

By: Chisum

H.B. No. 1833

A BILL TO BE ENTITLED

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AN ACT

relating to disclosures required for the creation of certain consumer contracts solicited by mail; providing a civil penalty.

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

SECTION 1. Subchapter D, Chapter 35, Business & Commerce Code, is amended by adding Section 35.455 to read as follows:

Sec. 35.455. DISCLOSURES REQUIRED FOR CERTAIN CONSUMER CONTRACTS SOLICITED BY MAIL. (a) Unless the context requires a different definition, the definitions of Chapter 3 apply to this section.

(b) This section applies only to a person that solicits business in this state by mailing an individual a check or draft payable to the individual. This section does not apply to a financial institution as defined in Section 201.101, Finance Code, or an authorized lender as defined in Section 341.001, Finance Code, that sends a check to an existing or prospective account holder authorizing the account holder to access an extension of credit.

(c) A person that makes an offer that the recipient may accept by endorsing and negotiating the check or draft shall state on the check or draft in uppercase 12-point boldfaced type next to the place for endorsement: "BY SIGNING AND NEGOTIATING THIS DOCUMENT YOU AGREE TO PAY FOR FUTURE SERVICES ARISING OUT OF THIS CONTRACT."

1       (d) If a person makes an offer under Subsection (c) that  
2 includes a free membership period, trial period, or other incentive  
3 with a time limit, and if the offer results in a contract unless the  
4 recipient cancels, rescinds, or revokes the offer by the end of the  
5 time period, the offeror shall send notice to the recipient, at  
6 least two weeks before the expiration of the time period, of the  
7 recipient's obligation to cancel, rescind, revoke, or otherwise  
8 terminate the recipient's acceptance. The notice must be in  
9 uppercase 12-point boldfaced type and state: "YOU MUST ACT NOW TO  
10 AVOID FUTURE CHARGES."

11       (e) An offer is void if the offeror:

12               (1) does not make the disclosure required by  
13 Subsection (c);

14               (2) does not give notice as required by Subsection  
15 (d), if applicable; or

16               (3) provides an incentive with a time limit, including  
17 a free trial or membership period, that is less than two weeks.

18       (f) If an offer described by Subsection (c) does not contain  
19 the required disclosure, or is not followed by any notice required  
20 by Subsection (d), the delivery of any goods or services to the  
21 recipient does not operate to form a contract between the offeror  
22 and the recipient.

23       (g) A violation of this section is a deceptive trade  
24 practice in addition to the practices described by Subchapter E,  
25 Chapter 17, and is actionable under that subchapter.

26       SECTION 2. Section 35.455, Business & Commerce Code, as  
27 added by this Act, applies only to a solicitation that is mailed on

1 or after September 1, 2005. A solicitation that is mailed before  
2 September 1, 2005, is covered by the law in effect on the date the  
3 solicitation was mailed, and the former law is continued in effect  
4 for that purpose.

5 SECTION 3. This Act takes effect September 1, 2005.