

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SB 1332

INTRODUCER: Commerce Committee, Senator Justice, and others

SUBJECT: Automatic Renewal of Service Contracts

DATE: April 16, 2010

REVISED: 04/20/10

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. O'Callaghan	Cooper	CM	Fav/CS
2.		BI	Withdrawn
3. Maclure	Maclure	JU	Fav/2 amendments
4.			
5.			
6.			

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill 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 six 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 one 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.

This bill provides exemptions from the disclosure and notice requirements for financial institutions, health studios, licensed insurance providers, warranty associations, health care

service organizations and programs, electric utilities, and private companies providing certain municipal services.

This bill creates an undesignated section of the Florida Statutes.

II. Present Situation:

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.”¹ 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.²

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), ch. 501, part II, F.S. FDUTPA prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce. “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.³ FDUTPA 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.

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.⁴

III. Effect of Proposed Changes:

This bill 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 six months after the contract was initiated.

¹ See 15 U.S.C.A. s. 45.

² See NY Gen. Oblig. s. 5-903, 815 IL CS 601/10, N.C.G.S.A. s. 75-41, and Utah Code Ann. s. 15-10-101.

³ Section 501.203(8), F.S.

⁴ See ss. 501.143(4)(g) and 501.017(1)(e), F.S.

If the length of the service contract is 12 months or more, and if the contract automatically renews for a period of more than one 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 new statutory section created by the bill are violated, except under certain circumstances.

This bill provides exemptions from the disclosure and notice requirements for financial institutions, health studios, licensed insurance providers, warranty associations, health care service organizations and programs, electric utilities, and private companies providing certain municipal services.

Section 1 creates an undesignated section of the Florida Statutes that requires sellers to clearly and conspicuously disclose and notify consumers of automatic renewal provisions contained in service contracts under certain circumstances.

Subsection (1)(a) of the new statute defines “automatic renewal provision” to mean a provision under which a service contract is renewed for more than one month and the renewal causes the contract to be in effect more than six months after entering the contract. This paragraph also provides for the cancellation of a service contract by the consumer if the consumer provides the seller notice of his or her intention to cancel the contract, making the renewal ineffective.

Subsection (1)(b) defines “consumer” to mean “an individual” receiving service, maintenance, or repair under a service contract and does not mean a firm, association of individuals, corporation, partnership, joint venture, sole proprietorship, individuals who enter into a contract for business purposes, or a government entity.⁵ Paragraph (1)(c) defines “seller” to mean any person, firm, partnership association, or corporation engaged in commerce that sells, leases, or offers to sell or lease a service to a consumer by contract. Paragraph (1)(d) defines “service contract” to mean any written contract for performance of services over a certain period of time or for a specific duration.

Subsection (2) provides specific requirements for service contracts containing automatic renewal provisions. 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 one month, the consumer must be notified in writing or electronically of the pending renewal between 30 and 60 days before the cancellation deadline. For example, if the contract will automatically renew on January 1, then the consumer must be notified no earlier than November 1 and no later than December 1.

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

⁵ See s. 501.603, F.S., for a definition of “individual.”

must also disclose methods by which the consumer can get more information about the renewal provision and the cancellation procedure.

The section provides that a violation of the disclosure and notice requirements would void an 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 or credit for the unearned portion of the renewed contract, starting from the date the seller is notified of the error.

This section exempts: state and federal financial institutions or any subsidiary or affiliate thereof; health studios, licensed insurance providers, warranty associations, health care service organizations and programs, electric utilities, and private companies providing certain municipal services. In proposed subparagraph (2)(d)5., the bill exempts entities “*licensed* under chapter 624, chapter 627, chapter 634, chapter 636, or chapter 641, Florida Statutes.” Some of the cited provisions provide for licensure of entities (e.g., warranty associations under ch. 634, F.S.). However, other cited chapters provide for certification rather than licensure. For example, s. 624.401, F.S., requires a certificate of authority to act as an insurer. The bill’s use of the specific term “*licensed*” may create uncertainty regarding the extent to which entities are or are not covered by the exemption.

The exemption for warranty associations encompasses an exemption for motor vehicle service agreement companies, home warranty associations, and service warranty associations. The exemption for health care organizations and programs includes prepaid limited health service organizations, discount medical plan organizations, health maintenance organizations, prepaid health clinics, and health care 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. 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.

Section 2 provides an effective date of July 1, 2010, and provides that this bill applies solely to contracts entered into on or after the effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

This bill may have an indeterminate fiscal impact due to the disclosure and notification requirements in the bill. Additionally, there may be an indeterminate impact on service contract providers who fail to meet the new disclosure and notification obligations as provided in the bill, as they could be required to provide refunds to consumers.

This bill will protect consumers by putting consumers on notice of contracts that automatically renew.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

If health studios are exempted in lines 84 through 85 of the bill because health studio contracts are already regulated under s. 501.017(1)(e), F.S., then it may be appropriate to provide the same exemption for dance studios. Dance studio contracts are regulated in the same manner as health studios under s. 501.143(4)(g), F.S.⁶

⁶ The health studio statute specifies that an initial contract may not be for a period in excess of 36 months and thereafter shall only be renewable annually. The dance studio statute similarly specifies that a contract for ballroom dance studio services or lessons may not be for a period in excess of 36 months and thereafter is only renewable annually.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce on March 10, 2010:

The committee substitute differs from the bill in that the committee substitute:

- Clarifies that a clear and conspicuous disclosure is required on all contracts with “automatic renewal provisions.”
- Links the conditions that exempt sellers from the disclosure requirements of the bill. Specifically, it requires that all of the conditions, as opposed to one of the conditions, be met to avoid having the contract voided if the seller does not comply with the renewal and notice requirements created in the bill.

- B. Amendments:

Barcode 846828 by Judiciary on April 19, 2010:

Expands the list of entities exempt from the bill’s provisions to include an entity “licensed” under the state’s contracting law (ch. 489, F.S.) and an entity “licensed” under the fire prevention and control law (ch. 633, F.S.). Some of the provisions in the cited chapters provide for registration or certification rather than licensure, which may raise questions about the extent to which those provisions are within the scope of the amendment.

Barcode 964406 by Judiciary on April 19, 2010:

Provides that a consumer who waives the right to be notified of an automatic renewal provision before the cancellation deadline in the service contract may rescind the waiver by notifying the seller in writing at anytime. The amendment contemplates that a consumer may waive the notification provisions prescribed in the bill. (WITH TITLE AMENDMENT)