

By: Howard of Fort Bend

H.B. No. 897

A BILL TO BE ENTITLED

AN ACT

relating to restrictions on the automatic renewal of contracts.

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

SECTION 1. Title 12, Business & Commerce Code, is amended by adding Chapter 606 to read as follows:

CHAPTER 606. AUTOMATIC RENEWAL OF CONTRACTS

Sec. 606.001. APPLICABILITY. (a) This chapter applies only to the renewal of a contract if:

(1) the original contract term is for six months or more and the contract automatically renews for a term of at least one month; or

(2) 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.

(b) This chapter does not apply to a contract:

(1) with:

(A) a governmental entity;

(B) a bank, trust company, savings bank, savings and loan association, credit union, insurance company, or health maintenance organization organized under the laws of any state or the United States;

(C) an electric utility, as defined by Section 31.002, Utilities Code, if the contract is for electricity services subject to rate tariffs approved by the Public Utility Commission

1 of Texas;

2 (D) a gas utility, if the contract is for natural  
3 gas service subject to Subchapter B, Chapter 104, Utilities Code;

4 (E) a telecommunications utility, as defined by  
5 Section 51.002, Utilities Code; or

6 (F) a provider of municipal solid waste  
7 collection services;

8 (2) that has an original contract term of six months or  
9 more and automatically renews for a term of at least one month, if  
10 the consumer:

11 (A) may cancel the contract after the original  
12 contract term has expired without penalty; and

13 (B) is required to pay only a prorated amount for  
14 the portion of the renewal contract period that has elapsed before  
15 the consumer canceled the contract; or

16 (3) for the sale, lease, or management of real  
17 property.

18 Sec. 606.002. DEFINITIONS. In this chapter:

19 (1) "Automatic renewal clause" means a provision of a  
20 contract that extends the term of or renews a contract if the  
21 consumer does not take a specified action.

22 (2) "Consumer" means a person who acquires goods or  
23 services for personal, family, or household purposes.

24 (3) "Seller" means a person who provides a service or  
25 sells goods.

26 Sec. 606.003. REQUIREMENTS FOR AUTOMATIC RENEWAL. If a  
27 contract between a seller and a consumer contains an automatic

1 renewal clause, the seller shall:

2 (1) for a contract described by Section 606.001(a)(1),  
3 clearly and conspicuously disclose to the consumer the automatic  
4 renewal clause and the procedure for canceling the automatic  
5 renewal:

6 (A) at the time that the seller enters into the  
7 contract with the consumer; or

8 (B) in writing not later than the 60th day after  
9 the date the seller enters into the contract with the consumer; and

10 (2) give the consumer written notice of the automatic  
11 renewal clause and the procedure for canceling the automatic  
12 renewal not before the 90th day and not after the 15th day before  
13 the last date on which the consumer may cancel the automatic  
14 renewal.

15 Sec. 606.004. NOTICE OF AUTOMATIC RENEWAL. (a) Written  
16 notice provided under Section 606.003(2) must clearly and  
17 conspicuously disclose:

18 (1) that the contract will automatically renew if the  
19 consumer does not cancel the automatic renewal;

20 (2) the cancellation procedure;

21 (3) a facsimile number, electronic mail address,  
22 telephone number, or mailing address that a consumer may contact to  
23 cancel the automatic renewal; and

24 (4) the dates during which the consumer may cancel the  
25 automatic renewal.

26 (b) A seller may opt to send to a consumer written notice  
27 under Section 606.003(2) by mail, certified mail, or personal

1 service, by including a statement in an invoice as provided by  
2 Subsection (c), or, if the consumer agrees, by written electronic  
3 communication, including electronic mail. The seller may assume  
4 that written notice deposited with the United States Postal Service  
5 with first class postage paid will be received by the consumer on  
6 the third federal business day after the notice is so deposited.

7 (c) Notice included in an invoice must be in red ink or in  
8 boldfaced type large enough to be easily noticed.

9 Sec. 606.005. CANCELLATION OF AUTOMATIC RENEWAL BY  
10 FACSIMILE, ELECTRONIC MAIL, TELEPHONE, OR MAIL. A seller shall  
11 allow a consumer to cancel the automatic renewal of a contract by  
12 contacting a facsimile number, electronic mail address, telephone  
13 number, or mailing address provided by the seller.

14 Sec. 606.006. CONSUMER'S RIGHT TO CANCEL. (a) A consumer  
15 may cancel the automatic renewal of a contract at any time before  
16 the beginning of the automatic renewal period, at no cost to the  
17 consumer, by following the procedure set out in the disclosure and  
18 notice provided under Sections 606.003 and 606.004.

19 (b) If the seller fails to provide either the disclosure  
20 under Section 606.003(1), if required, or the notice required by  
21 Section 606.003(2), the consumer may cancel the automatic renewal  
22 by any reasonable means at any time, at no cost to the consumer.

23 (c) If a consumer cancels the automatic renewal as provided  
24 by this section, the seller must cancel the automatic renewal with  
25 no additional cost to the consumer.

26 Sec. 606.007. DECEPTIVE TRADE PRACTICE. (a) Except as  
27 provided by Subsection (b), a violation of this chapter is a false,

1 misleading, or deceptive act or practice as defined by Section  
2 17.46(b), and any remedy under Subchapter E, Chapter 17, is  
3 available for a violation of this chapter.

4 (b) A violation of this chapter is not a false, misleading,  
5 or deceptive act or practice if the seller can demonstrate that:

6 (1) as a part of its routine business practice, the  
7 seller has established and implemented written procedures to comply  
8 with this chapter and enforces compliance with the procedures;

9 (2) the violation of this chapter is the result of  
10 error; and

11 (3) the seller prospectively canceled the renewed  
12 contract within a reasonable time after becoming aware of the error  
13 that caused the violation of this chapter, without penalty to the  
14 consumer, and has not subsequently automatically renewed or revived  
15 that same contract.

16 (c) Subsection (b)(3) does not relieve a consumer of the  
17 consumer's duties under a contract before the date the contract is  
18 canceled.

19 SECTION 2. The change in law made by Chapter 606, Business &  
20 Commerce Code, as added by this Act, applies only to a contract  
21 executed on or after September 1, 2011. A contract executed before  
22 September 1, 2011, is governed by the law as it existed on the date  
23 the contract was executed, and the former law is continued in effect  
24 for that purpose.

25 SECTION 3. This Act takes effect September 1, 2011.