

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 15 Automatic Renewal of Service Contracts

**SPONSOR(S):** McBurney and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 660

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	Insurance, Business & Financial Affairs Policy Committee	19 Y, 1 N, As CS	Tanner	Cooper
2)	Civil Justice & Courts Policy Committee			
3)	Economic Development Policy Committee			
4)	General Government Policy Council			
5)	Policy Council			

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**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 in general, but there are certain restrictions on warranty contracts and health club memberships.

CS/HB 15 requires clear and conspicuous disclosure of automatic renewal provisions in service contracts if the provision renews a contract for more than one month and if the provision causes the contract to be in effect more than 6 months after the contract was initiated. If the length of the service contract is 12 months or more, and if the contract automatically renews for a period of more than 1 month, the provider must notify the consumer, in a clear and conspicuous manner, of the renewal and how to cancel the renewal “no less than 30 days and no more than 60 days before” the deadline provided in the service contract.

The contract renewal is effective until the consumer terminates the service contract. The consumer must give the seller notice of his or her intent to terminate the contract.

This bill makes automatic renewal provisions void and unenforceable if any requirements of the bill are violated, except under certain circumstances. The bill provides exemptions from the disclosure and notice requirements for financial institutions, health studios, private companies providing certain municipal services, and electrical utilities as well as entities licensed under chapter 627 (Insurance), 634 (Warranty Associations), 636 (Prepaid Limited Health Service Organizations and Discount Medical Plan Organizations), and 641 (Health Care Service Programs).

The bill has no fiscal impact to state or local government.

The bill provides an effective date of July 1, 2009.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### 1. Background

Some contracts are designed to continuously renew unless a party takes action to cancel the contract before the deadline in the contract. In some instances, a consumer may not realize that his or her contract contains an automatic renewal provision. Therefore, consumers may end up with a contract period longer than anticipated.

Federal law provides a measure of protection against unfair or deceptive contract provisions under the Federal Trade Commission Act, which makes unlawful any "unfair or deceptive acts or practices in or affecting commerce."<sup>1</sup> Generally, unfair or deceptive contract terms relating specifically to automatic renewal provisions in contracts are regulated by state laws. For example, New York, Illinois, North Carolina, and Utah all have laws requiring specific notification of renewal clauses in contracts.<sup>2</sup>

Currently, Florida law does not explicitly require companies to notify customers about the automatic renewal of a contract. However, challenges may be made to unfair and deceptive practices affecting commerce under the Florida Deceptive and Unfair Trade Practices Act (FDUTPA), Chapter 501, part II, F.S. The act prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.<sup>3</sup> "Trade or commerce," which includes the conduct of any trade or commerce, is defined as the advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, of any good or service, or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated.<sup>4</sup> The act provides for remedies such as cease and desist orders, injunctions, remedies by the enforcing authority, and the award of attorney's fees and costs to the prevailing party in civil litigation. A willful violation of the FUDTPA subjects the violator to a civil penalty of not more than \$10,000 for each violation.<sup>5</sup>

Florida currently limits contract renewals of specific kinds of contracts. For example, contracts for dance studio and health studio services are limited to 36 months and are only renewable annually.<sup>6</sup>

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<sup>1</sup> 15 U.S.C. §45.

<sup>2</sup> See NY Gen. Oblig. §5-903, 815 ILCS 601/10, N.C.G.S. §75-41, and Utah Code Ann. §15-10-101.

<sup>3</sup> Section 501.202, F.S.

<sup>4</sup> Section 501.203(8), F.S.

<sup>5</sup> Section 501.2075, F.S.

<sup>6</sup> See ss. 501.143(4)(g) and 501.017(1)(e), F.S.

Similarly, warranty contracts governed by chapter 634, F.S., must allow the consumer to cancel the contract at any time.<sup>7</sup>

## **2. Effect of Bill**

### **Requirement**

This bill creates an undesignated section of the Florida Statutes to require sellers to clearly and conspicuously disclose and notify consumers of automatic renewal provisions contained in service contracts under certain circumstances.

“Automatic renewal provision” is defined as a service contract that renews the contract for a specified period of more than 1 month and the renewal causes the contract to be in effect more than 6 months after entering the contract, unless the consumer notifies the seller of his or her 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 typefaces and is often determined by deciding whether a reasonable person would notice it.

### **Renewal Notice**

Automatic renewal provisions are required to be clearly and conspicuously disclosed in service contracts. Furthermore, if a contract has a term of 12 months or more and contains an automatic renewal provision that renews the contract for more than 1 month, the consumer must be notified in writing or by electronic means of the pending renewal between 30 and 60 days before the cancellation deadline.

The written or electronic notice must clearly and conspicuously inform the consumer that the contract will automatically renew unless the contract is cancelled by the consumer. The notice must also disclose methods by which the consumer can get more information about the renewal provision and the cancellation procedure.

### **Consequences**

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

- It has established and implemented written procedures to comply with, and enforce, the requirements as part of their routine business practice;
- The failure to comply was the result of error; and
- It has provided, as a part of its routine business practice, a refund for the unearned portion of the renewed contract, starting from the date the seller is notified of the error.

### **Applicability**

The requirements of the bill 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 to mean an individual, as defined in s. 501.603, F.S.,<sup>8</sup> receiving service, maintenance, or repair under a service contract. Individuals engaged in business activities or

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<sup>7</sup> See Section 634.121(5), F.S. (Motor Vehicle Service Agreements); s. 634.414(3), F.S. (Home Warranties); and s. 634.312(8), F.S. (Service Warranties).

<sup>8</sup> “Individual” is defined in s. 501.603, F.S., to mean “a single human being and does not mean a firm, association of individuals, corporation, partnership, joint venture, sole proprietorship, or any other entity.”

employed or otherwise acting on behalf of governmental entity are not included in the definition of "consumer."

"Seller" is defined as any person, firm, partnership, association, or corporation engaged in commerce that sells, leases, or offers to sell or lease any service to a consumer pursuant to a service contract. "Service contract" means any written contract for performance of services over a certain period of time or for a specific duration.

This bill exempts the following from the disclosure and notice requirements of the bill:

- Financial institutions,
- foreign banks maintaining a branch or agency licensed under the laws of any state of the United States; or
- any subsidiary or affiliate thereof.

Exemptions are also provided for health studios and private companies providing municipal public works services. The exemption to private companies providing municipal public works services includes any private company authorized to construct or operate water works systems, sewerage systems, sewage treatment works, garbage collection, and garbage disposal plants.<sup>9</sup> The exemption also covers any other service described under ch. 180, F.S., that may be performed by these private companies, including cleaning and improving street channels or other bodies of water; regulating the flow of streams; providing water and alternative water supplies; collecting and disposing of sewage or garbage; constructing, maintaining, operating or repairing hospitals, jails, and golf courses; and constructing, operating, or maintaining gas plants.<sup>10</sup>

The bill further provides exemptions for entities licensed under chapter 627 (Insurance), 634 (Warranty Associations), 636 (Prepaid Limited Health Service Organizations and Discount Medical Plan Organizations), and 641 (Health Care Service Programs). The exemption for warranty associations encompasses an exemption for motor vehicle service agreement companies, home warranty associations, and service warranty associations.<sup>11</sup>

#### Effect on Existing Contracts

The bill explicitly excludes contracts entered into before the effective date.

#### B. SECTION DIRECTORY:

Section 1 creates new requirements for automatic renewal provisions to be clear and conspicuous in certain contracts and for certain automatic renewals to be accompanied by advance notification.

Section 2 provides an effective date of July 1, 2009.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

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<sup>9</sup> Section 180.05, F.S.

<sup>10</sup> Section 180.06, F.S.

<sup>11</sup> ch. 634, F.S.

**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 funds to consumers.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 19, 2009, the Insurance, Business & Financial Affairs Policy Committee adopted two amendments introduced by Rep. McBurney. The amendments made the following changes to the bill:

- Clarified that the defined term “consumer” does not include businesses or government entities;
- Conformed the definition of “automatic renewal provision” to the restriction parameters specified in the bill to exclude contracts that renew for less than one month;
- Clarified the definition of “seller” to mean any person or entity that provides services under a service contract; and
- Added electric utilities as well as entities licensed under chapter 627 (Insurance), 636 (Prepaid Limited Health Service Organizations and Discount Medical Plan Organizations), and 641 (Health Care Service Programs) to the list of bill exemptions.