

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 Banking and Insurance Committee

BILL: CS/CS/SB 1270

INTRODUCER: Banking and Insurance Committee, Commerce Committee and Senator Wise

SUBJECT: Automatic renewal of service contracts

DATE: April 1, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Earlywine	Cooper	CM	Fav/CS
2.	Knudson	Deffenbaugh	BI	Fav/CS
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input 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 committee substitute requires disclosure of automatic renewals on service contracts sold or leased to consumers.

If the terms of the service contracts are for 12 months or more, and the contract automatically renews for a term of more than 1 month unless the consumer cancels the contract, the provider must also notify the consumer in writing “no less than 30 days and no more than 60 days before the cancellation deadline pursuant to the automatic renewal provision.”

Exemptions from the requirements of the bill are provided for financial institutions, health studios and warranty associations. Electrical and alarm system contractors are exempt from the bill if their service contracts contain automatic renewal provision for a duration of 12 months or less.

This committee substitute 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 their contracts contain automatic renewal provisions. Therefore, consumers may end up with a contract period longer than anticipated. Currently, Florida law does not require companies to notify customers about an automatic renewal.

Some states have reacted to consumer complaints with laws varying from automatic renewal limitations on specific types of contracts to more broadly applied limitations accompanied by private rights of action with punitive damages. Some laws require the automatic renewal provision to be clearly communicated.

In Florida, contracts for dance studio services are limited to 36 months and are only renewable annually.¹ Additionally, health studio contracts in Florida are also limited to 36 months and are only renewable annually.²

III. Effect of Proposed Changes:

Section 1 creates an undesignated section of the Florida Statutes to require automatic renewal provisions to be clear and conspicuous in certain services contracts.

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 or by electronic means of the pending renewal between 30 and 60 days before the cancellation deadline. (For example, 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.

The section provides that violations of the notice requirements would void the automatic renewal provision, making it unenforceable.

This section provides a safe harbor for businesses that can demonstrate:

- It has established and implemented written procedures to comply with the requirement as part of their routine business practice;
- The failure to comply was the result of error; or
- It refunded the unearned portion of the contract from the date the seller is notified of the error.

¹ Section 501.143(4)(g), F.S.

² Section 501.017(1)(e), F.S.

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

This section exempts the following: state or federal association; bank; savings bank; trust company; international bank agency; international branch; representative office or international administrative office; credit union; insured depository institutions as defined by federal law; 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 this section.

Exemptions for financial institutions, health studios and warranty associations from the requirements of the bill are provided. Electrical and alarm system contractors are exempt from the bill if their service contracts contain automatic renewal provision for a duration of 12 months or less are provided.

Section 2 provides an effective date of July 1, 2008, and provides that this committee substitute only applies 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 committee substitute may have an indeterminate fiscal impact due to the notification requirement in this committee substitute. Additionally, there may be an indeterminate impact on service contract providers who fail to meet the new disclosure obligations as provided in the committee substitute, as they could be required to provide refunds to consumers.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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 Banking and Insurance on April 1, 2008:

The committee substitute allows states that a business that erroneously fails to comply with the notice requirements of the bill does not commit a violation if it refunds the unearned portion of the contract subject to the automatic renewal provision. Previously, the bill required a full refund of all amounts paid from the date the contract was automatically renewed or the original contract was terminated, whichever was earlier.

CS by Commerce on March 18, 2008:

This committee substitute makes the following changes from the bill as filed:

- It removes from the definition of “consumer” the condition “for profit.”
- It defines “service contract” as a written contract for the performance of services over a fixed period of time or for a specified duration;
- It removes references to products;
- It permits electronic renewal notification;
- It excludes insured depository institutions as defined under federal law;
- It exempts health studios;
- It exempts warranty associations from the requirements of the bill;
- It exempts electrical and alarm system contractors from the bill if their service contracts contain automatic renewal provision for a duration of 12 months or less; and
- It excludes contracts entered into before the effective date.

- B. **Amendments:**

None.