

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 569
SPONSOR(S): McBurney
TIED BILLS:

Automatic Renewal of Service Contracts
IDEN./SIM. BILLS: SB 1270

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Business Regulation</u>	<u>10 Y, 0 N</u>	<u>Marra/Smith</u>	<u>Liepshutz</u>
2) <u>Jobs & Entrepreneurship Council</u>	<u></u>	<u>Marra/Topp</u>	<u>Thorn</u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Some contracts are designed to continuously renew unless a party takes action to cancel the contract. These contracts contain automatic renewal provisions that may go unnoticed by consumers.

Florida law does not affect the ability of businesses to offer automatically renewable contracts. While this business practice may save company resources and promote customer retention, it may also be used to snare unsuspecting consumers for a period longer than they had anticipated. Many states have reacted to growing customer complaints with laws requiring the automatic renewal provision to be clearly communicated.

The bill creates a requirement for automatic renewal provisions to be disclosed clearly and conspicuously in certain service contracts. It also requires a renewal notice to be sent to consumers during the month before the cancellation deadline in certain cases.

The requirement applies to service contracts between consumers and sellers that contain automatic renewal provisions that cause the contract to be effective for more than 6 months from the date the contract was initially entered into. The terms of the bill would include certain product lease and sale contracts. The requirement would not extend to real property lease and sale contracts. Banks and other financial institutions are specifically excluded.

The bill applies the requirement to “any person, firm, partnership, association or corporation engaged in commerce that sells, leases, or offers to sell or lease any product or service ... pursuant to a service contract that automatically renews...” which may extend the requirement to persons outside the included definitions of consumer and seller.

Violations of the bill would result in the automatic renewal provision becoming void and unenforceable.

The bill provides a safe harbor for businesses that can demonstrate that compliance is part of their routine practices, violation was the result of error and they provide a full refund for all charges paid or billed to the consumer from the date of the renewal until the earlier of the date of the contract’s termination, or the date of the next notice of renewal.

The bill does not explicitly exclude existing contracts with automatic renewal provisions. If the bill is interpreted to include these contracts, constitutional challenges may be encountered.

The legislation is not expected to have any fiscal impact to the state, as the service provider would be held responsible for any violations of the new disclosure requirements and would carry any fiduciary responsibility to the consumer.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty – The bill would require clear and conspicuous notification of certain contract terms, thus creating new limitations on the ability of businesses to secure automatically renewable contracts.

B. EFFECT OF PROPOSED CHANGES:

Present situation

Some contracts are designed to continuously renew unless a party takes action to cancel the contract. These contracts contain automatic renewal provisions that may go unnoticed by consumers.

Currently, Florida law does not affect the ability of businesses to offer automatically renewable contracts. While this business practice may save company resources and promote customer retention, it may also be used to snare unsuspecting consumers for a period longer than they had anticipated if the automatic renewal provisions are not clearly communicated.

Many states have reacted to growing customer complaints with laws varying from automatic renewal limitations on specific types of contracts (for example, health club memberships) to more broadly applied limitations accompanied by private rights of action with punitive damages. The laws generally require the automatic renewal provision to be clearly communicated.

Effect of proposed changes

Requirement

The bill creates a requirement for automatic renewal provisions to be disclosed clearly and conspicuously in certain service contracts.

'*Automatic renewal provision*' is defined as a service contract provision that renews the contract for a specified period of time unless the consumer notifies the seller of his intention to terminate the contract.

'*Clearly and conspicuously*' is not defined by the bill. Whether a disclosure is clear and conspicuous generally depends on the size and font of the typeface and is often determined by deciding whether a reasonable person would notice it.

Renewal Notice

If a contract has a term of 12 months or more and an automatic renewal provision that renews the contract for more than 1 month, the consumer must be notified in writing of the pending renewal between 30 and 90 days before the cancellation deadline. (i.e. If contract will automatically renew on January 1 if the consumer does not cancel by December 1, then the consumer must be notified no earlier than October 1 and no later than November 1)

The notice must inform the consumer that the contract will automatically renew unless the contract is specifically cancelled by the consumer, and the notice must also disclose methods by which the consumer can learn more about the renewal provision and cancellation procedure.

Consequence

The bill provides that violation of the clear and conspicuous or notice requirements would void the automatic renewal provision, making it unenforceable.

The bill provides a safe harbor for businesses that can demonstrate:

1. They have established and implemented written procedures to comply with the requirement as part of their routine business practice;

2. Failure to comply was the result of error;
3. They provide a full refund or credit for all charges paid or billed to the consumer from the date of the renewal until the earlier of
 - a. the date of the contract's termination, or
 - b. the date of the next notice of renewal

Applicability

The requirements of the bill would apply to service contracts between consumers and sellers that contain automatic renewal provisions that cause the contract to be effective for more than 6 months from the date the contract was initially entered into.

'*Consumer*' is defined as any person receiving service, maintenance or repair under a service contract. Contracts entered into by persons engaged in for-profit business activities are excluded.

'*Seller*' is defined as any person providing service, maintenance or repair under a service contract. The term is only used in the bill once, in the requirement for renewal notices to include cancellation methods.

The bill applies the requirement to "any person, firm, partnership, association or corporation engaged in commerce that sells, leases, or offers to sell or lease any product or service ... pursuant a service contract that automatically renews..." which would extend to persons outside the included definitions of consumer and seller.

'*Service Contract*' is not defined by the bill. Black's Law Dictionary defines the term as "a contract to perform a service; esp., a written agreement to provide maintenance or repairs on a consumer product for a specified term." However, the terms of the bill would include certain product lease and sale contracts. The requirement would not extend to real property lease and sale contracts.

The bill excludes "banks, trust, companies, savings and loan associations, savings banks, or credit unions licensed or organized under the laws of any state of the United States; any foreign bank maintaining a branch or agency licensed under the laws of any state of the United States; or any subsidiary or affiliate thereof" from the requirements of the bill.

Effect on existing contracts

The bill does not explicitly exclude existing contracts with automatic renewal provisions. Both the U.S. and Florida constitutions forbid state government from interfering with the rights and duties under existing contracts. See U.S. Const. Art. I § 10; Fla. Const. Art. I § 10.

C. SECTION DIRECTORY:

Section 1. Creates a new requirement for automatic renewal provisions to be clear and conspicuous in certain contracts.

Section 2. Effective date - July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown but service contract providers who fail to meet the new disclosure obligations as provided in the bill could be required to provide refunds to consumers.

D. FISCAL COMMENTS:

The proposed legislation is not anticipated to have any fiscal impact to the state.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The bill may violate the contract clauses of the U.S. and Florida constitutions, if interpreted to apply to contracts already existing at the effective date. The contract clauses prohibit state government from interfering with private rights and duties under existing contracts. See U.S. Const. Art. I § 10; Fla. Const. Art. I § 10.

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

See III. A. 2, above.

D. STATEMENT OF THE SPONSOR

No statement of the sponsor submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

The Strike-All amendment clarifies the bill's applicability by:

- clearly excluding contracts entered into before the effective date;
- defining "service contract" as a written contract for the performance of services over a fixed period of time or for a specified duration;
- removing references to products;
- clarifying financial institution exclusion; and
- exempts health studios, otherwise known as health clubs.

It also amends the renewal notification requirement to allow for electronic notification.

Amendment 1 to the Strike-All amendment clarifies the financial institution exclusion to include depository institutions as defined under federal law.

Amendment 2 to the Strike-All amendment amends the safe harbor provision to limit the refund necessary to unearned portions as of the date the seller is notified of the erroneous renewal.