

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 or draft to an existing or prospective account holder authorizing the existing or prospective 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 clearly and conspicuously disclose on the check or draft, next to the place for endorsement, that by signing and negotiating the document the depositor agrees to pay for future goods or services as a result 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 debiting any account, of the recipient's
7 obligation to cancel, rescind, revoke, or otherwise terminate the
8 recipient's acceptance. The notice must be clear and conspicuous.
9 If the offeror bills the consumer by mailing an invoice, notice may
10 be included with the invoice.

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), or if the offeror fails to honor the recipient's
21 request to cancel made under the terms of the offer or as required
22 by Subsection (d), the delivery of any goods or services to the
23 recipient does not operate to form a contract between the offeror
24 and the recipient.

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

1 SECTION 2. Section 35.455, Business & Commerce Code, as
2 added by this Act, applies only to a solicitation that is mailed on
3 or after September 1, 2005. A solicitation that is mailed before
4 September 1, 2005, is covered by the law in effect on the date the
5 solicitation was mailed, and the former law is continued in effect
6 for that purpose.

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

President of the Senate

Speaker of the House

I certify that H.B. No. 1833 was passed by the House on April 26, 2005, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 1833 on May 23, 2005, by a non-record vote.

Chief Clerk of the House

I certify that H.B. No. 1833 was passed by the Senate, with amendments, on May 19, 2005, by the following vote: Yeas 29, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor