

By: Guerra

H.B. No. 2859

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 611 to read as follows:

CHAPTER 611. SUBSCRIPTION SERVICE CONTRACTS

SUBCHAPTER A. SUBSCRIPTION SERVICE CONTRACTS GENERALLY

Sec. 611.001. 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) "Seller" means a person who sells or contracts to sell goods.

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

(5) "Subscription service" means a service provided by a service provider or a periodic sale of goods provided by a seller to a consumer under a contract that:

(A) has an automatic renewal clause; or

(B) continues indefinitely until canceled by a

1 party.

2 Sec. 611.002. APPLICABILITY OF CHAPTER. This chapter does
3 not apply to:

4 (1) a person that provides:

5 (A) an offering or contract of insurance;

6 (B) evidence of coverage under Chapter 843,
7 Insurance Code; or

8 (C) a service contract under Section 1304.003,
9 Occupations Code; or

10 (2) an affiliate of a person described by Subdivision
11 (1).

12 Sec. 611.003. NOTICE REQUIREMENTS FOR SUBSCRIPTION SERVICE
13 CONTRACTS. (a) If a consumer enters into a contract with a service
14 provider or seller for a subscription service, the service provider
15 or seller shall:

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

19 (2) in the disclosure required under Subdivision (1)
20 or in a retainable confirmation sent to the consumer not later than
21 the date the consumer's first payment is due, clearly and
22 conspicuously disclose to the consumer the procedure for canceling
23 the contract; and

24 (3) if the contract has a term of 12 months or more and
25 automatically renews for a term of more than one month, give the
26 consumer additional written notice of the automatic renewal and the
27 procedure for canceling the contract not earlier than the 90th day

1 and not later than the 15th day before the date the contract is set
2 to renew.

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

5 (1) by regular mail or certified mail;

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

7 (3) by written electronic communication, including
8 e-mail, if the consumer has provided contact information for a
9 means of electronic communication to the service provider or
10 seller.

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

16 Sec. 611.004. METHOD OF CANCELLATION. (a) Subject to
17 Subsections (b) and (c), a service provider or seller shall provide
18 a consumer with one or more methods for canceling a contract for a
19 subscription service, which may include cancellation by:

20 (1) toll-free telephone number;

21 (2) e-mail;

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

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

26 (b) A service provider or seller shall allow a consumer to
27 cancel a contract for a subscription service by using the same

1 method as the consumer used to enter into the contract, including
2 allowing cancellation online, by mail, or by telephone. A consumer
3 who enters into a contract online must be able to cancel the
4 contract online.

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

8 SUBCHAPTER B. ADDITIONAL REQUIREMENTS FOR SUBSCRIPTION SERVICE

9 CONTRACTS FOR GOODS

10 Sec. 611.021. APPLICABILITY OF SUBCHAPTER. This subchapter
11 applies to a person who provides a subscription service contract
12 for the periodic sale of goods.

13 Sec. 611.022. REQUIREMENTS FOR PROMOTIONAL MATERIAL. A
14 seller who enters into a subscription service contract with a
15 consumer for the periodic sale of goods shall include in the notice
16 required by Section 611.003(a)(1):

17 (1) a description of the manner in which the consumer
18 may opt to not purchase goods during a period identified by the
19 consumer;

20 (2) a description of the notices the consumer will
21 receive under Section 611.023;

22 (3) a statement of the frequency with which the seller
23 will send notices under Section 611.023;

24 (4) a statement of the maximum number of notices
25 required by Section 611.023 that a consumer will receive in a
26 12-month period;

27 (5) a description of any obligation the consumer has

1 under the contract to purchase a minimum quantity of goods;

2 (6) a declaration of whether the bill to the customer
3 includes costs for shipping and handling the goods; and

4 (7) a description of the seller's duties under Section
5 611.024.

6 Sec. 611.023. REQUIRED NOTICE BEFORE PERIODIC SALE. (a)
7 Not later than the 20th day before completing a periodic sale under
8 this subchapter, a seller shall send a notice by mail reminding the
9 customer of the upcoming periodic sale.

10 (b) The notice required by Subsection (a) must:

11 (1) identify the goods to be sold;

12 (2) describe the process by which the consumer may
13 cancel or modify the periodic sale;

14 (3) provide notice that the consumer has not less than
15 10 days to return a request to cancel or modify the periodic sale
16 before the sale is completed; and

17 (4) provide assurance that the seller will credit the
18 consumer and pay the cost of shipping when required by Section
19 611.024.

20 (c) A seller that sends a notice under this section shall
21 accompany the notice with a form that the consumer may use to cancel
22 or modify the periodic sale.

23 (d) The form required by Subsection (c) must:

24 (1) clearly and conspicuously state that the seller
25 will complete the periodic sale if the consumer does not send a
26 request to cancel or modify the sale;

27 (2) describe how the form may be used to cancel or

1 modify the sale;

2 (3) state that to cancel or modify the sale, the
3 consumer must mail the form before the third day before the sale is
4 completed; and

5 (4) if the consumer entered into the subscription
6 service contract online, state the Internet website at which the
7 consumer may cancel or modify the sale online.

8 Sec. 611.024. RETURN OF GOODS DUE TO LATE NOTICE OF UPCOMING
9 SALE. A seller shall credit a consumer and pay the cost of shipping
10 for any return that is necessary because:

11 (1) a periodic sale was completed despite timely
12 receipt by the seller of a request by the consumer to cancel or
13 modify the sale;

14 (2) the consumer wanted to cancel or modify a periodic
15 sale and:

16 (A) the notice required under this section was
17 not delivered to the consumer before the 15th day before the date
18 the sale was completed; or

19 (B) the customer mailed a request to cancel or
20 modify the sale that was postmarked on or before the third day
21 before the date the sale was completed, but the request did not
22 arrive before the seller fulfilled the sale; or

23 (3) a periodic sale was made to a consumer who had
24 canceled the subscription services contract.

25 Sec. 611.025. INITIAL GOODS ON CREATION OF CONTRACT. (a) A
26 seller that offers initial or bonus goods as an incentive for a
27 consumer to enter into a subscription services contract for the

1 periodic sale of goods shall ship those goods not later than the
2 28th day after the consumer enters into a subscription services
3 contract.

4 (b) If a seller is unable to fulfill the sale due to
5 unanticipated circumstances beyond the seller's control, the
6 seller may offer a reasonably equivalent alternative to the
7 consumer and allow the consumer the opportunity to:

8 (1) accept the alternative goods; or

9 (2) cancel the subscription services contract for the
10 periodic sale of goods.

11 (c) A seller may require the return of any goods already
12 sent to the consumer as a condition for the refund of the consumer's
13 purchase.

14 (d) A seller may not send alternative goods under this
15 section without the express consent of the consumer.

16 Sec. 611.026. METHOD OF CANCELLATION OR MODIFICATION. If
17 the consumer entered into the subscription service contract online,
18 the seller shall provide a manner by which the consumer may cancel
19 or modify a periodic sale online.

20 SUBCHAPTER C. ENFORCEMENT

21 Sec. 611.051. DECEPTIVE TRADE PRACTICE. Except as provided
22 by Section 611.052, 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. 611.052. 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. 611.053. OPPORTUNITY TO CURE. (a) Before the attorney
2 general may bring an action against a service provider or seller
3 under Section 611.054 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 or seller identifying the specific
6 provisions of this chapter that the service provider or seller
7 allegedly violated.

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

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

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

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

16 (B) the service provider or seller will not
17 further violate this chapter in that same manner.

18 Sec. 611.054. CIVIL PENALTY; REMEDIES. (a) A service
19 provider or seller who violates this chapter is liable to this state
20 for a civil penalty of not more than \$2,000 for each violation if
21 the service provider or seller:

22 (1) fails to cure the violation as provided by Section
23 611.053; or

24 (2) commits the violation after curing an initial
25 violation and providing a written statement to the attorney general
26 under Section 611.053.

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

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

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

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

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

10 (1) Travis County; or

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

12 Sec. 611.055. LIABILITY OF SERVICE PROVIDER OR SELLER. A
13 service provider or seller acting in good faith to comply with the
14 requirements of this chapter is not liable under this chapter.

15 Sec. 611.056. CONSUMER'S OBLIGATIONS UNDER CONTRACT NOT
16 AFFECTED. Nothing in this chapter relieves a consumer of the
17 consumer's duties under the terms of a contract for subscription
18 services if the consumer cancels the contract's automatic renewal
19 clause.

20 SECTION 2. Chapter 611, Business & Commerce Code, as added
21 by this Act, applies only to a contract entered into or renewed on
22 or after the effective date of this Act.

23 SECTION 3. This Act takes effect January 1, 2026.