

By: Guerra

H.B. No. 2165

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 610 to read as follows:

CHAPTER 610. SUBSCRIPTION SERVICE CONTRACTS

Sec. 610.001. 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. 610.002. APPLICABILITY OF CHAPTER. This chapter does
not apply to:

(1) an offering or contract of insurance; or

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

3 Sec. 610.003. NOTICE REQUIREMENTS FOR SUBSCRIPTION SERVICE
4 CONTRACTS. (a) If a service provider and a consumer enter into a
5 contract for a subscription service, the service provider shall:

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

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

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

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

22 (1) by regular mail or certified mail;

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

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

26 (c) Notice provided under Subsection (b) must be clear and
27 conspicuous. For purposes of Subsection (b)(1), the service

1 provider may assume that written notice sent by regular mail is
2 received by the consumer on the third business day after the date
3 the notice is deposited in the mail.

4 Sec. 610.004. METHOD OF CANCELLATION. (a) Subject to
5 Subsections (b) and (c), a service provider shall provide a
6 consumer with multiple methods for canceling a contract for a
7 subscription service, which may include cancellation by:

8 (1) toll-free telephone number;

9 (2) electronic mail;

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

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

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

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

21 Sec. 610.005. DECEPTIVE TRADE PRACTICE. Except as provided
22 by Section 610.006, a violation of this chapter is a false,
23 misleading, or deceptive act or practice under Subchapter E,
24 Chapter 17, and is actionable under that subchapter.

25 Sec. 610.006. NO PRIVATE CAUSE OF ACTION. A private cause
26 of action for a violation of this chapter may not be brought under
27 this chapter or under Subchapter E, Chapter 17.

1 Sec. 610.007. OPPORTUNITY TO CURE. (a) Before the attorney
2 general may bring an action against a service provider under
3 Section 610.008 for an initial violation of this chapter, the
4 attorney general, on behalf of a consumer, must provide written
5 notice to the service provider identifying the specific provisions
6 of this chapter that the service provider allegedly violated.

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

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

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

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

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

17 Sec. 610.008. CIVIL PENALTY; REMEDIES. (a) A service
18 provider who violates this chapter is liable to this state for a
19 civil penalty of not more than \$2,000 for each violation for each
20 month the violation continues if the service provider:

21 (1) fails to cure the violation as provided by Section
22 610.007; or

23 (2) commits the violation after curing an initial
24 violation and providing a written statement to the attorney general
25 under Section 610.007.

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

27 (1) recover the civil penalty imposed under this

1 section;

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

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

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

9 (1) Travis County; or

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

11 Sec. 610.009. CONSUMER'S OBLIGATIONS UNDER CONTRACT NOT
12 AFFECTED. Nothing in this chapter relieves a consumer of the
13 consumer's duties under a contract before the date the contract is
14 canceled.

15 SECTION 2. Chapter 610, Business & Commerce Code, as added
16 by this Act, applies only to a contract entered into or renewed on
17 or after the effective date of this Act.

18 SECTION 3. This Act takes effect September 1, 2023.