

## Chapter 759

H.B. No. 1152

1 AN ACT  
2 relating to the deceptive trade practice of charging exorbitant or  
3 excessive prices for necessities during a declared disaster.

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

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

7 (17) "Building materials" includes lumber, windows,  
8 and other materials used in the construction or repair of  
9 improvements to real property.

10 SECTION 2. Section 17.46(b), Business & Commerce Code, as  
11 amended by Chapters 324 (S.B. 1488), 858 (H.B. 2552), and 967 (S.B.  
12 2065), Acts of the 85th Legislature, Regular Session, 2017, is  
13 reenacted and amended to read as follows:

14 (b) Except as provided in Subsection (d) of this section,  
15 the term "false, misleading, or deceptive acts or practices"  
16 includes, but is not limited to, the following acts:

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

18 (2) causing confusion or misunderstanding as to the  
19 source, sponsorship, approval, or certification of goods or  
20 services;

21 (3) causing confusion or misunderstanding as to  
22 affiliation, connection, or association with, or certification by,  
23 another;

24 (4) using deceptive representations or designations

1 of geographic origin in connection with goods or services;

2 (5) representing that goods or services have  
3 sponsorship, approval, characteristics, ingredients, uses,  
4 benefits, or quantities which they do not have or that a person has  
5 a sponsorship, approval, status, affiliation, or connection which  
6 the person does not;

7 (6) representing that goods are original or new if  
8 they are deteriorated, reconditioned, reclaimed, used, or  
9 secondhand;

10 (7) representing that goods or services are of a  
11 particular standard, quality, or grade, or that goods are of a  
12 particular style or model, if they are of another;

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

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

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

20 (11) making false or misleading statements of fact  
21 concerning the reasons for, existence of, or amount of price  
22 reductions;

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

26 (13) knowingly making false or misleading statements  
27 of fact concerning the need for parts, replacement, or repair

1 service;

2 (14) misrepresenting the authority of a salesman,  
3 representative or agent to negotiate the final terms of a consumer  
4 transaction;

5 (15) basing a charge for the repair of any item in  
6 whole or in part on a guaranty or warranty instead of on the value of  
7 the actual repairs made or work to be performed on the item without  
8 stating separately the charges for the work and the charge for the  
9 warranty or guaranty, if any;

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

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

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

21 (A) the discount is authorized under an agreement  
22 between the seller of the card and the provider of those goods and  
23 services or the discount or card is offered to members of the  
24 seller;

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

27 (C) the discount is not false, misleading, or

1 deceptive;

2           (19) using or employing a chain referral sales plan in  
3 connection with the sale or offer to sell of goods, merchandise, or  
4 anything of value, which uses the sales technique, plan,  
5 arrangement, or agreement in which the buyer or prospective buyer  
6 is offered the opportunity to purchase merchandise or goods and in  
7 connection with the purchase receives the seller's promise or  
8 representation that the buyer shall have the right to receive  
9 compensation or consideration in any form for furnishing to the  
10 seller the names of other prospective buyers if receipt of the  
11 compensation or consideration is contingent upon the occurrence of  
12 an event subsequent to the time the buyer purchases the merchandise  
13 or goods;

14           (20) representing that a guaranty or warranty confers  
15 or involves rights or remedies which it does not have or involve,  
16 provided, however, that nothing in this subchapter shall be  
17 construed to expand the implied warranty of merchantability as  
18 defined in Sections 2.314 through 2.318 and Sections 2A.212 through  
19 2A.216 to involve obligations in excess of those which are  
20 appropriate to the goods;

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

23           (22) representing that work or services have been  
24 performed on, or parts replaced in, goods when the work or services  
25 were not performed or the parts replaced;

26           (23) filing suit founded upon a written contractual  
27 obligation of and signed by the defendant to pay money arising out

1 of or based on a consumer transaction for goods, services, loans, or  
2 extensions of credit intended primarily for personal, family,  
3 household, or agricultural use in any county other than in the  
4 county in which the defendant resides at the time of the  
5 commencement of the action or in the county in which the defendant  
6 in fact signed the contract; provided, however, that a violation of  
7 this subsection shall not occur where it is shown by the person  
8 filing such suit that the person neither knew or had reason to know  
9 that the county in which such suit was filed was neither the county  
10 in which the defendant resides at the commencement of the suit nor  
11 the county in which the defendant in fact signed the contract;

12           (24) failing to disclose information concerning goods  
13 or services which was known at the time of the transaction if such  
14 failure to disclose such information was intended to induce the  
15 consumer into a transaction into which the consumer would not have  
16 entered had the information been disclosed;

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

21           (26) selling, offering to sell, or illegally promoting  
22 an annuity contract under Chapter 22, Acts of the 57th Legislature,  
23 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil  
24 Statutes), with the intent that the annuity contract will be the  
25 subject of a salary reduction agreement, as defined by that Act, if  
26 the annuity contract is not an eligible qualified investment under  
27 that Act or is not registered with the Teacher Retirement System of

1 Texas as required by Section 8A of that Act;

2 (27) subject to Section 17.4625, taking advantage of a  
3 disaster declared by the governor under Chapter 418, Government  
4 Code, or by the president of the United States by:

5 (A) selling or leasing fuel, food, medicine,  
6 lodging, building materials, construction tools, or another  
7 necessity at an exorbitant or excessive price; or

8 (B) demanding an exorbitant or excessive price in  
9 connection with the sale or lease of fuel, food, medicine, lodging,  
10 building materials, construction tools, or another necessity;

11 (28) using the translation into a foreign language of  
12 a title or other word, including "attorney," "immigration  
13 consultant," "immigration expert," "lawyer," "licensed," "notary,"  
14 and "notary public," in any written or electronic material,  
15 including an advertisement, a business card, a letterhead,  
16 stationery, a website, or an online video, in reference to a person  
17 who is not an attorney in order to imply that the person is  
18 authorized to practice law in the United States;

19 (29) delivering or distributing a solicitation in  
20 connection with a good or service that:

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

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

26 (30) delivering or distributing a solicitation in  
27 connection with a good or service that resembles a check or other

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

5 "SPECIMEN-NON-NEGOTIABLE";

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

12 (A) making a deceptive representation or  
13 designation about the synthetic substance; or

14 (B) causing confusion or misunderstanding as to  
15 the effects the synthetic substance causes when consumed or  
16 ingested;

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

26 (33) owning, operating, maintaining, or advertising a  
27 massage establishment, as defined by Section 455.001, Occupations

1 Code, that:

2 (A) is not appropriately licensed under Chapter  
3 455, Occupations Code, or is not in compliance with the applicable  
4 licensing and other requirements of that chapter; or

5 (B) is not in compliance with an applicable local  
6 ordinance relating to the licensing or regulation of massage  
7 establishments; or

8 (34) [~~33~~] a warrantor of a vehicle protection  
9 product warranty using, in connection with the product, a name that  
10 includes "casualty," "surety," "insurance," "mutual," or any other  
11 word descriptive of an insurance business, including property or  
12 casualty insurance, or a surety business.

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

15 Sec. 17.4625. PRICE GOUGING DURING DECLARED DISASTER. (a)  
16 In this section, "designated disaster period" means the period:

17 (1) beginning on the earliest of:

18 (A) the date the disaster occurs; or

19 (B) the date of:

20 (i) the proclamation or executive order of  
21 the governor declaring the disaster; or

22 (ii) the declaration of the disaster by the  
23 president of the United States, if any part of this state is named  
24 in the federally declared disaster area; and

25 (2) ending on the 30th day after the date the disaster  
26 declaration expires or is terminated.

27 (b) Notwithstanding any other provision of this subchapter,



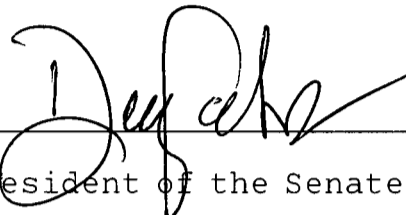
1 Section 17.46(b)(27) applies only to an act described by that  
2 subdivision that occurs during a designated disaster period in this  
3 state.

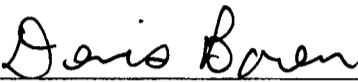
4 SECTION 4. To the extent of any conflict, this Act prevails  
5 over another Act of the 86th Legislature, Regular Session, 2019,  
6 relating to nonsubstantive additions to and corrections in enacted  
7 codes.

8 SECTION 5. The changes in law made by this Act apply only to  
9 an act or practice that occurs on or after the effective date of  
10 this Act. An act or practice that occurs before the effective date  
11 of this Act is governed by the law in effect on the date the act or  
12 practice occurred, and the former law is continued in effect for  
13 that purpose.

14 SECTION 6. This Act takes effect September 1, 2019.

H.B. No. 1152

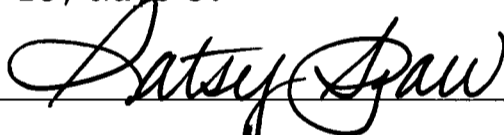
  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House

I certify that H.B. No. 1152 was passed by the House on May 10, 2019, by the following vote: Yeas 112, Nays 29, 2 present, not voting.

  
\_\_\_\_\_  
Chief Clerk of the House

I certify that H.B. No. 1152 was passed by the Senate on May 22, 2019, by the following vote: Yeas 28, Nays 3.

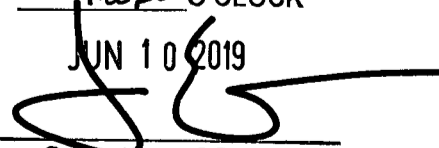
  
\_\_\_\_\_  
Secretary of the Senate

APPROVED: 6-8-2019  
Date

  
\_\_\_\_\_  
Governor

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
7:00 PM O'CLOCK

JUN 10 2019

  
\_\_\_\_\_  
Secretary of State