

By: Hartnett

H.B. No. 972

A BILL TO BE ENTITLED

AN ACT

relating to the cancellation of travel club membership agreements;  
providing a civil penalty.

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

SECTION 1. Title 12, Business & Commerce Code, is amended by  
adding Chapter 601A to read as follows:

CHAPTER 601A. CANCELLATION OF AGREEMENT FOR TRAVEL CLUB MEMBERSHIP

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 601A.001. DEFINITIONS. In this chapter:

(1) "Purchaser" means an individual who enters into an  
agreement with a seller to purchase a travel club membership.

(2) "Seller" means a person who offers to sell or sells  
a travel club membership.

(3) "Travel club membership" means a membership that  
gives its members the right to purchase or obtain travel services  
from or through a seller.

(4) "Travel service" means the arranging or booking  
of:

(A) a vacation or travel package;

(B) a reservation for rental of a motor vehicle;

(C) a ticket for domestic or foreign travel by  
any mode of transportation; or

(D) a hotel or other lodging.

Sec. 601A.002. APPLICABILITY OF CHAPTER. This chapter

applies only to an agreement for the purchase of a travel club membership in which:

(1) the seller or the seller's agent engages in a personal solicitation of a sale to an individual; and

(2) the agreement is for consideration that exceeds \$25, payable in installments or in cash.

[Sections 601A.003-601A.050 reserved for expansion]

SUBCHAPTER B. PURCHASER'S RIGHT TO CANCEL AGREEMENT; REQUIRED

NOTICES

Sec. 601A.051. PURCHASER'S RIGHT TO CANCEL AGREEMENT FOR TRAVEL CLUB MEMBERSHIP. (a) In addition to any other rights or remedies available, a purchaser may cancel an agreement for a travel club membership not later than midnight of the fifth business day after the date the purchaser signs the agreement.

(b) A seller may retain payments made by the purchaser for specific travel services used in connection with a travel club membership agreement before the date of the cancellation period prescribed by Subsection (a).

Sec. 601A.052. NOTICE OF PURCHASER'S RIGHT TO CANCEL REQUIRED. (a) A seller must provide a purchaser with a copy of an agreement for a travel club membership at the time of the agreement's execution.

(b) The copy of the agreement provided under Subsection (a) must:

(1) be in the same language as that principally used in the oral sales presentation;

(2) contain the date of the agreement;

1           (3) contain the name and address of the seller; and

2           (4) contain a statement:

3                   (A) in immediate proximity to the space reserved  
4 in the agreement for the signature of the purchaser; and

5                   (B) in at least 10-point boldfaced font in  
6 substantially the following form:

7           "YOU, THE PURCHASER, MAY CANCEL THIS AGREEMENT FOR TRAVEL  
8 CLUB MEMBERSHIP AT ANY TIME BEFORE MIDNIGHT OF THE FIFTH BUSINESS  
9 DAY AFTER THE DATE YOU SIGN THIS AGREEMENT. SEE THE ATTACHED NOTICE  
10 OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT."

11           Sec. 601A.053. COMPLETED CANCELLATION FORM REQUIRED. (a)  
12 A seller must attach to the copy of a travel club membership  
13 agreement a completed notice of cancellation form in duplicate.  
14 The form must:

15                   (1) be easily detachable;  
16                   (2) be in the same language as the agreement; and  
17                   (3) contain the following information and statements  
18 in at least 10-point boldfaced font:

19                           "NOTICE OF CANCELLATION  
20 (enter date of agreement)

21           "YOU MAY CANCEL THIS AGREEMENT FOR TRAVEL CLUB MEMBERSHIP,  
22 WITHOUT ANY PENALTY OR OBLIGATION, WITHIN FIVE BUSINESS DAYS AFTER  
23 THE ABOVE DATE UNLESS YOU HAVE ALREADY USED ANY TRAVEL SERVICES  
24 PROVIDED IN CONNECTION WITH THIS AGREEMENT.

25           "IF YOU HAVE ALREADY USED ANY TRAVEL SERVICES PROVIDED IN  
26 CONNECTION WITH THIS AGREEMENT, YOU MAY STILL CANCEL THIS  
27 TRANSACTION WITHIN FIVE BUSINESS DAYS AFTER THE DATE OF THE

AGREEMENT, BUT YOU ARE NOT ENTITLED TO A REFUND OF ANY PRIOR  
PAYMENTS MADE FOR THE SPECIFIC TRAVEL SERVICES USED.

"IF YOU CANCEL, ANY PAYMENTS MADE BY YOU UNDER THIS AGREEMENT  
THAT WERE NOT FOR SPECIFIC TRAVEL SERVICES USED WILL BE RETURNED  
WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR  
CANCELLATION NOTICE.

"TO CANCEL THIS AGREEMENT, MAIL OR DELIVER A SIGNED AND DATED  
COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE,  
INCLUDING BY E-MAIL OR FACSIMILE, TO (name of seller), AT (address,  
e-mail address, and fax number of seller's place of business) NOT  
LATER THAN MIDNIGHT OF (date).

I HEREBY CANCEL THIS AGREEMENT.

\_\_\_\_\_

DATE

\_\_\_\_\_  
PURCHASER'S SIGNATURE."

(b) A seller may not fail to include on both copies of the  
form described by Subsection (a):

- (1) the name of the seller;
- (2) the address, e-mail address, and fax number of the  
seller's place of business;
- (3) the date of the agreement; and
- (4) a date not earlier than the fifth business day  
after the date of the agreement by which the purchaser must give  
notice of cancellation.

[Sections 601A.054-601A.100 reserved for expansion]

SUBCHAPTER C. PROHIBITED ACTS BY SELLER

1       Sec. 601A.101. WAIVER OF RIGHTS. A seller may not include  
2 in an agreement for a travel club membership a waiver of any of the  
3 rights to which a purchaser is entitled under this chapter.

4       Sec. 601A.102. FAILURE TO INFORM OR MISREPRESENTATION OF  
5 RIGHT TO CANCEL. A seller may not:

6           (1) at the time the purchaser signs the agreement for a  
7 travel club membership fail to inform the purchaser orally of the  
8 right to cancel the agreement; or

9           (2) misrepresent in any manner the purchaser's right  
10 to cancel.

11       Sec. 601A.103. FAILURE TO TAKE CERTAIN ACTIONS FOLLOWING  
12 RECEIPT OF NOTICE OF CANCELLATION. A seller may not:

13           (1) fail or refuse to honor a valid cancellation under  
14 this chapter by a purchaser; or

15           (2) fail before the end of the 10th business day after  
16 the date the seller receives a valid notice of cancellation to:

17                   (A) refund all payments made under the agreement  
18 that were not for specific travel services used before the  
19 cancellation period; or

20                   (B) cancel and return any negotiable instrument  
21 executed by the purchaser in connection with the agreement for a  
22 travel club membership.

23       [Sections 601A.104-601A.150 reserved for expansion]

24                   SUBCHAPTER D. ENFORCEMENT

25       Sec. 601A.151. CERTAIN AGREEMENTS VOID. An agreement  
26 entered into in violation of this chapter is void.

27       Sec. 601A.152. LIABILITY FOR DAMAGES. A seller who

1 violates this chapter is liable to the purchaser for:

2 (1) actual damages suffered by the purchaser as a  
3 result of the violation;

4 (2) reasonable attorney's fees; and

5 (3) court costs.

6 Sec. 601A.153. DECEPTIVE TRADE PRACTICE. A violation of  
7 this chapter is a false, misleading, or deceptive act or practice as  
8 defined by Section 17.46(b). In addition to any remedy under this  
9 chapter, a remedy under Subchapter E, Chapter 17, is also available  
10 for a violation of this chapter.

11 Sec. 601A.154. INJUNCTION. If the attorney general  
12 believes that a person is violating or about to violate this  
13 chapter, the attorney general may bring an action in the name of the  
14 state to restrain or enjoin the person from violating this chapter.

15 SECTION 2. The change in law made by this Act applies only  
16 to an agreement for a travel club membership entered into on or  
17 after the effective date of this Act. An agreement for a travel  
18 club membership that is entered into before the effective date of  
19 this Act is governed by the law in effect on the date the agreement  
20 was entered into, and the former law is continued in effect for that  
21 purpose.

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