

**SUBJECT:** Disclosures in consumer solicitations arriving by mail as checks

**COMMITTEE:** Business and Industry — committee substitute recommended

**VOTE:** 6 ayes — Giddings, Elkins, Martinez, Taylor, Vo, Zedler  
0 nays  
3 absent — Bailey, Bohac, Solomons

**WITNESSES:** For — Mance Bowden, Texas Credit Union League  
Against — None  
On — Rose Ann Reeser, Texas Attorney General

**DIGEST:** HB 1833 would amend Business and Commerce Code, sec. 35.455, to require disclosures for consumer contracts arriving by mail as checks or drafts. The bill would apply only to a person who solicited business in Texas by mailing someone such a check or draft payable to that person. A person who made an offer that a recipient could accept by endorsing a check or draft would have to state on the check or draft in uppercase 12-point, boldfaced type next to the place for endorsement: "By signing and negotiating this document you agree to pay for future services arising out of this contract."

If someone made an offer that included a free membership period, trial period, or other incentive with a time limit – and if the offer resulted in a contract unless the recipient cancelled, rescinded, or revoked the offer by the end of the time period – the person making the offer would have to send notice, at least two weeks before the expiration, to the recipient informing that person of the obligation to cancel, rescind, revoke, or terminate acceptance. The notice would be in uppercase 12-point, boldfaced type and state, "You must act now to avoid future charges."

If the one making the offer did not make the required disclosure on the check or draft, did not give any required renewal notice, or provided an incentive with a time limit of less than two weeks, the offer would be void.

If such an offer of a check or draft did not contain the required disclosure or was not followed by any required expiration (or renewal) notice, the delivery of any goods or services to the recipient would not form a contract between the recipient and the person making the offer.

A violation would be a deceptive trade practice in addition to the other practices described in the Business and Commerce Code, Chapter 17, subchapter E.

HB 1833 would not apply to a financial institution, including a bank, a savings and loan association, a federal savings and loan association, a credit union, or a trust company, that sent a check to an account holder authorizing the person to access an extension of credit.

The bill would take effect September 1, 2005, and would apply only to a solicitation that was mailed on or after that date.

**SUPPORTERS  
SAY:**

HB 1833 would prevent devious sellers from tricking customers into buying unwanted goods or services by sending solicitations through the mail by way of a check, the endorsement of which automatically would obligate the customer. The bill would require that a conspicuous, specified notice be placed on the check if a person not associated with a financial institution solicited business this way in Texas. The bill also would require the person making such an offer to give the customer conspicuous, specified notice at least two weeks before the customer had to cancel an order to avoid charges. A violation would be a deceptive trade practice, for which the attorney general could seek appropriate remedy, including injunctive relief and civil penalties up to \$20,000 per violation.

Direct mail solicitors often include in their mailings checks payable to the people receiving the offers. The check usually is for a nominal amount, and the recipient may cash the check like any other. Cashing the check, however, causes the person unknowingly to enter into a contract to buy services or products. The effects of cashing the check seldom are noted on the check but usually are in small print in the body of some other information enclosed in the same envelope. Buyers often are not aware that by negotiating the check, they have contracted to receive some unwanted product or service. Often customers do not realize this until they have received merchandise or an unexpected service, such as a switch of telephone carriers.

Businesses also have problems with mail solicitations that include checks. Upon receipt of such a check, a bookkeeper, accountant, or department that routinely negotiates checks for a business cashes a check or draft, thinking it is a small amount owed. At the time, they are unaware that they have obligated the business for unwanted products or services.

HB 1833, by requiring conspicuous notice on these checks, would encourage customers to review all checks and drafts, to be more alert to their origin, and to recognize the consequences of cashing the check. Putting the notice requirement in statute could thwart significantly these unscrupulous practices. Legitimate businesses that offer such checks would not be affected as long as they complied with the bill's notice requirements and did not have intent to defraud consumers or other businesses.

The bill would not apply to checks sent by financial institutions, such as banks, credit unions, and savings and loan associations, to their own customers or members as extensions of credit.

OPPONENTS  
SAY:

No apparent opposition

NOTES:

The committee substitute differs from the introduced version by including an exception for financial institutions sending checks to account holders authorizing them to access extensions of credit. Also, the substitute changed "individual" to "person" and "recipient."