

- SUBJECT:** Restrictions on automatic renewal of contracts
- COMMITTEE:** Business and Industry — committee substitute recommended
- VOTE:** 8 ayes — Giddings, Elkins, Martinez, Bailey, Bohac, Taylor, Vo, Zedler
0 nays
1 absent — Solomons
- WITNESSES:** For — Keith Strama, The Direct Marketing Association

Against — Dennis Bryant, Sentinel The Alarm Company; Malcolm Reed, Knight Security Systems, Inc.
- BACKGROUND:** Deceptive trade practices are defined and prohibited in Business and Commerce Code, ch. 17. A consumer who files suit under ch. 17 for a deceptive trade practice is eligible to recover economic damages. If the judge or jury finds that the seller acted knowingly, the consumer also may recover mental anguish damages, and the judge or jury may triple the amount of the economic damages. If the judge or jury finds that the seller acted intentionally, the judge or jury may triple the combined amount of the economic and mental anguish damages. A consumer also may recover reasonable attorney's fees and other damages.
- DIGEST:** CSHB 533 would create Business and Commerce Code, ch. 48. It would apply only to a contract that:
- had a term of six months or more and renewed automatically for a term of more than one month; and
 - was between a seller of goods or services and a consumer who acquired those goods or services for personal use.

If the seller included a clause in the contract that automatically renewed the contract, the seller would be required to clearly disclose the clause and the procedure for canceling the renewal. The seller also would be required to give the consumer written notice of the automatic renewal clause and the procedure to cancel the renewal. Such notice would have to be given not less than 15 days in advance but not more than 90 days before the final

date on which the consumer could cancel. The consumer could cancel an automatic renewal at no cost any time before the contract renewed or, if the seller failed to notify the consumer of the renewal clause as specified above, the consumer could cancel the renewal before or after the contract renewed at no cost.

The bill would make a violation of ch. 48 a false, misleading, or deceptive act or practice under subject to the remedies provided in Business and Commerce Code, ch. 17. A violation would not be considered a false, misleading, or deceptive act or practice if the seller could prove that:

- it had established, implemented, and enforced compliance with, written procedures to comply with the requirements of this bill;
- the violation was a mistake; and
- it had cancelled the contract without penalty to the consumer.

The bill would not apply to contracts entered into with a government entity or with a bank, trust company, savings and loan association, or credit union.

The bill would take effect September 1, 2005, and would apply only to contracts executed on or after that date.

**SUPPORTERS
SAY:**

CSHB 533 would prevent consumers from unknowingly entering automatic renewal contracts and protect them against sellers who did not provide notification about the renewal clause. It is not uncommon for consumer contracts to include provisions for automatic renewal. Most consumers, however, are not aware of these provisions, and the provisions themselves often are buried in fine print. Many consumers are lured into such contracts by introductory offers and often do not learn of the automatic renewal until the contract is renewed and the consumer receives the charge. Canceling such a renewal often is difficult and generally requires the consumer to follow a specific procedure.

**OPPONENTS
SAY:**

CSHB 533 unfairly would penalize a seller who made a simple mistake of not notifying the consumer of the renewal clause. A consumer would be able to cancel the renewal and would not be required to pay for any goods or services received after the contract renewed. In contracts for home security services, for example, a consumer unfairly could enjoy the protection of the service for several months, cancel the service, and not be required to pay for services the consumer had used.

The bill also would impose an excessive penalty by classifying a violation as a false, misleading, or deceptive practice. A consumer's remedy for not being informed of an automatic renewal simply should be the ability to cancel the contract at any time.

NOTES:

The bill as introduced would have applied only to contracts for services and magazine and newspaper subscriptions. It would have required the seller to notify the buyer of the impending automatic renewal not more than 45 days or less than 15 days before the contract expired. Also, the original bill would not have made a violation of ch. 48 a deceptive trade practice.