

## **BILL ANALYSIS**

C.S.H.B. 1833  
By: Chisum  
Business & Industry  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Direct mail solicitors frequently include in their solicitations a check payable to the person receiving the offer. The “check” is usually for a nominal amount of money and, indeed, the person receiving it may cash the check as they would any other check. However, the act of cashing the check causes the person unknowingly to enter into a contract to buy services or products. The effect of cashing the check is seldom noted on the check. Instead, it is usually written in small print in the body of some other information enclosed in the envelope with the check. Only after the purchaser calls to question the seller upon receipt of the merchandise, do purchasers become aware that by negotiating the check they have contracted to receive unwanted products or services.

This problem is experienced by businesses, as well as individuals, when the checks are received by a bookkeeping or accounting person or department who routinely negotiates the check, assuming the check is a payment due the business.

The purpose of HB1833 is to prevent sellers from tricking customers into buying unwanted goods or services by sending solicitations that include a check, negotiation of which automatically obligates the customer.

HB 1833 requires that, if a person solicits business in Texas by mailing a check or draft payable to an individual, that a disclosure be placed on the check. The bill also requires that the offeror give the customer notice at least two weeks before the end of the time period by which the customer must cancel to avoid charges.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

SECTION 1. Amends Subchapter D, Chapter 35, Business & Commerce Code, by adding Section 35.455. This section applies to a person that solicits business in this state by mailing a person a check or draft payable to the person. An offer that the recipient may accept by endorsing and negotiating the check must include the following statement in 12 point boldfaced type next to the endorsement line: “BY SIGNING AND NEGOTIATING THIS DOCUMENT YOU AGREE TO PAY FOR FUTURE SERVICES ARISING OUT OF THIS CONTRACT.” If the offer includes a free trial period or other incentive with a time period, and the person must cancel to avoid further charges, the offeror must notify the recipient of the obligation to cancel at least two weeks before the deadline for cancellation. The notice must state in 12 point boldface type: “YOU MUST ACT NOW TO AVOID FUTURE CHARGES.” The incentive period may not be shorter than two weeks. An offer is void if it does not comply with these provisions and there is no resulting contract. A violation of this section is actionable as a deceptive trade practice. (Subchapter E, Chapter 17.41 et seq.)

SECTION 2. Transition provision.

SECTION 3. Effective date.

C.S.H.B. 1833 79(R)

**EFFECTIVE DATE**

September 1, 2005.

**DIFFERENCE BETWEEN THE ORIGINAL AND THE SUBSTITUTE**

The word “individual” on page one, line 12 of the original was changed to “person” in the substitute.

The word “individual” on page one, line 13 of the original was changed to “person” in the substitute.

The word “individual” on page one, line 23 of the original was changed to “recipient” in the substitute.