

By: Elkins

H.B. No. 1983

A BILL TO BE ENTITLED

AN ACT

relating to the automatic renewal of certain consumer contracts.

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

SECTION 1. Title 4, Business & Commerce Code, is amended by adding Chapter 48 to read as follows:

CHAPTER 48. AUTOMATIC RENEWAL PROVISIONS IN CONSUMER  
CONTRACTS

Sec. 48.001. DEFINITIONS. In this chapter:

(1) "Consumer" means an individual who seeks or acquires goods or services for personal, family, or household purposes.

(2) "Consumer contract" means a contract or agreement in which one or more of the parties is a consumer.

(3) "Knowingly" means with actual awareness of the act or practice that violates this chapter, which may be inferred if an objective manifestation indicates that a person acted with actual awareness.

(4) "Merchant" means a party to a consumer contract other than a consumer.

Sec. 48.002. APPLICABILITY OF CHAPTER. This chapter applies only to a consumer contract for the lease or sale of goods or services that provides that the contract's term automatically renews for a term exceeding one month.

Sec. 48.003. TIME FOR DECLINING CONTRACT RENEWAL. A

1 consumer may decline to automatically renew a contract at any time  
2 during the contract's original or renewal term, including the date  
3 on which the contract is executed.

4 Sec. 48.004. DISCLOSURE OF AUTOMATIC RENEWAL; NOTICE BY  
5 MERCHANT. (a) A consumer contract may not contain an automatic  
6 renewal provision unless:

7 (1) the contract clearly and conspicuously states:

8 (A) that the contract will automatically renew  
9 for a term following the initial contract term unless the consumer  
10 declines automatic renewal;

11 (B) the steps the consumer must take to prevent  
12 the automatic renewal of the contract by declining automatic  
13 renewal; and

14 (C) the means by which the merchant will notify  
15 the consumer, as required by Subdivision (3), of the contract's  
16 automatic renewal and the consumer's right to decline automatic  
17 renewal;

18 (2) the contract includes a space for the consumer to  
19 acknowledge receipt of the disclosures required by Subdivision (1);  
20 and

21 (3) the merchant provides to the consumer, before each  
22 automatic renewal period, written notice complying with Subsection  
23 (b) that:

24 (A) informs the consumer of the automatic renewal  
25 provision; and

26 (B) offers the consumer the opportunity to  
27 decline automatic renewal at any time.

1        (b) The merchant shall provide the written notice required  
2 by Subsection (a)(3) to the consumer personally, by mail, or by  
3 prominently displaying the notice on the first page of a monthly  
4 statement. The notice must be written in clear and understandable  
5 language printed in a type size and style that is easy to read. The  
6 merchant shall provide the notice:

7            (1) on the date the contract is executed, for an  
8 automatic renewal following the original term of a contract that  
9 does not exceed 30 days; or

10           (2) after the 61st calendar day but not later than the  
11 30th calendar day before the last date on which the consumer may  
12 decline automatic renewal.

13        Sec. 48.005. MERCHANT MUST HONOR NONRENEWAL. A merchant  
14 may not fail or refuse to honor a consumer's request to decline the  
15 automatic renewal of a contract made in accordance with this  
16 chapter and any terms of the contract that do not conflict with this  
17 chapter.

18        Sec. 48.006. CERTAIN AUTOMATIC RENEWAL PROVISIONS VOID. An  
19 automatic renewal provision of a contract that violates this  
20 chapter is void.

21        Sec. 48.007. RELIEF TO CONSUMERS. (a) A person who  
22 violates this chapter is liable to a person adversely affected by  
23 the violation for:

24           (1) the greater of \$500 or actual damages that result  
25 from the violation, except that only actual damages are recoverable  
26 in a class action; and

27           (2) if the person adversely affected establishes that

1 the violation was committed knowingly, up to \$1,500 or three times  
2 the amount of the actual damages, whichever is greater.

3 (b) A plaintiff in an action filed under this chapter may  
4 obtain:

5 (1) an order enjoining the act or failure to act that  
6 violates this chapter;

7 (2) any order necessary to restore to the plaintiff  
8 any property acquired by the defendant in violation of this  
9 chapter; or

10 (3) other relief the court considers proper, including  
11 the appointment of a receiver if the judgment against the defendant  
12 is not satisfied within three months after the date of the final  
13 judgment.

14 (c) A plaintiff who prevails in an action filed under this  
15 section is entitled to reasonable and necessary attorney's fees,  
16 expert witness fees, costs for copies of depositions, and court  
17 costs.

18 (d) On finding that an action filed under this chapter is  
19 groundless and was brought in bad faith or for the purpose of  
20 harassment, the court shall award court costs and reasonable  
21 attorney's fees to the defendant.

22 Sec. 48.008. ENFORCEMENT BY COURTS. The enforcement of  
23 this chapter is not subject to an arbitration agreement.

24 Sec. 48.009. MERCHANT'S RIGHT TO CURE. (a) A merchant who  
25 unknowingly or accidentally violates this chapter may cure the  
26 violation if, before the 15th day after receiving written notice of  
27 the violation from the attorney general, a governmental agency, or

1 a consumer that specifically mentions this chapter and the right to  
2 cure under this subsection, the merchant tenders:

3 (1) a refund of all money collected from the consumer  
4 after the violation of this chapter;

5 (2) court costs incurred by the consumer in advancing  
6 a claim under this chapter; and

7 (3) reasonable and necessary attorney's fees for the  
8 advance of the consumer's claims under this chapter.

9 (b) If a consumer brings a lawsuit before the consumer  
10 notifies the merchant in writing of the violated provisions of this  
11 chapter or the merchant is given time to cure under Subsection (a):

12 (1) the written pleadings that specifically reference  
13 this chapter constitute the written notice;

14 (2) the merchant has 45 days after the date the  
15 merchant is served with the pleading to cure in conformity with this  
16 section; and

17 (3) the consumer's right to reasonable and necessary  
18 attorney's fees, expert witness fees, costs for copies of  
19 depositions, and court costs is subject to the court's discretion.

20 (c) If the merchant timely cures an unknowing or accidental  
21 violation of this chapter, there is no actionable claim under this  
22 chapter, except as provided by this section.

23 (d) Whether the merchant timely cured the violation is a  
24 question for the court only.

25 Sec. 48.010. DECEPTIVE TRADE PRACTICE. A violation of this  
26 chapter is a false, misleading, or deceptive act or practice as  
27 defined by Section 17.46(b) and is actionable in a public or private

1 suit brought under Subchapter E, Chapter 17.

2           SECTION 2. The change in law made by Chapter 48, Business &  
3 Commerce Code, as added by this Act, applies only to a contract  
4 executed or renewed for a term on or after September 1, 2005. A  
5 contract executed or renewed before September 1, 2005, is governed  
6 by the law as it existed on the date the contract was executed until  
7 that term of the contract expires, and the former law is continued  
8 in effect for that purpose.

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