

1 AN ACT

2 relating to disclosures required for the creation of certain
3 consumer contracts solicited by mail; providing a civil penalty.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subchapter D, Chapter 35, Business & Commerce
6 Code, is amended by adding Section 35.455 to read as follows:

7 Sec. 35.455. DISCLOSURES REQUIRED FOR CERTAIN CONSUMER
8 CONTRACTS SOLICITED BY MAIL. (a) Unless the context requires a
9 different definition, the definitions of Chapter 3 apply to this
10 section.

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

19 (c) A person that makes an offer that the recipient may
20 accept by endorsing and negotiating the check or draft shall
21 clearly and conspicuously disclose on the check or draft, next to
22 the place for endorsement, that by signing and negotiating the
23 document the depositor agrees to pay for future goods or services as
24 a result of this contract.

1 (d) If a person makes an offer under Subsection (c) that
2 includes a free membership period, trial period, or other incentive
3 with a time limit, and if the offer results in a contract unless the
4 recipient cancels, rescinds, or revokes the offer by the end of the
5 time period, the offeror shall send notice to the recipient, at
6 least two weeks before debiting any account, of the recipient's
7 obligation to cancel, rescind, revoke, or otherwise terminate the
8 recipient's acceptance. The notice must be clear and conspicuous.
9 If the offeror bills the consumer by mailing an invoice, notice may
10 be included with the invoice.

11 (e) An offer is void if the offeror:

12 (1) does not make the disclosure required by
13 Subsection (c);

14 (2) does not give notice as required by Subsection
15 (d), if applicable; or

16 (3) provides an incentive with a time limit, including
17 a free trial or membership period, that is less than two weeks.

18 (f) If an offer described by Subsection (c) does not contain
19 the required disclosure, or is not followed by any notice required
20 by Subsection (d), or if the offeror fails to honor the recipient's
21 request to cancel made under the terms of the offer or as required
22 by Subsection (d), the delivery of any goods or services to the
23 recipient does not operate to form a contract between the offeror
24 and the recipient.

25 (g) A violation of this section is a deceptive trade
26 practice in addition to the practices described by Subchapter E,
27 Chapter 17, and is actionable under that subchapter.

1 SECTION 2. Section 35.455, Business & Commerce Code, as
2 added by this Act, applies only to a solicitation that is mailed on
3 or after September 1, 2005. A solicitation that is mailed before
4 September 1, 2005, is covered by the law in effect on the date the
5 solicitation was mailed, and the former law is continued in effect
6 for that purpose.

7 SECTION 3. This Act takes effect September 1, 2005.

David Dewhurst

President of the Senate

Jim Coulter

Speaker of the House

I certify that H.B. No. 1833 was passed by the House on April 26, 2005, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 1833 on May 23, 2005, by a non-record vote.

Robert Haney

Chief Clerk of the House

I certify that H.B. No. 1833 was passed by the Senate, with amendments, on May 19, 2005, by the following vote: Yeas 29, Nays 0.

Datsy Spaw

Secretary of the Senate

APPROVED: 17 JUNE '05

Date

Rick Perry

Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
11:20 AM '05

Roger Williams
Secretary of State