



The DTPA Turns 50

A look at its history.

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Fifty years ago, the DTPA became law in Texas.¹

DTPA EARLY HISTORY 1971-1973

The governor's signature on House Bill 417 immediately enacted the "Texas Deceptive Trade Practices-Consumer Remedies Act" which forevermore would be known simply as the "DTPA." Legislative adoption of this act signaled the death knell for application of caveat emptor against consumers in Texas.

The DTPA was only one of several 1973 reforms recognized by the Texas Legislative Council as being "occasioned" by the "vivid memory of the Sharpstown fiasco."

As it became known, the Sharpstown Scandal was a huge 1971-1972 political dust-up involving bribery allegations relating to bank-financed stock purchases Houston financier Frank Sharp arranged for key elected officials at his Sharpstown

Bank. The proceeds from these loans would then be used to buy shares in National Bankers Life Insurance Company, a Sharp-controlled company, with the pay-off being quick profits for the favored officials.

Not surprisingly, lawsuits, indictments, and criminal cases soon followed.

Like today, Texas elections were controlled by a single political party, except back then it was Democrats rather than Republicans. By primary election day in May 1972, voters were fed up by the scandal and promptly expressed their anger by "throwing the rascals out."²

The 1972 election results brought in key new leaders, including governor, lieutenant governor, attorney general, and new majorities in the Texas Senate and House of Representatives (including a new speaker). Many were keen to sponsor "open

ABOVE FROM LEFT: Joe K. Longley, Gov. Dolph Briscoe, and Attorney General John Hill at the signing of the DTPA bill, which went into effect immediately after the governor signed. PHOTO COURTESY OF JOE K. LONGLEY

government” bills designed to eliminate alleged secret influence by moneyed special interests, as well as effective reforms for protection of Texas consumers.³

Gaining strength from this reform-minded election was a cadre of young activist lawyers who had labored in many of the 1972 winning campaigns.⁴

Consequently, the earliest draft-version of the DTPA came from this group.⁵

Numerous drafts and re-drafts were circulated among several incoming Senate and House members seeking to obtain strong and effective bill sponsors. Eventually, Sen. Oscar Mauzy, of Dallas, and Rep. Carl Parker, of Beaumont, agreed to become the primary sponsors and soon introduced bill versions of the DTPA. These became Senate Bill 75 in the Senate, and House Bill 417 in the House, respectively.

HB 417 made it through the legislative maze first and was among the first of heavily contested pieces of legislation to earn the “reform” label. In its end-of-session “Round-Up,” the Legislative Council described HB 417 as “The most comprehensive piece of legislation for consumer protection. . . .”⁶

As Time Went By: 1974-Present

For the remainder of the 1970s, the DTPA experienced the usual litigation exploring the limits of a new cause of action. The first case to reach the Texas Supreme Court was *Woods v. Littleton*.⁷

In *Woods*, the court held that actual damages awarded to successful consumers were to be *automatically* trebled under the structure and purpose of the act.⁸

This holding set off a round of criticism that ultimately culminated in a 1979 legislative battle between business and consumer interests. Business won.

The 1979 passage of SB 357 legislatively reversed the *Woods* decision.

Helping to bring about this legislative reversal was effective “push back” contained in a lengthy 1979 law review article. There the authors described the problem with the DTPA as being one of “overreaching.”⁹

“The problem is one of overreaching. The original act contained no limitation on the size of the transaction, or the type of consumer goods covered. Accordingly, the remedy of treble damages for breach of warranty or innocent misrepresentation, which was a justifiable incentive to litigation for plaintiffs involved in relatively small consumer purchases, was extended to large commercial transactions where the treble sanction had no readily discernible justification.”¹⁰

SB 357 provided that successful consumers could recover only actual damages, plus double the first \$1,000 awarded—rather than mandatory treble damages. For any other additional damages, consumers were required to first show that the deception was committed “knowingly”—in which case the consumer could recover up to three times the original award.

The Legislative Council described SB 357 as “a response to complaints by the business community that many innocent businesspersons were being held liable for treble damages. . . .”¹¹

Nevertheless, even with its numerous amendments, the DTPA has remained a viable and effective consumer remedy over the past 50 years. Its historical importance is highlighted by the Texas Legislative Reference Library’s, or TLRLs, selection of the DTPA

for one of the few collections the TLRL maintains online.¹²

Suffice it to conclude that the 1973 enactment of the DTPA provided the prologue for many other Texas consumer laws providing protections against a variety of more specific deceptive and unfair practices. These include misrepresentations of insurance policies; unfair settlement practices; limits on home solicitations (door-to-door sales); unfair debt collection practices (debtor harassment), plus further limits on usury and consumer credit charges; and effective protections against landlord abuse of tenant security deposits, utility cutoffs, and abusive eviction practices.

Although today’s reported DTPA cases are fewer in number, there are no indications that the DTPA has outlived its usefulness. Its own unique notice requirements and settlement procedures still make the DTPA a consumer remedy available for Texas consumers. **TBJ**

NOTES

1. Act of May 21, 1973, 63rd Leg. R.S. ch. 143, § 1, 1973 Tex. Gen. Laws. 322, 322-42.
2. See e.g. Charles Deaton, *The Year They Threw the Rascals Out* (Shoal Creek Publishers, Austin) 1973; Harvey Katz, *Shadow on the Alamo* (Doubleday 1972).
3. See *Journal of Consumer & Commercial Law Section of the State Bar of Texas*, Vol. 11, No. 1, p. 7 (Fall 2007).
4. Lloyd Doggett, Jim Boyle, Liz Lacy, and I were included in this group. Doggett and Boyle had lobbied consumer issues on behalf of the Texas Consumers Association in 1971; Doggett was later elected to the Texas Senate, the Texas Supreme Court, and ultimately to the U.S. Congress. Boyle served as an early public counsel to the Texas Public Utilities Commission, then later opened his private law practice in Austin. Lacy had extensive legislative bill drafting experience with the Texas Legislative Council, then later moved to Virginia where she was elected as a justice to the Virginia Supreme Court. My own experience in those days included a series of part-time jobs in the Texas Senate, Governor’s Office, and Texas House while in college and law school.
5. This first draft was the product of an October 1972 late afternoon drafting session attended by the four members of the group held at Jaimie’s Spanish Village Restaurant on Red River Street in Austin. Due to an abundance of margaritas, nachos, and snappy repartee, several redrafts were later required.
6. The bill strikes directly at the inadequacy of prior law and provides means by which a consumer can sue and recover treble damages plus attorneys’ fees by proving violations of the act rather than having to prove the elements of common law fraud. The bill also provides for efficient and economical procedures to secure such protection; see also *Accomplishments of the 63rd Legislature*, Legislative Reference Library of Texas, https://lrl.texas.gov/scanned/sessionoverviews/63_Accomplishments_1.pdf.
7. 554 S.W.2d 662 (Tex. 1977).
8. *Id.* at 672.
9. Robert E. Goodfriend and Michael P. Lynn: *Of White Knights and Black Knights: An Analysis of the 1979 Amendments to the Texas Deceptive Trade Practices Act*, SMU Law Review, Vol. 33, Issue 4, Art. 2 (1979).
10. *Id.* at 1003.
11. Texas Legislative Council, “Summary of Enactments; 66th Legislature,” 1979. “As finally passed by both houses, SB 357 would limit the kinds of deceptive practices for which a consumer could sue . . . and would eliminate the mandatory treble damages the Texas Supreme Court has ruled the act now requires.”
12. See <https://lrl.texas.gov/collections/DTPA/lrlhome.cfm>; the DTPA Collection is also physically maintained at the TLRL location on the 2nd floor of the Texas State Capitol.



JOE K. LONGLEY

co-authored and nurtured the passage of the Texas Deceptive Trade Practices-Consumer Protection Act in 1973. He served on the State Bar of Texas Board of Directors and the District 9 Grievance Committee. In 2011, Longley received the State Bar of Texas Insurance Law Section’s Insurance Legend Award. He served as president of the State Bar of Texas from 2018 to 2019.

For more information about the Texas Deceptive Trade Practices-Consumer Protection Act and to view documents in the Joe K. Longley-Philip K. Maxwell Deceptive Trade Practices Act Collection at the Legislative Reference Library of Texas, go to <https://lrl.texas.gov/collections/DTPA/lrlhome.cfm>.