

1-1 By: Chisum (Senate Sponsor - Seliger) H.B. No. 1833
1-2 (In the Senate - Received from the House April 27, 2005;
1-3 April 29, 2005, read first time and referred to Committee on
1-4 Business and Commerce; May 16, 2005, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 7,
1-6 Nays 0; May 16, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1833 By: Estes

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to disclosures required for the creation of certain
1-11 consumer contracts solicited by mail; providing a civil penalty.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subchapter D, Chapter 35, Business & Commerce
1-14 Code, is amended by adding Section 35.455 to read as follows:

1-15 Sec. 35.455. DISCLOSURES REQUIRED FOR CERTAIN CONSUMER
1-16 CONTRACTS SOLICITED BY MAIL. (a) Unless the context requires a
1-17 different definition, the definitions of Chapter 3 apply to this
1-18 section.

1-19 (b) This section applies only to a person that solicits
1-20 business in this state by mailing an individual a check or draft
1-21 payable to the individual. This section does not apply to a
1-22 financial institution as defined in Section 201.101, Finance Code,
1-23 or an authorized lender as defined in Section 341.001, Finance
1-24 Code, that sends a check or draft to an existing or prospective
1-25 account holder authorizing the existing or prospective account
1-26 holder to access an extension of credit.

1-27 (c) A person that makes an offer that the recipient may
1-28 accept by endorsing and negotiating the check or draft shall
1-29 clearly and conspicuously disclose on the check or draft, next to
1-30 the place for endorsement, that by signing and negotiating the
1-31 document the depositor agrees to pay for future goods or services as
1-32 a result of this contract.

1-33 (d) If a person makes an offer under Subsection (c) that
1-34 includes a free membership period, trial period, or other incentive
1-35 with a time limit, and if the offer results in a contract unless the
1-36 recipient cancels, rescinds, or revokes the offer by the end of the
1-37 time period, the offeror shall send notice to the recipient, at
1-38 least two weeks before debiting any account, of the recipient's
1-39 obligation to cancel, rescind, revoke, or otherwise terminate the
1-40 recipient's acceptance. The notice must be clear and conspicuous.
1-41 If the offeror bills the consumer by mailing an invoice, notice may
1-42 be included with the invoice.

1-43 (e) An offer is void if the offeror:

1-44 (1) does not make the disclosure required by
1-45 Subsection (c);

1-46 (2) does not give notice as required by Subsection
1-47 (d), if applicable; or

1-48 (3) provides an incentive with a time limit, including
1-49 a free trial or membership period, that is less than two weeks.

1-50 (f) If an offer described by Subsection (c) does not contain
1-51 the required disclosure, or is not followed by any notice required
1-52 by Subsection (d), or if the offeror fails to honor the recipient's
1-53 request to cancel made under the terms of the offer or as required
1-54 by Subsection (d), the delivery of any goods or services to the
1-55 recipient does not operate to form a contract between the offeror
1-56 and the recipient.

1-57 (g) A violation of this section is a deceptive trade
1-58 practice in addition to the practices described by Subchapter E,
1-59 Chapter 17, and is actionable under that subchapter.

1-60 SECTION 2. Section 35.455, Business & Commerce Code, as
1-61 added by this Act, applies only to a solicitation that is mailed on
1-62 or after September 1, 2005. A solicitation that is mailed before
1-63 September 1, 2005, is covered by the law in effect on the date the

2-1 solicitation was mailed, and the former law is continued in effect
2-2 for that purpose.

2-3 SECTION 3. This Act takes effect September 1, 2005.

2-4

* * * * *