

BILL ANALYSIS

C.S.H.B. 2672
By: Howard, Charlie
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Many businesses lure customers into contracts by offering introductory incentives. Once the introductory period expires, billing commences. Unless a customer calls to cancel, the customer may be charged for services that the customer will never use or want.

C.S.H.B. 2672 requires a seller to provide notification to a consumer relating to an automatic renewal clause in certain types of contracts. The bill sets forth the contracts that are exempt from the notification requirements.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2672 amends the Business & Commerce Code to require a seller, if a contract between a seller and a consumer contains an automatic renewal clause and the original contract term is for six months or more and the contract automatically renews for a term of at least one month, to clearly and conspicuously disclose to the consumer the automatic renewal clause and the procedure for canceling the automatic renewal at the time that the seller enters into the contract with the consumer or in writing not later than the 60th day after the date the seller enters into the contract with the consumer. The bill also requires a seller, if a contract between a seller and a consumer contains an automatic renewal clause, to give the consumer written notice of the automatic renewal clause and the procedure for canceling the automatic renewal not before the 90th day and not after the 15th day before the last date on which the consumer may cancel the automatic renewal.

C.S.H.B. 2672 requires such written notice to clearly and conspicuously disclose that the contract will automatically renew if the consumer does not cancel the automatic renewal, the cancellation procedure, a facsimile number, electronic mail address, telephone number, or mailing address that a consumer may contact to cancel the automatic renewal, and the dates during which the consumer may cancel the automatic renewal. The bill authorizes a seller to send to a consumer the written notice by mail, certified mail, or personal service, by including a statement in an invoice, or, if the consumer agrees, by written electronic communication, including electronic mail. The bill authorizes the seller to assume that written notice deposited with the United States Postal Service with first class postage paid will be received by the consumer on the third federal business day after the notice is so deposited. The bill requires notice included in an invoice to be in red ink or in boldfaced type large enough to be easily noticed.

C.S.H.B. 2672 requires a seller to allow a consumer to cancel the automatic renewal of a contract by contacting a facsimile number, electronic mail address, telephone number, or mailing address provided by the seller. The bill authorizes a consumer to cancel the automatic renewal of a

contract at any time before the beginning of the automatic renewal period, at no cost to the consumer, by following the procedure set out in the disclosure and notice provided by the seller. The bill authorizes the consumer to cancel the automatic renewal by any reasonable means at any time, at no cost to the consumer, if the seller fails to provide the required disclosure or the required notice. The bill requires a seller to cancel the automatic renewal with no additional cost to the consumer if a consumer cancels the automatic renewal by the required means and within the required time.

C.S.H.B. 2672 applies its provisions only to the renewal of a contract if the original contract term is for six months or more and the contract automatically renews for a term of at least one month or if the price for goods or services under the contract as renewed is greater than the price of goods or services under the contract during the immediately preceding contract term. The bill applies its provisions only to a contract that is for a service, including Internet or telephone service, or for a magazine or newspaper subscription, and that specifies a term during which the service or subscription will be provided. The bill makes its provisions inapplicable to a contract for the sale, lease, or management of real property or to a contract that has an original contract term of six months or more and automatically renews for a term of at least one month, if the consumer may cancel the contract after the original contract term has expired without penalty and is required to pay only the amount due for each month the contract is in effect, including the month during which the consumer canceled the contract, if services are provided until the end of that month. The bill defines "automatic renewal clause," "consumer," and "seller."

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2672 adds a provision not in the original applying the bill's provisions only to a contract that is for a service, including Internet or telephone service, or for a magazine or newspaper subscription, and that specifies a term during which the service or subscription will be provided. The substitute removes provisions in the original making the bill's provisions inapplicable to a contract with a governmental entity; a bank, trust company, savings bank, savings and loan association, credit union, insurance company, or health maintenance organization; an electric utility, if the contract is for electricity services subject to rate tariffs approved by the Public Utility Commission of Texas; a gas utility, if the contract is for natural gas service; or a telecommunications utility. The substitute differs from the original by making the bill's provisions inapplicable to certain contracts if the consumer is required to pay only the amount due for each month the contract is in effect, including the month during which the consumer canceled the contract, if services are provided until the end of that month and the consumer may cancel the contract after the original contract term has expired without penalty, whereas the original makes the bill's provisions inapplicable to certain contracts if the consumer is required to pay only a prorated amount for the portion of the month before the consumer canceled the contract and the consumer may cancel the contract after the original contract term has expired without penalty.

C.S.H.B. 2672 requires written notice of the automatic renewal clause and the procedure for canceling the automatic renewal to disclose a facsimile number, electronic mail address, telephone number, or mailing address that a consumer may contact to cancel the automatic renewal, whereas the original only requires the disclosure of a facsimile number. The substitute adds a provision not in the original authorizing a seller to send the required written notice to a consumer by written electronic communication if the consumer agrees. The substitute differs from the original by requiring a seller to allow a consumer to cancel the automatic renewal of a contract by contacting an electronic mail address, telephone number, or mailing address provided by the seller, whereas the original requires a seller to allow a consumer to cancel the automatic renewal by contacting a facsimile number.

C.S.H.B. 2672 removes provisions in the original establishing that a violation of bill provisions is a false, misleading, or deceptive act or practice and that any remedy under provisions relating to deceptive trade practices and consumer protection is available for a violation of these provisions; setting forth the actions not considered a false, misleading, or deceptive act or practice; and establishing that this provision does not relieve a consumer of the consumer's duties under a contract before the date the contract is canceled.