

Chapter 1023

H.B. No. 1265

AN ACT

1
2 relating to a deceptive act or practice involving a solicitation in
3 connection with a good or service or involving the production,
4 sale, distribution, or promotion of certain synthetic substances.

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

6 SECTION 1. Section 17.46(b), Business & Commerce Code, is
7 amended to read as follows:

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

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

12 (2) causing confusion or misunderstanding as to the
13 source, sponsorship, approval, or certification of goods or
14 services;

15 (3) causing confusion or misunderstanding as to
16 affiliation, connection, or association with, or certification by,
17 another;

18 (4) using deceptive representations or designations
19 of geographic origin in connection with goods or services;

20 (5) representing that goods or services have
21 sponsorship, approval, characteristics, ingredients, uses,
22 benefits, or quantities which they do not have or that a person has
23 a sponsorship, approval, status, affiliation, or connection which
24 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:

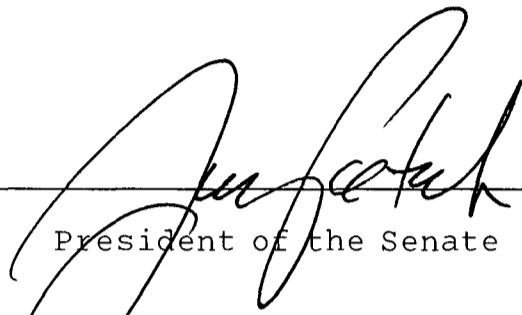
23 (A) making a deceptive representation or
24 designation about the synthetic substance; or

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

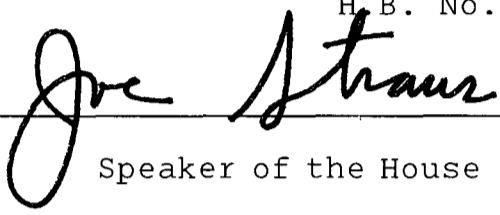
1 (31) a licensed public insurance adjuster directly or
2 indirectly soliciting employment, as defined by Section 38.01,
3 Penal Code, for an attorney, or a licensed public insurance
4 adjuster entering into a contract with an insured for the primary
5 purpose of referring the insured to an attorney 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.



President of the Senate



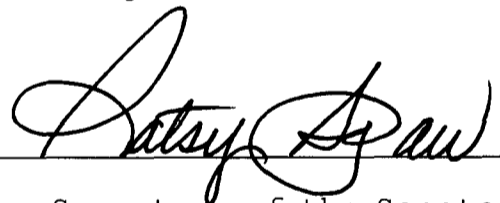
Speaker of the House

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.



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.




Secretary of the Senate

APPROVED: 6-13-2015
Date



Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
6:30 pm O'CLOCK

JUN 19 2015


Secretary of State

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 28, 2015

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1265 by Wu (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.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend the Business and Commerce Code to add certain actions as a deceptive trade practice. The bill would take effect September 1, 2015.

Based on LBB's analysis of the Office of the Attorney General, the costs associated with implementation of the bill could be absorbed with existing resources.

Local Government Impact

The fiscal implications of the bill cannot be determined at this time

Source Agencies: 302 Office of the Attorney General

LBB Staff: UP, SD, CL, TBo

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 22, 2015

TO: Honorable Kevin Eltife, Chair, Senate Committee on Business & Commerce

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **HB1265** by Wu (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.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Business and Commerce Code to add certain actions as a deceptive trade practice. The bill would take effect September 1, 2015.

Based on LBB's analysis of the Office of the Attorney General, the costs associated with implementation of the bill could be absorbed with existing resources.

Local Government Impact

The fiscal implications of the bill cannot be determined at this time

Source Agencies: 302 Office of the Attorney General

LBB Staff: UP, CL, TBo

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 21, 2015

TO: Honorable Kevin Eltife, Chair, Senate Committee on Business & Commerce

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1265 by Wu (Relating to a deceptive act or practice involving a solicitation in connection with a good or service.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend the Business and Commerce Code to add certain actions as a deceptive trade practice. The bill would take effect September 1, 2015.

Based on LBB's analysis of the Office of the Attorney General, the costs associated with implementation of the bill could be absorbed with existing resources.

Local Government Impact

The fiscal implications of the bill cannot be determined at this time.

Source Agencies: 302 Office of the Attorney General

LBB Staff: UP, CL, TBo

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

March 31, 2015

TO: Honorable René Oliveira, Chair, House Committee on Business & Industry

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1265 by Wu (Relating to a deceptive act or practice involving a solicitation in connection with a good or service.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Business and Commerce Code to add certain actions as a deceptive trade practice. The bill would take effect September 1, 2015.

Based on LBB's analysis of the Office of the Attorney General, the costs associated with implementation of the bill could be absorbed with existing resources.

Local Government Impact

The fiscal implications of the bill cannot be determined at this time

Source Agencies: 302 Office of the Attorney General

LBB Staff: UP, CL, EP, TBo

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

March 14, 2015

TO: Honorable René Oliveira, Chair, House Committee on Business & Industry

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1265 by Wu (Relating to a deceptive act or practice related to an unsolicited advertisement of goods and services sent by mail.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Business and Commerce Code to add certain actions as a deceptive trade practice and to provide an affirmative defense in certain instances. The bill would take effect September 1, 2015.

The Office of the Attorney General indicates the costs associated with implementation of the bill could be absorbed with existing resources.

Local Government Impact

The fiscal implications of the bill cannot be determined at this time

Source Agencies: 302 Office of the Attorney General

LBB Staff: UP, CL, EP, TBo