ASSEMBLY, No. 2462



STATE OF NEW JERSEY

219th LEGISLATURE



INTRODUCED FEBRUARY 3, 2020

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SYNOPSIS

Establishes notification standards for certain service contracts with automatic renewal.

CURRENT VERSION OF TEXT

As introduced.



An Act concerning service contracts and supplementing P.L.1960, c.39 (C.56:8-1 et seq.).

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. As used in this act:

“Automatic renewal provision” means a provision under which a service contract is renewed for a specified period of more than one month if: (1) the renewal causes the service contract to be in effect more than six months after the day of the initiation of the service contract; and (2) the renewal is effective unless the consumer gives notice to the seller of the consumer’s intention to terminate the service contract.

“Consumer” means a natural person who buys other than for purposes of trade any tangible personal property that is distributed in commerce and that is normally used for personal, family, or household purposes and not for business or research purposes.

“Propane gas marketer” means a person engaged primarily in the sale of odorized liquefied petroleum gas to the ultimate consumer or to a retail liquefied petroleum gas dispenser, and includes the owner or operator of a bulk plant.

“Seller” means any natural person, firm, partnership, company, corporation, association, or other similar legal entity engaged in commerce that sells, leases, or offers to sell or lease any service to a consumer pursuant to a service contract.

“Service contract” means a written contract for the performance of service, maintenance, or repair over a fixed period of time or for a specified duration in connection with any real property or that provides a benefit to any real property.

“Warranty” means a warranty made solely by the manufacturer, importer, or seller of property or services without consideration, that is incidental to, and not negotiated or separated from, the sale of the property or services, that guarantees indemnity for defective materials, parts, mechanical or electrical breakdown, labor, or workmanship, or provides other remedial measures, including repair or replacement of the property or repetition of services.

2. a. Any seller that sells, leases or offers to sell or lease any service to a consumer pursuant to a service contract that has an automatic renewal provision shall disclose the automatic renewal provision clearly and conspicuously in the contract or contract offer.

b. Any seller that sells or offers to sell any service to a consumer pursuant to a service contract the term of which is a specified period of 12 months or more and that automatically renews for a specified period of more than one month, unless the consumer cancels the contract, shall provide the consumer with written or electronic notification of the automatic renewal provision. Notification shall be provided to the consumer not less than 30 days nor more than 60 days before the cancellation deadline pursuant to the automatic renewal provision. This notification shall disclose clearly and conspicuously:

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

(2) Methods by which the consumer may obtain details of the automatic renewal provision and cancellation procedure, whether by contacting the seller at a specified telephone number or address, by referring to the contract, or by any other method.

c. As part of the seller’s routine business practice, where an error has caused the failure to comply with the provisions of this section, the unearned portion of the contract subject to the automatic renewal provision shall be refunded as of the date on which the seller is notified of the error.

d. The seller shall provide written or electronic notification to the consumer not less than 30 days nor more than 60 days before any change in the procedures required of the consumer to cancel the automatic renewal provision.

3. The following shall be exempt from the provisions of this act:

a. a warranty;

b. a service contract on tangible property if the tangible property for which the service contract is sold has a purchase price of $250 or less, excluding sales tax;

c. a service contract with a bank, trust company, savings bank, savings and loan association, credit union, insurance company, or health maintenance organization organized under the laws of any state or the United States;

d. a service contract issued, offered, or sold:

(1) by a cable, electric, gas, telecommunication, or water public utility regulated by the Board of Public Utilities, by a propane gas marketer,by a person providing central heating and air conditioning services, or by a New Jersey-licensed burglar alarm or fire alarm business which provides integrated security and life safety systems and which may be required to maintain alarm system compliance, on an ongoing basis, pursuant to applicable statutory or regulatory requirements or insurance company standards; or

(2) to any person other than a consumer;

e. except as provided in subsection b. of section 5 of this act, a service contract containing a provision allowing the consumer to cancel the service contract at any time, if the service contract permits the consumer to cancel: by telephone; in writing, by mail; or by email. In order to be exempt under this subsection, the service contract shall make each method of cancellation available to a consumer and only shall require a consumer to cancel by one method; and

f. news media, to the extent that the news media accept or publish any advertising that falls within the scope of this act.

4. a. This act shall not limit rights or remedies available to a consumer under any other law.

b. If a seller does not comply with the provisions of this act, the automatic renewal provision shall be void and unenforceable and the seller shall refund the consumer for the unearned portion of the automatically renewed service contract.

5. a. Except as provided in subsection b. of this section, a violation of section 2 of this act shall be an unlawful practice and a violation of P.L.1960, c.39 (C.56:8-1 et seq.).

b. A seller of a service contract with an automatic renewal provision that allows a consumer to cancel the service contract at any time during the contract and provides proper notification to a consumer pursuant to subsections a., b., and d. of section 2 of this act shall not be subject to the penalties set forth in subsection a. of this section if the seller refunds the consumer the unearned portion of the contract subject to the automatic renewal provision.

6. This act shall take effect on the first day of the third month next following the date of enactment, and shall apply to service contracts entered into on or after that date.

STATEMENT

This bill establishes notification standards regarding service contracts which contain automatic renewal provisions.

A service contract is defined to mean a written contract for the performance of service, maintenance, or repair over a fixed period of time in connection with real property. A service contract does not include a warranty offered by a manufacturer, importer, or seller of property or services that is incidental to the sale of the property or service. Excluded from the bill’s provisions are:

* a warranty;
* service contracts on tangible property valued under $250;
* service contracts offered by certain financial institutions, certain entities regulated by the Board of Public Utilities, propane gas marketers, persons providing central heating and air conditioning services; and New Jersey-licensed burglar alarm or fire alarm businesses which provide integrated security and life safety systems and may be required to maintain alarm system compliance, on an ongoing basis, pursuant to applicable statutory or regulatory requirements or insurance company standards;
* service contracts containing a provision allowing the consumer to cancel the service contract at any time, if the service contract permits the consumer to cancel: (1) by telephone; (2) in writing, by mail; or (3) by email. In order to be exempt under this paragraph, the service contract is to make each method of cancellation available to a consumer and only require a consumer to cancel by one method; and
* news media, to the extent that the news media accept or publish any advertising that falls within the scope of the bill.

Specifically, the bill provides that if a service contract contains an automatic renewal provision for a specified period of more than one month, the seller is required to disclose the automatic renewal provision clearly and conspicuously in the contract or contract offer. Additionally, if the service contract is for 12 months or longer, and the renewal is for a period of one month or longer, the seller is required to provide either written or electronic notification to the consumer at least 30 days but not more than 60 days prior to the cancellation deadline provided in the contract. This notification would indicate methods by which the consumer may obtain details of the automatic renewal provision and cancellation procedure and also disclose that a contract will automatically renew unless the consumer cancels it.

The bill also requires the seller to notify the consumer of any change in the procedures required to cancel the automatic renewal.

If an error has caused the seller to fail to comply with the provisions of the bill, the unearned portion of the contract subject to the automatic renewal provision would be refunded as of the date on which the seller is notified of the error. An automatic renewal provision would be void and unenforceable if the notification requirements stipulated in the bill are not met. The bill requires a seller to refund a consumer for the unearned portion of the automatically renewed service contract if the service contract is void and unenforceable as a result of the seller not complying with the bill’s provisions.

A violation of the bill’s provisions constitutes an unlawful practice under the consumer fraud act. An unlawful practice is punishable by a monetary penalty of not more than $10,000 for a first offense and not more than $20,000 for any subsequent offense. Additionally, a violation can result in cease and desist orders issued by the Attorney General, the assessment of punitive damages, and the awarding of treble damages and costs to the injured. However, the bill provides that the consumer fraud act penalties would not be imposed if a seller of a service contract with an automatic renewal provision allows a consumer to cancel the service contract at any time during the contract, provides proper notification to the consumer, and refunds the unearned portion of the contract subject to the automatic renewal provision.