

By: Chisum

H.B. No. 1833

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to disclosures required for the creation of certain  
3 consumer contracts solicited by mail; providing a civil penalty.

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

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

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

11 (b) This section applies only to a person that solicits  
12 business in this state by mailing an individual a check or draft  
13 payable to the individual.

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

20 (d) If a person makes an offer under Subsection (c) that  
21 includes a free membership period, trial period, or other incentive  
22 with a time limit, and if the offer results in a contract unless the  
23 individual cancels, rescinds, or revokes the offer by the end of the  
24 time period, the offeror shall send notice to the recipient, at

1 least two weeks before the expiration of the time period, of the  
2 recipient's obligation to cancel, rescind, revoke, or otherwise  
3 terminate the recipient's acceptance. The notice must be in upper  
4 case 12-point boldfaced type and state: "YOU MUST ACT NOW TO AVOID  
5 FUTURE CHARGES."

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

7 (1) does not make the disclosure required by  
8 Subsection (c);

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

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

13 (f) If an offer described by Subsection (c) does not contain  
14 the required disclosure, or is not followed by any notice required  
15 by Subsection (d), the delivery of any goods or services to the  
16 recipient does not operate to form a contract between the offeror  
17 and the recipient.

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

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

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