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DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 93

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATED TO CONSUMER CONTRACTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Subchapter IV, Chapter 27, Title 6 of the Delaware Code by making deletions as shown by
2 strike through and insertions as show by underline as follows:

3 § 2731. Definitions.

4 As used in this subchapter:

5 (1) “Automatic renewal provision” means a provision under which a contract is renewed for a specified
6 period of more than 1 month if the renewal causes the contract to be in effect more than 6 months after
7 the day of the initiation of the contract and such renewal is effective unless the consumer gives notice to
8 the seller of the consumer’s intention to terminate the contract.

9 (2) “Clearly and conspicuously” means: In larger type than the surrounding text, or in contrasting type,
10 font, or color to the surrounding text of the same size, or set off from the surrounding text of the same
11 size by symbols or other marks, in a manner that clearly calls attention to the language.

12 (43) “Consumer” means an individual who purchases or leases merchandise primarily for personal,
13 family or household purposes.

14 (34) “Contract” means any contract for the sale of merchandise or any lease.

15 (35) “Merchandise” means any objects, wares, goods, commodities, intangibles, real estate or services,
16 other than insurance.

17 (46) “Person” means an individual, corporation, government or governmental subdivision or agency,
18 statutory trust, business trust, estate, trust, partnership, unincorporated association, 2 or more of any of the
19 foregoing having a joint or common interest or any other legal or commercial entity.

20 (57) “Sale” means any sale, offer for sale or attempt to sell any merchandise for cash or credit.

21 (78) “Seller” means any person engaged in commerce that sells, leases, or offers to sell or lease any
22 merchandise to a consumer.

23 § 2732. Deceptive practices in consumer contracts.

24 In a contract for the sale or lease of merchandise to a consumer, a person engages in a deceptive practice when that
25 person knowingly or recklessly:

- 26 (1) Distorts or obscures the terms, conditions or meaning of the contract or creates a likelihood of confusion or
27 misunderstanding by the use of unintelligible words, phrases or sentences; or
28 (2) Omits information required by law to be disclosed in contracts with a ~~consumer~~; consumer; or
29 (3) Violates §2734 of this subchapter; or
30 (4) With respect to a contract that automatically renews and without regard to the duration of such renewal period,
31 fails to provide a cost-effective, timely, and easy to use mechanism for cancellation. For purposes of this
32 subsection, a mechanism for cancellation that is both (i) in the same medium as the medium used by the consumer
33 for entering into the relevant contract and (ii) no less onerous than such sign-up process, shall be deemed cost-
34 effective, timely, and easy to use.

35 § 2733. Guidelines.

36 The following are factors that a court may consider in determining whether a contract complies with this subchapter:

- 37 (1) Whether cross-references are confusing.
38 (2) Whether sentences are unreasonably long or complex.
39 (3) Whether sentences contain double negatives and exceptions to exceptions.
40 (4) Whether sentences and sections are in a confusing or illogical order.
41 (5) Whether it contains words with obsolete meanings or words that differ in their legal meaning from their
42 ordinary meaning.
43 (6) Whether conditions, exceptions to the main provision of the agreement and protection for consumers or
44 restrictions of consumers' right are given equal prominence with the main provision.

45 § 2734. Contracts with Automatic Renewal Provisions.

- 46 (a) Any seller that sells, leases, or offers to sell or lease any merchandise to a consumer pursuant to a contract that
47 contains an automatic renewal provision shall disclose the terms of the automatic renewal provision clearly and
48 conspicuously in writing at the time the contract is entered into.
49 (b) Any seller that sells or leases any merchandise to a consumer pursuant to a contract that contains an automatic
50 renewal provision, shall notify the consumer of each upcoming extension of the contract no less than 30 days and no
51 more than 60 days before the cancellation deadline pursuant to the automatic renewal provision. Such notification shall
52 disclose clearly and conspicuously:

- 53 (1) That unless the consumer cancels the contract, the contract will automatically renew;
54 (2) The date at which the contract will automatically renew if not cancelled;
55 (3) The date by which the consumer must cancel the contract to avoid automatic renewal;
56 (4) The procedures the consumer must follow to cancel the contract; and
57 (5) How the consumer may obtain details of the automatic renewal provision, whether by contacting the seller at a
58 specified telephone number or address, by providing a copy of the provision, by providing access to the contract, or
59 by any other appropriate method.

60 (c) A seller that fails to comply with the requirements of this section is in violation of this subchapter unless the seller
61 demonstrates that:

- 62 (1) As part of the seller's routine business practice, the seller has both (i) established and implemented written
63 procedures to comply with this section and (ii) enforces compliance with such procedures;
64 (2) Any failure to comply with this subchapter is the result of error; and
65 (3) As part of the seller's routine business practice, where an error has caused the failure to comply with this
66 subchapter, the unearned portion of the contract subject to the automatic renewal provision is refunded as of the date
67 on which the seller is notified of the error or becomes aware of the error, whichever is earlier.

68 (d) This section does not apply to:

- 69 (1) Matters subject to the jurisdiction of the Public Service Commission.
70 (2) Matters subject to the jurisdiction of the Insurance Commissioner of this State.
71 (3) Leases subject to the Residential Landlord-Tenant Code, Chapters 51 through 59 of Title 25, or the
72 Manufactured Homes and Manufactured Home Communities Act, Chapter 70 of Title 25.

73 § 2734⁵. Remedies.

74 (a) Any person who engages in a deceptive practice governed by this subchapter shall be liable to a consumer in an
75 amount equal to treble the amount of actual damages proved, plus reasonable attorney's fees.

76 (b) A consumer likely to be damaged by a deceptive practice governed by this subchapter may be granted an injunction
77 against it under the principles of equity and on terms the court considers reasonable.

78 (c) With respect to any contract containing an automatic renewal provision that is renewed in violation of Section 2734
79 of this subchapter, such contract is voidable by the consumer.

80 (1) The consumer shall void the contract using any method that would have been sufficient to cancel the contract
81 prior to its renewal.

82 (2) A consumer who voids a contract pursuant to this subsection shall not be liable for any costs, fees, or expenses
83 associated with the contract that accrue after the date on which the consumer voided the contract. The seller may
84 retain a prorated fraction of any prepaid fees or costs based on the time since the renewal was executed and the time
85 remaining in the renewal period. The seller shall refund any remaining prepaid fees or costs to the consumer within
86 30 days.

87 § 27356. Application.

88 This subchapter shall not apply to contracts in which the total contract price or the total amount financed exceeds
89 \$50,000, or to any contract entered into with or acquired by a banking organization or building and loan association
90 as defined by Chapters 1 and 17, respectively, of Title 5 or to any public utility tariff on file with the Delaware
91 Public Service Commission pursuant to Chapter 7 [repealed] of Title 26.

92 § 27367) Enforcement

93 In addition to any remedies a consumer may have at law or in equity, ~~Chapter 25 of Title 29 shall apply to~~
94 ~~violations of this subchapter~~ a violation of this subchapter shall be deemed an unlawful practice under § 2513 of
95 this title and a violation of Subchapter II of Chapter 25 of this title.

SYNOPSIS

This bill provides protections for consumers in connection with contracts with automatic renewal provisions. Multiple states have enacted laws regulating the automatic renewals of contracts, often described as "evergreen" clauses. These state laws are aimed at protecting consumers from unknowingly entering into these types of agreements by requiring that evergreen clauses be presented in a clear and conspicuous manner and that sellers of such contracts provide a written notice to consumers about an upcoming renewal.

This bill also requires sellers of such contracts to provide consumers with a means to cancel the contract that is at least as easy to use as the means available to sign up for the contract.

This bill also updates the language of the enforcement provision in Subchapter IV, Chapter 27 of Title 6 of the Delaware Code.

Author: Senator Poore