87R20577 MLH-D

By:  Guerra H.B. No. 2259

Substitute the following for H.B. No. 2259:

By:  Turner of Tarrant C.S.H.B. No. 2259

A BILL TO BE ENTITLED

AN ACT

relating to requirements for subscription service contracts; 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 608 to read as follows:

CHAPTER 608. SUBSCRIPTION SERVICE CONTRACTS

Sec. 608.001.  DEFINITIONS. In this chapter:

(1)  "Automatic renewal clause" means a provision of a contract that extends the term of or renews a contract for a period of at least one month if the consumer does not take a specified action.

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

(3)  "Service provider" means a business that provides a service to a consumer.

(4)  "Subscription service" means a service provided by a service provider to a consumer under a contract that:

(A)  has an automatic renewal clause; or

(B)  continues indefinitely until canceled by a party.

Sec. 608.002.  APPLICABILITY OF CHAPTER. This chapter does not apply to:

(1)  an offering or contract of insurance; or

(2)  evidence of coverage under Chapter 843, Insurance Code.

Sec. 608.003.  NOTICE REQUIREMENTS FOR SUBSCRIPTION SERVICE CONTRACTS. (a) If a service provider and a consumer enter into a contract for a subscription service, the service provider shall:

(1)  at the time the service provider enters into the contract with the consumer, clearly and conspicuously disclose to the consumer the nature of the contract;

(2)  in the disclosure required under Subdivision (1) or in a retainable confirmation sent to the consumer not later than the fifth day after the date the service provider enters into the contract with the consumer, clearly and conspicuously disclose to the consumer the procedure for canceling the contract; and

(3)  if the contract has a term of 12 months or more and automatically renews for a term of more than one month, give the consumer additional written notice of the automatic renewal and the procedure for canceling the contract not earlier than the 90th day and not later than the 15th day before the date the contract is set to renew.

(b)  A service provider may provide the written notice required under Subsection (a)(3):

(1)  by regular mail or certified mail;

(2)  on an invoice delivered to the consumer; or

(3)  by written electronic communication, including electronic mail, if agreed to by the consumer.

(c)  Notice provided under Subsection (b) must be clear and conspicuous. For purposes of Subsection (b)(1), the service provider may assume that written notice sent by regular mail is received by the consumer on the third business day after the date the notice is deposited in the mail.

Sec. 608.004.  METHOD OF CANCELLATION. (a) Subject to Subsections (b) and (c), a service provider shall provide a consumer with multiple methods for canceling a contract for a subscription service, which may include cancellation by:

(1)  toll-free telephone number;

(2)  electronic mail;

(3)  mailing address, if the service provider bills the consumer using mail; and

(4)  any other cost-effective, timely, and easy-to-use method.

(b)  A service provider shall allow a consumer to cancel a contract for a subscription service by using the same method as the consumer used to enter into the contract, including allowing cancellation online, by mail, or by telephone.

(c)  If a subscription service contract is not entered into electronically, the service provider shall allow the consumer to cancel the contract by mail.

Sec. 608.005.  DECEPTIVE TRADE PRACTICE. Except as provided by Section 608.006, a violation of this chapter is a false, misleading, or deceptive act or practice under Subchapter E, Chapter 17, and is actionable under that subchapter.

Sec. 608.006.  NO PRIVATE CAUSE OF ACTION. A private cause of action for a violation of this chapter may not be brought under this chapter or under Subchapter E, Chapter 17.

Sec. 608.007.  OPPORTUNITY TO CURE. (a) Before the attorney general may bring an action against a service provider under Section 608.008 for an initial violation of this chapter, the attorney general, on behalf of a consumer, must provide written notice to the service provider identifying the specific provisions of this chapter that the service provider allegedly violated.

(b)  Not later than the 30th day after the date the notice required by Subsection (a) was received by the service provider, the service provider shall:

(1)  cure each violation alleged in the notice; and

(2)  provide a written statement to the attorney general certifying that:

(A)  each violation alleged in the notice has been cured; and

(B)  no further violation of this chapter will occur.

Sec. 608.008.  CIVIL PENALTY; REMEDIES. (a) A service provider who violates this chapter is liable to this state for a civil penalty of not more than $2,000 for each violation for each month the violation continues if the service provider:

(1)  fails to cure the violation as provided by Section 608.007; or

(2)  commits the violation after curing an initial violation and providing a written statement to the attorney general under Section 608.007.

(b)  The attorney general may bring an action to:

(1)  recover the civil penalty imposed under this section;

(2)  obtain a temporary or permanent injunction to restrain the violation; or

(3)  seek restitution for consumers who are residents of this state and who incurred damages as a direct result of the violation.

(c)  An action under this section may be brought in a district court in:

(1)  Travis County; or

(2)  a county in which any part of the violation occurs.

Sec. 608.009.  CONSUMER'S OBLIGATIONS UNDER CONTRACT NOT AFFECTED. Nothing in this chapter relieves a consumer of the consumer's duties under a contract before the date the contract is canceled.

SECTION 2.  Chapter 608, Business & Commerce Code, as added by this Act, applies only to a contract entered into or renewed on or after the effective date of this Act.

SECTION 3.  This Act takes effect September 1, 2021.