

AUTOMATIC CONTRACT RENEWAL DISCLOSURE

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House Bill 4843 as introduced
Sponsor: Rep. Abraham Aiyash
Committee: Economic Development and Small Business
Complete to 10-2-23

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4843 would amend the Michigan Consumer Protection Act to require a clearly marked cancellation option for contracts that renew automatically.

The bill would add section 3j to the act to provide that a person engaged in trade or commerce that sells, leases, or offers to sell or lease a service or good to a consumer through a contract with an automatic renewal provision would have to disclose the conditions of the automatic renewal in a *clear and conspicuous* manner. The disclosure, which would have to be in at least 10-point type and included in the contract or offer, would have to include the following:

- A statement that the contract will automatically renew if the consumer agrees to the contract.
- The length of the initial term of the contract and the amount to be charged to the consumer for the initial term.
- The length of each renewal period under the contract and the amount to be charged for any renewal period.
- The terms of any promotional or discounted limited-time price.
- A list and explanation of any terms of the contract that will change upon renewal.
- The specific procedure by which the consumer can cancel the contract at the end of the initial term or a renewal period.
- An email, mailing address, toll-free telephone number, or other cost-effective, timely, and easy-to use mechanism that the consumer may use to cancel the contract.
- If the contract or offer includes a gift or trial, a clear and conspicuous explanation of the price that will be charged after the trial ends or any changes in price after the conclusion of the gift or trial period, in addition to the specific procedure by which the consumer can cancel the contract at the end of the gift or trial period.

Clear and conspicuous would mean written in a larger font type than the surrounding text; written in contrasting type, font, or color to the surrounding text; or set off from the surrounding text by symbols or other marks in a manner that clearly calls attention to the disclosure.

Additionally, a provider could not automatically renew a contract for a period of longer than two months without providing the consumer with a written or electronic notice before the end of the contract term that includes the following information:

- A statement that the contract will automatically renew unless the consumer cancels it.
- A list and explanation of any terms of the contract that will change upon renewal.
- The specific procedure by which the consumer can cancel the contract.
- A mechanism for cancellation, as described above.

Consumers would have to be notified between 30 and 60 days of the last day that they could give notice of their intent to cancel the contract, and they would have at least 30 days after receiving the notice to cancel the contract at the end of any term. In addition to the methods of cancellation provided above, a consumer who accepts a contract with an automatic renewal provision would have to be able to cancel the contract exclusively online.

A timely cancellation would have to be honored, regardless of whether it is received after the expiration of the notice period. An additional fee or other penalty could not be charged to cancel a contract at the end of any term or at the end of a gift or trial period.

The bill would add a violation of these provisions to the list of unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce that are unlawful under the Michigan Consumer Protection Act.

The bill would apply to a contract that takes effect or is extended, renewed, or modified after its effective date, and any contract contrary to the bill's provisions could be voided.

MCL 445.903 (amended) and 445.903j (proposed)

BACKGROUND:

The Michigan Consumer Protection Act was enacted to protect consumers from deceptive business practices such as price gouging or misrepresenting goods as new when they are used.¹ Section 3 of the act states that unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce are unlawful and currently lists 37 activities that constitute such a method, act, or practice. In addition, the act specifically prohibits certain actions (for which a civil fine may be imposed) and imposes additional requirements on certain transactions, such as vehicle rental transactions. However, as described below, the Michigan Supreme Court has ruled that the act does not apply to individuals or businesses that are regulated under state or federal law.

Remedies

A person who suffers a loss due to a violation of the Michigan Consumer Protection Act can sue to recover \$250 or actual damages, whichever is greater, along with reasonable attorney fees. Any person can sue for a declaratory judgment that an act or practice is unlawful under the act or for an injunction against someone engaging or about to engage in such conduct. In addition, the attorney general or a prosecuting attorney can bring an action to permanently enjoin a person from engaging in an unlawful act or practice, and a court may assess a fine of up to \$25,000 if the conduct is found to be unlawful. The act also allows for a class action to be brought under certain circumstances.

Applicability

Section 4(1)(a) of the Michigan Consumer Protection Act exempts a transaction or conduct specifically authorized under laws administered by a regulatory board or officer acting under state or federal law. The Michigan Supreme Court has held that this exemption applies when

¹ For more information on the Michigan Consumer Protection Act, see: https://www.house.mi.gov/hfa/PDF/FiscalSnapshot/GG_AttyGen_Michigan_Consumer_Protection_Act_Jan2023.pdf.

“the general transaction is specifically authorized by law, regardless of whether the specific misconduct alleged is prohibited.”² That is, rather than a business practice being exempt from the act if it is specifically authorized by law, the court ruled that a practice whose legality under the act is in dispute is exempt from the act if the general activity being engaged in is authorized and regulated under law. For example, if a business is an industry regulated under a state or federal law and the transaction or conduct alleged to be deceptive is within the regulatory scheme of that industry, the exemption under section 4(1)(a) would likely apply and a person could not—under the Michigan Consumer Protection Act—sue for damages or petition to have the business stop engaging in the conduct alleged to be deceptive.

FISCAL IMPACT:

The bill would likely have no fiscal impact to the state or to local units of government.

The Department of Attorney General (AG) is responsible for enforcement of the Michigan Consumer Protection Act. The department may experience an increase of cases related to the bill to the extent that it takes civil action on behalf of consumers against any businesses that violate the provisions in the bill.

The AG would likely be able to absorb any increased caseload resulting from the bill with ongoing staff and funding. If existing AG staff is insufficient to comply with the bill, additional state costs of approximately \$100,000 annually for any additional support staff FTE position and \$200,000 annually for any additional attorney FTE position may be required.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

² *Smith v Globe Life Insurance Company*, 460 Mich 446 (1999). The court affirmed *Smith* in *Liss v Lewiston-Richards, Inc.*, 478 Mich 203 (2007).