

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 751

Automatic Renewal of Service Contracts

SPONSOR(S): McBurney

TIED BILLS:

IDEN./SIM. BILLS: CS/SB 1332

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance, Business & Financial Affairs Policy Committee		Vickroy	Cooper
2) Civil Justice & Courts Policy Committee			
3) General Government Policy Council			
4)			
5)			

SUMMARY ANALYSIS

Contracts with automatic renewal provisions are designed to continuously renew unless a party takes an action to cancel the contract. The burden is generally placed on the consumer, who may not always notice the provisions, to terminate the contract. Therefore, consumers may ultimately contract for a period longer than anticipated.

Federal law provides protection against unfair or deceptive contract provisions under the Federal Trade Commission Act (FTC Act), and state law provides similar protection under the Florida Deceptive and Unfair Trade Practices Act (FDUTP Act); however, state law does not explicitly regulate the notification of automatic renewal provisions to consumers.

The bill provides that an automatic renewal provision must be clearly and conspicuously disclosed in service contracts where the provision renews a contract for more than one month and where the provision causes the contract to be in effect more than six months after the contract was initiated. It also provides that where the service contract is for twelve months or longer, and the renewal is for a period of one month or longer, the seller must provide either written or electronic notification to the consumer no more than sixty and no less than thirty days prior to the cancellation deadline provided in the service contract.

The bill makes automatic renewal provisions void and unenforceable if any notification requirements are not met, except under certain circumstances. It also provides exemptions from the notification requirements for:

- financial institutions;
- health studios;
- insurance providers;
- warranty associations;
- electric utilities;
- private companies providing certain local or municipal services; and
- certain types of healthcare organizations and programs.

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

The bill would go into effect July 1, 2010 and would only apply to service contracts entered into on or after the effective date.

## 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:

##### **Background:**

An automatic renewal provision allows an agreement to continuously renew unless either party to the agreement gives notice of his or her intention to terminate the contract within a specified period of time before the renewal deadline.<sup>1</sup> In some instances, consumers do not realize a service contract contains a renewal provision and may ultimately contract with the seller for a period longer than anticipated or desired.

The Federal Trade Commission Act (FTC Act) provides protection against unfair or deceptive contract provisions, thus, automatic renewal provisions not disclosed prominently may be prohibited under federal law. The FTC Act provides that, "unfair or deceptive acts or practices in or affecting commerce" are unlawful.<sup>2</sup> Similarly, the Florida Deceptive and Unfair Trade Practices Act (FDUTP Act) provides protection for consumers against unfair methods of competition, or deceptive or unfair acts or practices in the conduct of any trade or commerce.<sup>3</sup> Furthermore, the FDUTP Act is expressly intended to provide consistent protection with the FTC Act,<sup>4</sup> and does not purport to list every offense which may constitute unfair or deceptive practices.<sup>5</sup> A violation of this Act may result in a civil penalty of up to \$10,000 for each violation.<sup>6</sup> Thus, state law may provide protection for deceptive or undisclosed automatic renewal provisions.

Several states provide express regulation of automatic renewal provisions. For example, California, New York, Rhode Island, Illinois, and North Carolina law provide specific requirements for automatic renewal provisions.<sup>7</sup>

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<sup>1</sup> US Legal Definitions, Automatic Renewal Clause Law and Legal Definition, <http://definitions.uslegal.com/a/automatic-renewal-clause/> (last visited March 15, 2010).

<sup>2</sup> 15 U.S.C.A. § 45.

<sup>3</sup> Section 501.202(2), F.S.

<sup>4</sup> Section 501.202(3), F.S.

<sup>5</sup> F.A.C. 2-2.001.

<sup>6</sup> Section 501.2075, F.S.

<sup>7</sup> ElfaOnline, State Laws Regulating Automatic Renewal Clauses in Tangible Personal Property Lease Contracts, *available at:*

[www.elfaonline.org/pub/advocacy/state/.../AutoRenewalLaws.pdf](http://www.elfaonline.org/pub/advocacy/state/.../AutoRenewalLaws.pdf)

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Florida law currently provides limitations on certain types of contracts. For example, dance studio<sup>8</sup> and health studio services<sup>9</sup> are limited to thirty-six months and may only be renewed annually. Similarly, warranty contracts must allow the consumer to cancel the contract at any time.<sup>10</sup>

### **Effect of Purposed Changes:**

#### Notification Requirements:

The bill requires sellers<sup>11</sup> to clearly and conspicuously disclose automatic renewal provisions to consumers<sup>12</sup> when the provision renews a contract for more than one month and causes the contract to stay in effect for more than six months after the contract was initiated. The bill does not define clearly and conspicuously; however, states with similar statutes sometimes define this term based on the size of the font, typeface, and whether a reasonable person would notice the disclosure.<sup>13</sup>

In addition, the bill further requires sellers of contracts with a term of twelve months or more, which contain an automatic renewal provision that renews the contract for more than one month to provide written or electronic notification to consumers no more than sixty and no less than thirty days prior to the cancellation deadline provided in the service contract.<sup>14</sup> This notification must clearly and conspicuously inform the consumer that the contract will automatically renew unless it is cancelled by the consumer. It must also provide methods for the consumer to obtain details of the automatic renewal provision and cancellation procedure.

#### Consequences for Failure to Comply:

The bill provides that a seller who fails to comply with the notification requirements will render the contract void and unenforceable. This may result in sellers being required to reimburse consumers for the unwanted or unknown additional extension of a service contract.

However, the bill also provides that if the seller can demonstrate the following, the contract will not be void and unenforceable:

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

It is somewhat unclear whether the seller is required to demonstrate all three elements of this list, or whether demonstration of one or more of the elements is sufficient.

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<sup>8</sup> Section 501.143(4)(g), F.S.

<sup>9</sup> Section 501.017(1)(e), F.S.

<sup>10</sup> See Section 634.12195), F.S. (governing motor vehicle service agreements); section 634.414, F.S. (governing home warranties); and section 634.312(8), F.S. (governing service warranties).

<sup>11</sup> "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.

<sup>12</sup> "Individual" is defined in section 501.603(7), F.S. as "a single human being and does not mean a firm, association of individuals, corporation, partnership, joint venture, sole proprietorship, or any other entity."

<sup>13</sup> For example, California's disclosure law defines clearly and conspicuously to mean, "in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size...in a manner that clearly calls attention to the language." Section 17601(5)(c), CA Stat. Anon.

<sup>14</sup> See *supra* note 10 (defining "service contract").

## Exemptions from the Notification Requirements:

The bill exempts the following entities from the notification requirements:

- Federal and state financial institutions and any subsidiary or affiliate thereof;<sup>15</sup>
- health studios;<sup>16</sup>
- insurance providers;<sup>17</sup>
- warranty associations;<sup>18</sup>
- healthcare service organizations and programs;<sup>19</sup>
- electric utilities;<sup>20</sup> and
- private companies providing certain types of municipal services.<sup>21</sup>

The warranty association exemption includes an exemption for motor vehicle service agreement companies, home warranty associations, and service warranty associations.<sup>22</sup> The exemption for healthcare service organizations and programs include: prepaid limited health service organizations, discount medical plan organizations,<sup>23</sup> health maintenance organizations, prepaid health clinics, and healthcare services.<sup>24</sup>

The exemption for private companies providing municipal services includes any company authorized to construct or operate water works systems, sewerage systems, sewage treatment works, garbage collection, and garbage disposal plants.<sup>25</sup> It also encompasses any other service enumerated in ch. 180, F.S. that may be performed by 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>26</sup>

### B. SECTION DIRECTORY:

**Section 1** provides that automatic renewal provisions must be clearly and conspicuously disclosed and that certain contracts require the seller to provide written or electronic notification to the consumer before the deadline of the contract. It also provides for the requirements for notification and exemptions of certain licensed entities, financial institutions, and private companies.

**Section 2** provides an effective date of July 1, 2010 and that the requirements would only apply to service contracts entered into on or after the effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

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<sup>15</sup> See section 655.005(1)9h), F.S.; and 12 U.S.C.A. § 1813(c)(2).

<sup>16</sup> See Section 501.0125(1), F.S.

<sup>17</sup> See Ch. 624, F.S.; and ch. 627, F.S.

<sup>18</sup> See Ch. 634, F.S.

<sup>19</sup> See Ch. 636, F.S.; and ch. 641, F.S.

<sup>20</sup> See Section 366.02(2), F.S.

<sup>21</sup> See Section 180.05, F.S.

<sup>22</sup> See Ch. 634, F.S.

<sup>23</sup> See Ch. 636, F.S.

<sup>24</sup> See Ch, 641, F.S.

<sup>25</sup> Section 180.05, F.S.

<sup>26</sup> Section 180.06, F.S.

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:

The bill may have a negative impact on sellers who must provide refunds to consumers when they have not complied with the notification requirements of the bill.

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:

Section 501.603, F.S. does not specifically define "consumer." It does define "consumer goods or services" and "individual," but it does not provide a definition of "consumer" as is stated within the bill.

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