



SPONSOR: Rep. K. Williams

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE AMENDMENT NO. 1
TO
HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 96

AMEND House Substitute No. 1 for House Bill No. 96 on line 2 by inserting “and redesignating accordingly” after “follows”.

FURTHER AMEND House Substitute No. 1 for House Bill No. 96 by deleting lines 13 through 34 in their entirety and inserting in lieu thereof the following:

“(8) “Residential waste” means as defined in § 6052 of Title 7.

~~(8)(9)~~ “Sale” means any sale, offer for sale sale, or attempt to sell any merchandise for cash or credit.

~~(11)~~ “Solid waste collection services” means as regulated under Chapter 60 of Title 7.

Section 2. Amend § 2732, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2732. Deceptive practices in consumer contracts.

In a contract for the sale or lease of merchandise to a consumer, a person engages in a deceptive practice when that person knowingly or ~~recklessly~~ recklessly does any of the following:

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

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

(3) ~~Violates § 2734~~ Fails to comply with § 2734, § 2734A, or § 2735 of this title; or title.

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 [Repealed.]~~

Section 3. Amend § 2734, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 2734. Contracts with automatic renewal provisions.

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

(b) ~~Any~~ A seller that sells or leases any merchandise to a consumer ~~pursuant to~~ under a contract that is renewed for a specified period of 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 the contract, shall notify the consumer of each upcoming extension of the contract no less than 30 days and no more than 60 days before the cancellation deadline ~~pursuant to~~ under the automatic renewal provision. ~~Such notification shall disclose clearly and conspicuously:~~ The notification required under this subsection must clearly and conspicuously disclose all of the following:

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

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

(3) The procedures the consumer must follow to cancel the ~~contract;~~ and contract. If the consumer entered into the contract online, the seller must provide an online procedure for a consumer to cancel the contract.

(4) How the consumer may obtain details of the automatic renewal provision, ~~whether by contacting~~ including any of the following:

a. Contacting the seller at a specified telephone number or ~~address, by providing~~ address.

b. Providing a copy of the ~~provision, by providing~~ provision.

c. Providing access to the ~~contract, or by~~ contract.

d. By any other appropriate method.

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

(1) As part of the seller's routine business practice, the seller ~~has both:~~ does all of the following:

a. Established and implemented written procedures to comply with this ~~section;~~ and section.

b. Enforces compliance with ~~such procedures;~~ the procedures established under paragraph (c)(1)a. of this section.

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

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

(d) This section does not apply ~~to:~~ to any of the following:

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

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

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

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

Section 4. Amend § 2735, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2735. Remedies.

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

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

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

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

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

(d) The remedies and penalties under this subchapter are not exclusive and are in addition to any other procedures, rights, or remedies which exist with respect to any other provisions of law including Subchapter II and Subchapter III of Chapter 25 of this title.

Section 5. Amend § 2737, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2737. Enforcement.

(a)(1) Before bringing an action with respect to the automatic renewal of any contract containing an automatic renewal provision that is renewed in violation of § 2734 of this title, the consumer must provide the seller with notice of the

violation and a request to cancel the extension of the contract. The consumer ~~shall send the notice by:~~ must send this notice
by 1 of the following:

a. ~~Email;~~ Email.

b. ~~Mail; or~~ Mail.

c. Any other method ~~the business wants to offer.~~ offered by the seller.

(2) ~~If An action may not be initiated under this chapter by the consumer against the seller for the cured~~
~~violation of § 2734 of this title if, within 30 days of the consumer sending the notice, the seller:~~ notice required under
paragraph (a)(1) of this section, the seller does all of the following:

a. ~~Cures the violation;~~ violation.

b. Provides the consumer with a written statement that the alleged ~~violations have~~ violation has been
cured and that no further violations of that kind ~~shall occur;~~ and will occur and sends

~~e. Sends a copy of such~~ this statement to the Director of Consumer Protection of the Department of
~~Justice;~~ Justice.

~~then no action shall be initiated under this chapter by the consumer against the seller for the cured~~
~~violation of § 2734 of this title.~~

(3)~~a.~~ Nothing in this section ~~shall preclude~~ precludes investigation or enforcement action by the Attorney
General for violations of this chapter.

b. The Attorney General has the same authority to enforce and carry out this subchapter as under Chapter
25 of Title 29.

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

(c) The automatic renewal provisions of this subchapter ~~shall become effective~~ take effect on January 1, 2022.

FURTHER AMEND House Substitute No. 1 for House Bill No. 96 on line 37 by deleting “§ 2737.” and inserting
in lieu thereof “§ 2734A.”.

FURTHER AMEND House Substitute No. 1 for House Bill No. 96 on line 47 by deleting “prominently” and
inserting in lieu thereof “clearly and conspicuously.”.

FURTHER AMEND House Substitute No. 1 for House Bill No. 96 by deleting line 57 in its entirety and inserting
in lieu thereof the following:

“b. If a consumer receives notice under paragraph (c)(3)a. of this section, the consumer may terminate or”.

SYNOPSIS

Senate Substitute No. 1 for Senate Bill No. 93 was enacted on August 4, 2021, revising the Delaware Code sections in House Substitute No. 1 for House Bill No. 96. This Amendment revises HS 1 for HB 96 to conform to the current version of the Delaware Code by redesignating sections and using newly created defined terminology.

This Amendment also makes technical corrections to conform existing law, including provisions enacted by SS 1 for SB 93, to the standards of the Delaware Legislative Drafting Manual.