

BILL ANALYSIS

C.S.H.B. 972
By: Hartnett
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, laws regarding the deadline by which a consumer may cancel certain consumer transactions apply only to a transaction in which the merchant or the merchant's agent engages in a personal solicitation at a place other than the merchant's place of business, such as door-to-door sales, telephone sales, or sales conducted in rented hotel rooms. Consequently, there is concern that certain types of entities, such as vacation travel clubs, may hold their sales presentations in rented office space as a place of business, to avoid a sales contract from being subject to a consumer's right of rescission within the prescribed time. C.S.H.B. 972 seeks to address this limitation on a consumer's right to cancel a transaction by enacting provisions specifically relating to cancellation of a travel club membership agreement.

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. 972 amends the Business & Commerce Code to authorize the purchaser of an agreement for a travel club membership, in addition to any other rights or remedies available, to cancel the agreement not later than midnight of the fifth business day after the date the purchaser signs the agreement. The bill authorizes a seller to retain payments made by the purchaser for specific travel services used in connection with a travel club membership agreement before the date of the specified cancellation period.

C.S.H.B. 972 requires a seller to provide a purchaser with a copy of an agreement for a travel club membership at the time of the agreement's execution. The bill requires the copy of such an agreement to be in the same language as that principally used in the oral sales presentation, contain the date of the agreement, contain the name and address of the seller, and contain a statement regarding the purchaser's cancellation rights in immediate proximity to the space reserved for the purchaser's signature and in at least 10-point boldfaced font in a form that substantially follows language set out by the bill's provisions.

C.S.H.B. 972 requires a seller to attach to the copy of a travel club membership agreement a completed notice of cancellation form in duplicate. The bill requires the form to be easily detachable, be in the same language as the agreement, and contain information and statements set out by the bill's provisions regarding cancellation rights and procedures and limitations on refunding payments in at least 10-point boldfaced font. The bill prohibits a seller from failing to include on both copies of such a form the name of the seller; the address, e-mail address, and fax number of the seller's place of business; the date of the agreement; and a date not earlier than the fifth business day after the date of the agreement by which the purchaser must give notice of cancellation.

C.S.H.B. 972 prohibits a seller from including in an agreement for a travel club membership a

waiver of any of the rights to which a purchaser is entitled under the bill's provisions. The bill prohibits a seller from failing, at the time the purchaser signs the agreement for a travel club membership, to inform the purchaser orally of the right to cancel the agreement or from misrepresenting in any manner the purchaser's right to cancel. The bill prohibits a seller from failing or refusing to honor a valid cancellation by a purchaser or from failing, before the end of the 10th business day after the date the seller receives a valid notice of cancellation, either to refund all payments made under the agreement that were not for specific travel services used before the cancellation period or to cancel and return any negotiable instrument executed by the purchaser in connection with the agreement for a travel club membership.

C.S.H.B. 972 establishes that an agreement entered into in violation of the bill's provisions is void and makes a seller who violates such provisions liable to the purchaser for actual damages suffered by the purchaser as a result of the violation, reasonable attorney's fees, and court costs. The bill establishes that a violation of the bill's provisions constitutes a false, misleading, or deceptive act or practice as defined under provisions of the Deceptive Trade Practices-Consumer Protection Act and that, in addition to any remedy under the bill's provisions, a remedy under the Deceptive Trade Practices-Consumer Protection Act is also available for such a violation.

C.S.H.B. 972 authorizes the attorney general to bring an action in the name of the state to restrain or enjoin the person from violating the bill's provisions if the attorney general believes that a person is violating or about to violate the bill's provisions.

C.S.H.B. 972 makes its provisions applicable only to an agreement for the purchase of a travel club membership in which the seller or the seller's agent engages in a personal solicitation of a sale to an individual and the agreement is for consideration that exceeds \$25, payable in installments or in cash. The bill exempts from its provisions an agreement relating to a timeshare plan that is in compliance with the Texas Timeshare Act and the sale of a product, service, or a program related to, offered in conjunction with, or used to promote the timeshare plan. The bill defines "purchaser," "seller," "travel club membership," and "travel service."

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 972 contains a provision not included in the original exempting a timeshare plan in compliance with the Texas Timeshare Act and the sale of a product, service, or a program related to, offered in conjunction with, or used to promote the timeshare plan from the bill's provisions establishing a purchaser's right to cancel a travel club membership agreement.