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DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1
FOR
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 period of
6 more than 1 month if the renewal causes the contract to be in effect more than 12 months after the day of the initiation of
7 the contract and such renewal is effective unless the consumer gives notice to the seller of the consumer’s intention to
8 terminate the contract.

9 (2) “Clearly and conspicuously” means either that printed disclosures must be in larger type than the surrounding
10 text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the
11 same size by symbols or other marks, or by way of a recorded audio disclosure, in a manner that clearly calls attention to
12 the language.

13 (4~~3~~) “Consumer” means an individual who purchases or leases merchandise primarily for personal, family or
14 household purposes.

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

16 (2~~5~~) “Lease” means any lease, offer to lease or attempt to lease any merchandise.

17 (3~~6~~) “Merchandise” means any objects, wares, goods, commodities, intangibles, real estate or services, other than
18 insurance.

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

22 (58) "Sale" means any sale, offer for sale or attempt to sell any merchandise for cash or credit.

23 (9) "Seller" means any person engaged in commerce that sells, leases, or offers to sell or lease any merchandise to
24 a consumer.

25 § 2732. Deceptive practices in consumer contracts.

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

28 (1) Distorts or obscures the terms, conditions or meaning of the contract or creates a likelihood of confusion or
29 misunderstanding by the use of unintelligible words, phrases or sentences; or

30 (2) Omits information required by law to be disclosed in contracts with a ~~consumer~~; consumer; or

31 (3) Violates §2734 of this subchapter; or

32 (4) With respect to a contract that automatically renews and without regard to the duration of such renewal period,
33 fails to provide a cost-effective, timely, and easy to use mechanism for cancellation. A consumer who enters into a contract
34 online shall be permitted to cancel the contract online.

35 § 2733. Guidelines.

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

38 (1) Whether cross-references are confusing.

39 (2) Whether sentences are unreasonably long or complex.

40 (3) Whether sentences contain double negatives and exceptions to exceptions.

41 (4) Whether sentences and sections are in a confusing or illogical order.

42 (5) Whether it contains words with obsolete meanings or words that differ in their legal meaning from
43 their ordinary meaning.

44 (6) Whether conditions, exceptions to the main provision of the agreement and protection for consumers
45 or restrictions of consumers' right are given equal prominence with the main provision.

46 § 2734. Contracts with Automatic Renewal Provisions.

47 (a) Any seller that sells, leases, or offers to sell or lease any merchandise to a consumer pursuant to a contract that
48 contains an automatic renewal provision shall disclose the terms of the automatic renewal provision clearly and
49 conspicuously at the time the contract is entered into.

50 (b) Any seller that sells or leases any merchandise to a consumer pursuant to a contract that is renewed for a
51 specified period of more than 1 month if the renewal causes the contract to be in effect more than 12 months after the day
52 of the initiation of the contract, shall notify the consumer of each upcoming extension of the contract no less than 30 days
53 and no more than 60 days before the cancellation deadline pursuant to the automatic renewal provision. Such notification
54 shall disclose clearly and conspicuously:

55 (1) That unless the consumer cancels the contract, the contract will automatically renew;

56 (2) The date by which the consumer must cancel the contract to avoid automatic renewal;

57 (3) The procedures the consumer must follow to cancel the contract; and

58 (4) How the consumer may obtain details of the automatic renewal provision, whether by contacting the
59 seller at a specified telephone number or address, by providing a copy of the provision, by providing access to the
60 contract, or by any other appropriate method.

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

63 (1) As part of the seller's routine business practice, the seller has both (i) established and implemented
64 written procedures to comply with this section and (ii) enforces compliance with such procedures;

65 (2) Any failure to comply with this subchapter is the result of error; and

66 (3) As part of the seller's routine business practice, where an error has caused the failure to comply with
67 this subchapter, the unearned portion of the contract subject to the automatic renewal provision is refunded as of
68 the date on which the seller is notified of the error or becomes aware of the error, whichever is earlier.

69 (d) This section does not apply to:

70 (1) Matters subject to the jurisdiction of the Public Service Commission.

71 (2) Matters subject to the jurisdiction of the Insurance Commissioner of this State.

72 (3) Matters subject to the jurisdiction of the Federal Communications Commission.

73 (4) Leases subject to the Residential Landlord-Tenant Code, Chapters 51 through 59 of Title 25, or the
74 Manufactured Homes and Manufactured Home Communities Act, Chapter 70 of Title 25.

75 § ~~2734~~ 2735. Remedies.

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

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

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

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

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

89 § ~~2735~~ 2736. Application.

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

94 § ~~2736~~ 2737. Enforcement.

95 (a) Before bringing an action with respect to the automatic renewal of any contract containing an automatic
96 renewal provision that is renewed in violation of § 2734 of this subchapter, the consumer must provide the seller with
97 notice of the violation and a request to cancel the extension of the contract. The consumer shall send the notice by (1)
98 email, (2) mail, or (3) any other method the business wants to offer. If within 30 days of the consumer sending the notice,
99 the seller (i) cures the violation, (ii) provides the consumer with a written statement that the alleged violations have been
100 cured and that no further violations of that kind shall occur, and (iii) sends a copy of such statement to the Director of
101 Consumer Protection of the Department of Justice, then no action shall be initiated under this Chapter by the consumer
102 against the seller for the cured violation of § 2734. Nothing in this section shall preclude investigation or enforcement
103 action by the Attorney General for violations of this Chapter.

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

107 (c) The automatic renewal provisions of this subchapter shall become effective January 1, 2022.

SYNOPSIS

This Act 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 notice to consumers about an upcoming renewal.

This Act 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.

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

This Act is a substitute for and differs from Senate Bill No. 93 by extending the length of covered contracts from 6 months to 12 months. It also adds audio disclosure to the definition of "clearly and conspicuously" and removes the provision stating that a cancellation that is in the same medium as the medium used to enter the contract is considered "cost effective, timely, and easy to use." It further specifies that a consumer who signs up for a covered contract online must be able to cancel online.

The substitute eliminates the requirement that businesses notify consumers the date at which the contract will automatically renew if not canceled and establishes a right to cure. It also adds matters subject to the jurisdiction of the Federal Communications Commission to the exempted entities.

Finally, the effective date is changed to January 1, 2022.

Author: Senator Poore