OLR Bill Analysis

HB 5314

AN ACT CONCERNING CONSUMER AGREEMENTS AND CONSUMER BILLS.

SUMMARY

This bill sets limitations and conditions on using automatic renewal and continuous service provisions in consumer agreements entered into or amended on or after October 1, 2023. Among other things, it prohibits businesses that enter into or offer these agreements from charging a consumer's credit card, debit card, or third-party payment account for any automatic renewal or continuous services without the consumer's affirmative consent. This prohibition applies regardless of whether the renewal or continuous services were offered at a promotional or discounted price.

The bill additionally requires these businesses to:

1. establish and maintain a toll-free phone number, email address or postal address, and an online way for consumers to prevent automatic renewals or prevent and terminate continuous consumer services;
2. meet various disclosure requirements; and
3. allow a consumer to take any action needed to stop a renewal or service entirely online if the consumer agreement was entered into online.

The bill also requires any legal entity doing business in the state that delivers or provides consumer goods or services to issue paper, rather than electronic, bills or invoices to a consumer upon request. Further, it prohibits these businesses from making the consumer pay a charge or fee for the paper bills or invoices. (These provisions could be subject to litigation based on a federal court's ruling on a similar law in New York,

see BACKGROUND.) The bill allows the consumer protection commissioner to adopt regulations to implement these paper bill provisions.

EFFECTIVE DATE: October 1, 2023

AUTOMATIC RENEWAL & CONTINUOUS SERVICE PROVISIONS

The bill generally prohibits businesses from offering or entering into a consumer agreement that has an automatic renewal provision or continuous services provision unless it meets the conditions described below.

Definitions

Under the bill, a "consumer agreement" is a verbal, telephonic, written, or electronic agreement between a business and a consumer (1) in which the business agrees to provide consumer goods or services and (2) that is initially entered into or amended on or after October 1, 2023. "Consumer goods" and "consumer services" are any articles or services, purchased, leased, exchanged, or received primarily for personal, family, or household purposes. A "consumer" is a Connecticut resident and prospective recipient of consumer goods or services.

An "automatic renewal provision" is a consumer agreement provision that allows the business to renew the agreement without any action by the consumer. A "continuous service provision" is a consumer agreement provision that allows the business to continue providing service to the consumer until the consumer takes action to prevent or terminate it.

Disclosure Requirements

Under the bill, if an agreement has an automatic renewal or continuous service provision, then the business must disclose (as applicable) that the (1) agreement will automatically renew until the consumer acts to prevent it or (2) business will provide continuous services under the agreement until the consumer acts to prevent or terminate them.

The disclosure must occur before the consumer enters into the agreement and be provided electronically, verbally, telephonically, or in writing. It must also include the following:

1. a description of what the consumer must do to prevent the automatic renewal or prevent or terminate the continuous service and, if disclosed electronically, a link or other electronic way for the consumer to do so;

2. all recurring charges that will be charged to the consumer's credit card, debit card, or third-party payment account for the renewal or continuous services, and if the amount is subject to change, then how much it will change (if the business knows);

3. the duration of the renewal's term (unless the consumer selects it) or the continuous services, and any additional provisions about them;

4. any minimum purchase requirements; and

5. the business's contact information.

Material Changes. If the business intends to make any material changes to an automatic renewal or continuous service provision's term, it must first disclose it to the consumer and describe what the consumer must do to cancel the renewal or terminate the services.

Free Gifts & Trial Periods. Under the bill, if the agreement includes a free gift or trial period, then before the consumer enters into the agreement, the business must disclose how the agreement's pricing will change and what price will be charged after the period expires. A "free gift" does not include a free promotional item or gift that differs from the consumer goods or services subject to the agreement.

If the agreement is offered electronically or telephonically and has a free gift or trial period, or a discounted or promotional price period, the business must also disclose the following to the consumer electronically or telephonically:

1. that the business will automatically renew or provide continuous services under the agreement until the consumer acts to prevent

it;

2. the duration of the automatic renewal term or continuous services and any additional provisions about them;
3. a description of what the consumer must do to stop the renewal or services; and
4. if the agreement is offered electronically, a prominently displayed direct link or button, or an email message, as required by the bill's provisions for online agreements (see below).

Under the bill, when the business must make this disclosure depends on the duration of the free gift or trial period, or discounted or promotional period. If the period is a least 32 days long, the disclosure must occur at least 21 days after the period starts, but no earlier than three days before it expires. If the period lasts for at least one year, then the disclosure must occur 15 to 45 days before it expires.

Under the bill, a business does not have to make these disclosures for free gifts and trial periods if it has not collected or maintained the consumer's email address or telephone number, as applicable, and cannot make the disclosure to the consumer.

Other Disclosure Conditions. The bill also requires that all of the disclosures described above meet certain additional conditions depending on how the related consumer agreement is presented. Disclosures for electronic or written agreements must be in a form that the consumer can retain and in a text that is either (1) larger than any surrounding text or (2) the same size, but (a) in a contrasting typeface, font, or color or (b) set off from the surrounding text by symbols or other marks that draw the consumer's attention to the disclosure. Disclosures for verbal or telephone agreements must be at a volume and cadence that the consumer can readily hear and understand.

Requirements for Online Agreements

The bill requires each business that enters into an online consumer agreement that has an automatic renewal or continuous services provision to allow the consumer to take any action needed to prevent the renewal or prevent or terminate the service online, at will, and without requiring any offline action by the consumer. The business cannot obstruct or delay the consumer's efforts to stop the renewal or services.

Under the bill, a business that has these agreements must enable consumers to stop the renewal or services through either (1) a prominently displayed direct link or button that may be located in the consumer's account or profile, or device or user settings, or (2) an email from the business that the consumer may immediately access and reply to without obtaining additional information.

The bill specifies that regardless of these requirements for online agreements, businesses may require consumers who maintain accounts with them to enter their account information or otherwise authenticate their identity online before they can stop an automatic renewal or continuous service. Under the bill, consumers who cannot or will not enter their account information or authenticate their identity online are not precluded from authenticating their identity or acting to stop a renewal or service offline, by phone, email, or traditional mail as provided in the bill.

BACKGROUND

Related Court Case

In 2021, the federal District Court for the Northern District of New York ruled that a New York law (N.Y. Gen. Bus. Law § 399-zzz) that prohibited paper billing fees, but explicitly did not prohibit offering consumers a credit or other incentive to elect a specific billing option, violated the U.S. Constitution's First Amendment because it regulated the communication of fees (*Manship* v. *T.D. Bank*, 2021 WL 981587 (2021)).

COMMITTEE ACTION

General Law Committee

Joint Favorable
Yea 22 Nay 0 (03/07/2023)