

## **BILL ANALYSIS**

C.S.H.B. 2259  
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Business & Industry  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Concerns have been raised regarding the uphill battle many Texans face when attempting to unsubscribe from or cancel a subscription service. It has been noted that service providers typically make unsubscribing or canceling from certain services very difficult as a method of discouraging cancellation and retaining subscriptions. There have been calls to ensure that the process to cancel these services is as accessible as the method for starting them. C.S.H.B. 2259 seeks to address this issue by providing requirements for subscription service contracts and imposing a civil penalty for certain violations.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 2259 amends the Business & Commerce Code to require a service provider that enters into a contract with a consumer for a subscription service that has an automatic renewal clause, as defined by the bill, or continues indefinitely until cancellation, to do the following:

- at the time the provider enters into the contract with the consumer, clearly and conspicuously disclose to the consumer the nature of the contract;
- in that disclosure or in a retainable confirmation sent to the consumer not later than the fifth day after the date the provider enters into the contract with the consumer, clearly and conspicuously disclose to the consumer the procedure for canceling the contract; and
- if the contract has a term of 12 months or more and automatically renews for a term of more than one month, give the consumer additional written notice, which must be clear and conspicuous, of the automatic renewal and the procedure for canceling the contract not earlier than the 90th day and not later than the 15th day before the date the contract is set to renew.

The bill provides for the method of delivery of the notice and an assumption of its receipt.

C.S.H.B. 2259 requires a service provider to provide a consumer with multiple methods for canceling a contract for a subscription service and sets out authorized cancellation methods. The bill requires a service provider to allow a consumer to cancel a contract by using the same method used to enter into the contract, including online or by mail or telephone, and requires the provider to allow the consumer to cancel the contract by mail if it is not entered into electronically.

C.S.H.B. 2259 establishes that a violation of the bill's provisions is a false, misleading, or deceptive act or practice under the Deceptive Trade Practices-Consumer Protection Act and is actionable under that act, but prohibits a private cause of action for such a violation from being brought under those provisions or that act. The bill requires the attorney general, on behalf of a consumer and before bringing an action against a service provider under the bill's provisions for an initial violation, to provide written notice to the provider identifying the specific bill provisions that the provider allegedly violated. The bill requires the service provider, not later than the 30th day after the date the notice was received by the provider to do the following:

- cure each violation alleged in the notice; and
- provide a written statement to the attorney general certifying the following:
  - that each violation alleged in the notice has been cured; and
  - no further violation will occur.

C.S.H.B. 2259 makes a service provider who violates the bill's provisions liable to the state for a civil penalty of not more than \$2,000 for each violation for each month the violation continues if the provider fails to cure the violation or commits the violation after curing an initial violation and providing the written statement to the attorney general. The bill authorizes the attorney general to bring an action to recover the civil penalty, obtain a temporary or permanent injunction to restrain the violation, or seek restitution for consumers who are Texas residents and who incurred damages as a direct result of the violation. The bill establishes the venue for such an action is a district court in Travis County or a county in which any part of the violation occurs.

C.S.H.B. 2259 exempts from its provisions an offering or contract of insurance and evidence of coverage under the Texas Health Maintenance Organization Act. The bill establishes that nothing in its provisions relieves a consumer of the consumer's duties under a contract before the date the contract is canceled.

#### **EFFECTIVE DATE**

September 1, 2021.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2259 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Whereas the original required the service provider to disclose the procedure for canceling the subscription service contract at the time the provider enters into the contract with the consumer, the substitute gives the provider the option to provide that disclosure in a retainable confirmation sent to the consumer not later than the fifth day after the date the provider enters into the contract with the consumer as an alternative to providing the disclosure upon entering into the contract. The substitute changes the bill's conditions under which additional written notice of automatic renewal and cancellation procedures must be provided from if the contract has a term of six months or more and automatically renews for a minimum one-month term, as in the original, to if the contract has a term of 12 months or more and automatically renews for a term of more than one month.

The substitute does not include a requirement that appeared in the original for the service provider to give the consumer additional written notice of certain upcoming payments by a specified deadline if the contract does not automatically renew but continues until canceled. The substitute revises the original's definition of "automatic renewal clause" by specifying a minimum one-month extension or renewal period for the applicable contract.

Whereas the original established that its provisions do not prohibit the service provider from allowing the consumer to cancel a contract by additional methods, the substitute includes requirements for a service provider to provide a consumer with multiple methods for canceling a contract and to allow the consumer to cancel the contract by mail if the contract is not entered into electronically.

While both the original and the substitute each establish that a violation of the bill's provisions is a false, misleading, or deceptive act or practice, the substitute does not include the original's provisions establishing the conditions under which such a violation is not such an act or practice. Additionally, the original established that one of those conditions involving the provider prospectively canceling the contract after becoming aware of its error does not relieve a consumer of their duties under a contract before the cancellation date, whereas the substitute establishes that nothing in its provisions relieves the consumer of those duties before the cancellation date. The substitute includes the following provisions, which were absent from the original:

- provisions prohibiting a private cause of action from being brought under the bill's provisions or the Deceptive Trade Practices-Consumer Protection Act;
- provisions establishing opportunity for a service provider to cure a violation of the bill's provisions; and
- provisions imposing a civil penalty for certain violations and authorizing the attorney general to bring an action for certain remedies.

The substitute includes exemptions from the bill's provisions for an offering or contract of insurance or evidence of coverage under the Texas Health Maintenance Organization Act, which were not included in the original.