

BILL ANALYSIS

Senate Research Center

H.B. 1833
By: Chisum (Seliger)
Business & Commerce
5/10/2005
Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Direct mail solicitors frequently include in their solicitations a check payable to the person receiving the offer. The "check" is usually for a nominal amount of money and the person receiving it may cash the check as they would any other check. However, the act of cashing the check causes the person unknowingly enter into a contract to buy services or products. The effect of cashing the check is seldom noted on the check. Instead, it is usually written in small print in the body of some other information enclosed in the envelope with the check. Only after the purchaser calls to question the seller upon receipt of the merchandise do purchasers become aware that by negotiating the check they have contracted to receive unwanted products or services.

This problem is experienced by businesses, as well as individuals, when such checks are received by a bookkeeping or accounting person or department who routinely negotiates the check, assuming the check is a payment due the business.

The purpose of H.B. 1833 is to prevent sellers from tricking customers into buying unwanted goods or services by sending solicitations that include a check, negotiation of which automatically obligates the customer.

H.B. 1833 requires that, if a person solicits business in Texas by mailing a check or draft payable to an individual, that a disclosure be placed on the check. The bill also requires that the offeror give the customer notice at least two weeks before the end of the time period by which the customer must cancel the negotiation to avoid charges.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter D, Chapter 35, Business & Commerce Code, by adding Section 35.455, as follows:

Sec. 35.455. DISCLOSURES REQUIRED FOR CERTAIN CONSUMER CONTRACTS SOLICITED BY MAIL. (a) Provides that, unless the context requires a different definition, the definitions of Chapter 3 (Negotiable Instruments) apply to this section.

(b) Provides that this section applies only to a person that solicits business in this state by mailing an individual a check or draft payable to the individual. Provides that this section does not apply to a financial institution as defined in Section 201.101, Finance Code, or an authorized lender as defined in Section 341.001, Finance Code, that sends a check to an existing or prospective account holder authorizing the account holder to access an extension of credit.

(c) Requires a person that makes an offer that the recipient may accept by endorsing and negotiating the check or draft 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."

(d) Requires an offeror to send certain notice to a recipient, if a person makes an offer under Subsection (c) that includes a free membership period, trial period, or other incentive with a time limit, and if the offer results in a contract unless the recipient cancels, rescinds, or revokes the offer by the end of the time period.

(e) Provides that the offer is void under certain conditions.

(f) Provides that if an offer described by Subsection (c) does not contain the required disclosure, or is not followed by any notice required by Subsection (d), the delivery of any goods or services to the recipient does not operate to form a contract between the offeror and the recipient.

(g) Provides that a violation of this section is a deceptive trade practice in addition to the practices described by Subchapter E (Deceptive Trade Practices and Consumer Protection), Chapter 17, and is actionable under that subchapter.

SECTION 2. Makes application of Section 35.455, Business & Commerce Code, as added by this Act, prospective.

SECTION 3. Effective date: September 1, 2005.