
3-21 (27) subject to Section 17.4625, taking advantage of a
3-22 disaster declared by the governor under Chapter 418, Government
3-23 Code, or by the president of the United States by:
3-24 (A) selling or leasing fuel, food, medicine,
3-25 lodging, building materials, construction tools, or another
3-26 necessity at an exorbitant or excessive price; or
3-27 (B) demanding an exorbitant or excessive price in
3-28 connection with the sale or lease of fuel, food, medicine, lodging,
3-29 building materials, construction tools, or another necessity;
3-30 (28) using the translation into a foreign language of
3-31 a title or other word, including "attorney," "immigration
3-32 consultant," "immigration expert," "lawyer," "licensed," "notary,"
3-33 and "notary public," in any written or electronic material,
3-34 including an advertisement, a business card, a letterhead,
3-35 stationery, a website, or an online video, in reference to a person
3-36 who is not an attorney in order to imply that the person is
3-37 authorized to practice law in the United States;
3-38 (29) delivering or distributing a solicitation in
3-39 connection with a good or service that:
3-40 (A) represents that the solicitation is sent on
3-41 behalf of a governmental entity when it is not; or
3-42 (B) resembles a governmental notice or form that
3-43 represents or implies that a criminal penalty may be imposed if the
3-44 recipient does not remit payment for the good or service;
3-45 (30) delivering or distributing a solicitation in
3-46 connection with a good or service that resembles a check or other
3-47 negotiable instrument or invoice, unless the portion of the
3-48 solicitation that resembles a check or other negotiable instrument
3-49 or invoice includes the following notice, clearly and conspicuously
3-50 printed in at least 18-point type:
3-51 "SPECIMEN-NON-NEGOTIABLE";
3-52 (31) in the production, sale, distribution, or
3-53 promotion of a synthetic substance that produces and is intended to
3-54 produce an effect when consumed or ingested similar to, or in excess
3-55 of, the effect of a controlled substance or controlled substance
3-56 analogue, as those terms are defined by Section 481.002, Health and
3-57 Safety Code:
3-58 (A) making a deceptive representation or
3-59 designation about the synthetic substance; or
3-60 (B) causing confusion or misunderstanding as to
3-61 the effects the synthetic substance causes when consumed or
3-62 ingested;
3-63 (32) a licensed public insurance adjuster directly or
3-64 indirectly soliciting employment, as defined by Section 38.01,
3-65 Penal Code, for an attorney, or a licensed public insurance
3-66 adjuster entering into a contract with an insured for the primary
3-67 purpose of referring the insured to an attorney without the intent
3-68 to actually perform the services customarily provided by a licensed
3-69 public insurance adjuster, provided that this subdivision may not

4-1 be construed to prohibit a licensed public insurance adjuster from
4-2 recommending a particular attorney to an insured; ~~[or]~~

4-3 (33) owning, operating, maintaining, or advertising a
4-4 massage establishment, as defined by Section 455.001, Occupations
4-5 Code, that:

4-6 (A) is not appropriately licensed under Chapter
4-7 455, Occupations Code, or is not in compliance with the applicable
4-8 licensing and other requirements of that chapter; or

4-9 (B) is not in compliance with an applicable local
4-10 ordinance relating to the licensing or regulation of massage
4-11 establishments; or

4-12 (34) ~~[(33)]~~ a warrantor of a vehicle protection
4-13 product warranty using, in connection with the product, a name that
4-14 includes "casualty," "surety," "insurance," "mutual," or any other
4-15 word descriptive of an insurance business, including property or
4-16 casualty insurance, or a surety business.

4-17 SECTION 3. Subchapter E, Chapter 17, Business & Commerce
4-18 Code, is amended by adding Section 17.4625 to read as follows:

4-19 Sec. 17.4625. PRICE GOUGING DURING DECLARED DISASTER. (a)
4-20 In this section, "designated disaster period" means the period:

4-21 (1) beginning on the earliest of:

4-22 (A) the date the disaster occurs; or

4-23 (B) the date of:

4-24 (i) the proclamation or executive order of
4-25 the governor declaring the disaster; or

4-26 (ii) the declaration of the disaster by the
4-27 president of the United States, if any part of this state is named
4-28 in the federally declared disaster area; and

4-29 (2) ending on the 30th day after the date the disaster
4-30 declaration expires or is terminated.

4-31 (b) Notwithstanding any other provision of this subchapter,
4-32 Section 17.46(b)(27) applies only to an act described by that
4-33 subdivision that occurs during a designated disaster period in this
4-34 state.

4-35 SECTION 4. To the extent of any conflict, this Act prevails
4-36 over another Act of the 86th Legislature, Regular Session, 2019,
4-37 relating to nonsubstantive additions to and corrections in enacted
4-38 codes.

4-39 SECTION 5. The changes in law made by this Act apply only to
4-40 an act or practice that occurs on or after the effective date of
4-41 this Act. An act or practice that occurs before the effective date
4-42 of this Act is governed by the law in effect on the date the act or
4-43 practice occurred, and the former law is continued in effect for
4-44 that purpose.

4-45 SECTION 6. This Act takes effect September 1, 2019.

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