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THE HAGGLER

How Did This Become a Commitment?

By DAVID SEGAL
Published: October 15, 2011

EVER get the sense that the junk mail you throw out every day includes an item or two that you really ought to read? Ever wonder if some ought-to-read letters have been designed to look junky on purpose?



Christoph Fitz

The Haggler does, because he receives e-mails like the one sent recently by Barbara Rockefeller of Southbury, Conn. She complained about a magazine service that had renewed her subscriptions to Time and the Atlantic, even though she thought those subscriptions would run out after an introductory offer expired.

"The source of the credit card charge is not the subscription department of the magazines but rather some kind of service," she wrote. "The bill shows a telephone number, but you get only an automated voice routine, not a human

being. The number is (877) 754-4892."

Naturally, the Haggler Googled those digits. And it was as if a door had swung open to a basement packed with angry people.

"Company offers 'free trial' of magazines, promising that you are free to 'cancel after trial,' but after they obtain your credit card number they continue charging without notice or permission," wrote someone identified as "bhdsn" on Ripoffreport.com.

"They charged my credit card for a subscription without my authorization," huffed John on 800notes.com, a site with complaints about specific phone numbers. "When I called the number an automated voice system answered — not allowing me to talk to a real person. It then took me about 10 minutes to go through all the questions and answers before I finally was able to cancel the subscription entirely."

All of these people, it turns out, are complaining about the Synapse Group of Stamford, Conn. A subsidiary of Time Inc., Synapse partners with airlines, retailers, banks and others, offering subscriptions in exchange for, say, frequent-flier miles. It markets hundreds of magazines from publishers like Condé Naste, Hearst and Rodale, and says on its Web site that it handles 50 million customer transactions a year.

Judging from the online ravings, Synapse is skilled at signing up subscribers but miserable at alerting them later that their subscriptions are being renewed. So bad that a plaintiff's lawyer, Gary Graifman, filed a class-action lawsuit against it, contending that it purposely

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tries to make its renewal notices look like junk mail. (A federal judge in New Jersey has rebuffed his efforts to certify a class; his appeal is pending.)

"You subscribe to, say, Sports Illustrated, but you get a notice from a company called Synapse, which no one has ever heard of," says Mr. Graifman, of the New York law firm Kantrowitz, Goldhamer & Graifman. "The whole game is to discourage as many people as possible from canceling, and these guys are very sophisticated about how they do that."

He sent a copy of the renewal notice that Synapse sends to customers. The front reads: "Less time at the newsstand means more time enjoying your favorite magazines." Next to that is: "Subscriber rate enclosed. Up to 40 percent off newsstand prices."

If that doesn't say "Toss me, I'm junk mail," what does?

To be fair, the other side of the letter, which has far smaller type, includes lines like, "We have a selection of issues, and the credit card you previously provided for your selections will be charged for [fill in the name of the magazine] at [fill in the annual subscription rate]."

Compare that with the notice sent by Sports Illustrated, if you subscribe to it directly. The notice is in big bold letters, and it says "Toss me, I'm junk mail" at this card,

Here's the odd part. Sports Illustrated is published by Time Inc. And Time Inc., as noted, owns Synapse. Given their shared parentage, why is Synapse's renewal notice so muffled and circuitous while Sports Illustrated's is so loud and direct?

Mr. Graifman has a guess. In 2006, he notes, Time Inc. signed an agreement with 23 attorneys general that ended an investigation into the company's auto-renew notices. In the agreement, Time denied that it had violated any laws or tried to deceive anyone. It also agreed to a host of particulars about the way renewal notices would look in the future. They would, for instance, include the words "automatic renewal," in clear and conspicuous letters, on the front.

Guess what? Synapse, which was acquired by Time Inc. in 2005, was not part of the agreement.

EFFORTS to speak with Synapse yielded several not-very-helpful e-mails from Kristen Kish, a member of the communications team who would not send her phone number or call the Haggler.

Honestly, Synapse — a horde fumes about your phone maze, and the communications staff won't talk? Keith Coccozza, a spokesman for Time Warner, which owns Time Inc., was more responsive. In several conversations, he emphasized that the online complainers were a small fraction of Synapse's customer base.

He also wrote this: "Millions of subscribers enjoy the ease of automatic renewal for receiving the magazines they love. But if a customer is unclear or unhappy about the service they've signed up for, we work with them to remedy the situation to their satisfaction."

E-mail: haggler@nytimes.com. Keep it brief and family-friendly, and go easy on the caps-lock key. Letters may be edited for clarity and length.

A version of this article appeared in print on October 16, 2011, on page BU8 of the New York edition with the headline: How Did This Become a Commitment?

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Florida Passes Automatic Renewal Statute, Other States to Follow

By [Sabrina Gasulla](#)

June 10, 2010

The state of Florida passed a new bill affecting automatic renewal of contracts. Under House Bill 751, titled, An act relating to automatic renewal of service contracts, service providers must include a clear and conspicuous clause in the contract specifying the terms of the automatic renewal, as well as give notice "between 30 and 60 days prior" that the contract will self-renew.

This statute was signed by Florida governor, Charlie Crist, on May 12, 2010 and will affect all contracts entered into on or after July 1, 2010. As Ken Kirschenbaum of Kirschenbaum & Kirschenbaum, P.C., Garden City, N.Y., points out in a recent newsletter, the bill exempts business subscribers, but also all renewals of up to one month, which he suggests sellers should consider as a safe bet in light of similar statutes passed and likely to pass across the United States.

At least 10 other states have passed or amended similar legislation in the past four years and ESA director of government relations, John Chwat says we will see many more follow suit. "I'm following about 23 to 24 [proposed bills] at the moment. Some have not passed this session but some are still active." With all 50 state legislatures meeting in 2011, Chwat predicts those 23 or 24 bills could grow significantly. "It's a big and popular issue in consumer protection at the state legislature level. And we haven't seen the end of it."

In addition to Florida, states with similar, enacted, automatic renewal legislation include Arkansas, Connecticut, Illinois, New Mexico, North Carolina, New York, Pennsylvania, Tennessee and Utah.

Of those states looking to pass anti-automatic renewal statutes, Tennessee, which currently has legislation stating automatic renewal on residential alarm contracts is permitted up to one year, is notable for drafting bills specifically targeting alarm system contractors. Senate Bill 1476 and House Bill 0786, which were opposed this session, would disallow automatic renewal clauses altogether, as well as impose other requirements on alarm system contracts.

Bob Worthy, who as Legislative Committee chairman for the Alarm Association of Florida worked very

closely with the new Florida statute, saw it develop from a potentially challenging legislative proposition to a manageable regulation. "It all boils down to education; a lot of states don't have strong alarm associations to warn legislators as to possible pitfalls," Worthy said. "We came out probably better off than a lot of states that passed bills with no industry representation."

Last year, the California Alarm Association (CAA) was able to secure an exemption from Senate Bill 340, which requires a conspicuous clause and specific approval from the subscriber on automatic renewal bids. According to an ESA press release, the CAA argued that the alarm industry is already regulated by Alarm Act statutes and the Department of Consumer Affairs via the Bureau of Security and Investigative Services. CAA also proposed that the alarm industry requires special consideration as automatic renewal of contracts ensures subscribers' "safety and well-being."

"This is a significant victory because the legislature has now recognized that there are unique circumstances regarding alarm contracts and we will be able to cite the exemption in future legislative debates in other states," reads the release.

On the other side of the legislative coin, New York Senate Bill 7230, which would amend a previous law requiring notice of automatic renewal by certified mail, was referred to the Judiciary Committee March 24, 2010. The bill is particular to electronic and life safety alarm services and says that payment by a subscriber after a contract has expired acknowledges the extension of that contract and fulfills the notice requirements of the law already in place. This bill, as well as the California exemption, is the result of very active lobbying, according to Chwat.

"This fall, everyone should be aware of these types of bills coming down the pipe," Chwat advises. "If they're not going to take a proactive stance like New York has, states should seek to get exemption like California."

Bob Ireland, president of the Alarm Association of Florida, advises, "All sides need to work together keeping an open mind about new legislation." He stresses that whatever the law, "Every company should make it very clear to their client what the terms and conditions of the contract are" including what the renewal clause is." ESA and Kirschenbaum agreed, in their respective literature, that maintaining open communication with consumers is key in avoiding negative repercussions from these statutes.

For information on automatic renewal statutes state by state, visit <http://www.kirschenbaumesq.com/autorenewal.htm>

2. Auto-renewal laws that apply to contracts with individual consumers, not companies, that require clear and conspicuous disclosure of auto-renewal terms and require a service provider to notify its customer of the auto-renewal within a certain period of time before the cancellation deadline (Connecticut, Florida, Illinois, Hawaii and Utah fall in this category); and
3. Auto-renewal laws that impose similar requirements as those described above, but only with respect to very specific types of contracts, such as (for example) contracts for health club memberships, home security services, leases of certain types of personal property or retail telecommunications service subscriptions. (Arkansas, Maryland, South Carolina, South Dakota, Tennessee and Wisconsin³ fall in this category).

New York’s statute, however, is unique in its breadth. It applies to any contract for “service, maintenance or repair” – a description that, as mentioned above, encompasses many different types of technology-related agreements. It also explicitly applies to any type of customer, whether it be an individual consumer or a company.

Implications for Service Providers

As a result of New York’s relatively heavy-handed regulation of auto-renewal clauses, service providers (and any lessor of personal property) should not rely on a contract when it comes to renewal mechanics. Instead, they should implement a notification process to ensure that the customer is alerted to any renewal of the contract between 15 and 30 days before the cancellation deadline. Absent such a notice, the auto-renewal clause would be unenforceable. This, in turn, jeopardizes any contractual remedy a service provider may have with respect to a customer’s early termination of a contract.

¹ New York has enacted an analogous statute, General Obligations Law § 5-901, which applies to any lease of personal property.

² *Ovitz v. Bloomberg L.P.*, No. 38, slip op. at 7 (N.Y. March 7, 2012).

³ In this category, Wisconsin’s statute is the most broad and deserves special notice. It applies to any lease of “business equipment,” and to individual consumers and companies alike. Wis. Stat. § 134.49.

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Source URL: <http://www.natlawreview.com/article/contract-auto-renewals-not-necessarily-so-automatic-recent-ny-case-demonstrates>

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 751
SPONSOR(S): McBurney
TIED BILLS:

Automatic Renewal of Service Contracts

IDEN./SIM. BILLS: CS/SB 1332

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance, Business & Financial Affairs Policy Committee		Vickroy	Cooper
2) Civil Justice & Courts Policy Committee			
3) General Government Policy Council			
4)			
5)			

SUMMARY ANALYSIS

Contracts with automatic renewal provisions are designed to continuously renew unless a party takes an action to cancel the contract. The burden is generally placed on the consumer, who may not always notice the provisions, to terminate the contract. Therefore, consumers may ultimately contract for a period longer than anticipated.

Federal law provides protection against unfair or deceptive contract provisions under the Federal Trade Commission Act (FTC Act), and state law provides similar protection under the Florida Deceptive and Unfair Trade Practices Act (FDUTP Act); however, state law does not explicitly regulate the notification of automatic renewal provisions to consumers.

The bill provides that an automatic renewal provision must be clearly and conspicuously disclosed in service contracts where the provision renews a contract for more than one month and where the provision causes the contract to be in effect more than six months after the contract was initiated. It also provides that where the service contract is for twelve months or longer, and the renewal is for a period of one month or longer, the seller must provide either written or electronic notification to the consumer no more than sixty and no less than thirty days prior to the cancellation deadline provided in the service contract.

The bill makes automatic renewal provisions void and unenforceable if any notification requirements are not met, except under certain circumstances. It also provides exemptions from the notification requirements for:

- financial institutions;
- health studios;
- insurance providers;
- warranty associations;
- electric utilities;
- private companies providing certain local or municipal services; and
- certain types of healthcare organizations and programs.

The bill has no fiscal impact on state or local government.

The bill would go into effect July 1, 2010 and would only apply to service contracts entered into on or after the effective date.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background:

An automatic renewal provision allows an agreement to continuously renew unless either party to the agreement gives notice of his or her intention to terminate the contract within a specified period of time before the renewal deadline.¹ In some instances, consumers do not realize a service contract contains a renewal provision and may ultimately contract with the seller for a period longer than anticipated or desired.

The Federal Trade Commission Act (FTC Act) provides protection against unfair or deceptive contract provisions, thus, automatic renewal provisions not disclosed prominently may be prohibited under federal law. The FTC Act provides that, "unfair or deceptive acts or practices in or affecting commerce" are unlawful.² Similarly, the Florida Deceptive and Unfair Trade Practices Act (FDUTP Act) provides protection for consumers against unfair methods of competition, or deceptive or unfair acts or practices in the conduct of any trade or commerce.³ Furthermore, the FDUTP Act is expressly intended to provide consistent protection with the FTC Act,⁴ and does not purport to list every offense which may constitute unfair or deceptive practices.⁵ A violation of this Act may result in a civil penalty of up to \$10,000 for each violation.⁶ Thus, state law may provide protection for deceptive or undisclosed automatic renewal provisions.

Several states provide express regulation of automatic renewal provisions. For example, California, New York, Rhode Island, Illinois, and North Carolina law provide specific requirements for automatic renewal provisions.⁷

¹ US Legal Definitions, Automatic Renewal Clause Law and Legal Definition, <http://definitions.uslegal.com/a/automatic-renewal-clause/> (last visited March 15, 2010).

² 15 U.S.C.A. § 45.

³ Section 501.202(2), F.S.

⁴ Section 501.202(3), F.S.

⁵ F.A.C. 2-2.001.

⁶ Section 501.2075, F.S.

⁷ ElfaOnline, State Laws Regulating Automatic Renewal Clauses in Tangible Personal Property Lease Contracts, *available at*: www.elfaonline.org/pub/advocacy/state/.../AutoRenewalLaws.pdf

Florida law currently provides limitations on certain types of contracts. For example, dance studio⁸ and health studio services⁹ are limited to thirty-six months and may only be renewed annually. Similarly, warranty contracts must allow the consumer to cancel the contract at any time.¹⁰

Effect of Purposed Changes:

Notification Requirements:

The bill requires sellers¹¹ to clearly and conspicuously disclose automatic renewal provisions to consumers¹² when the provision renews a contract for more than one month and causes the contract to stay in effect for more than six months after the contract was initiated. The bill does not define clearly and conspicuously; however, states with similar statutes sometimes define this term based on the size of the font, typeface, and whether a reasonable person would notice the disclosure.¹³

In addition, the bill further requires sellers of contracts with a term of twelve months or more, which contain an automatic renewal provision that renews the contract for more than one month to provide written or electronic notification to consumers no more than sixty and no less than thirty days prior to the cancellation deadline provided in the service contract.¹⁴ This notification must clearly and conspicuously inform the consumer that the contract will automatically renew unless it is cancelled by the consumer. It must also provide methods for the consumer to obtain details of the automatic renewal provision and cancellation procedure.

Consequences for Failure to Comply:

The bill provides that a seller who fails to comply with the notification requirements will render the contract void and unenforceable. This may result in sellers being required to reimburse consumers for the unwanted or unknown additional extension of a service contract.

However, the bill also provides that if the seller can demonstrate the following, the contract will not be void and unenforceable:

- It has established and implemented written procedures to comply with and enforce the requirements as part of its routine business practice;
- The failure to comply was the result of error;
- It has provided, as a part of routine business practice, for a refund for the unearned portion of the contract starting from the date the seller is notified of the error.

It is somewhat unclear whether the seller is required to demonstrate all three elements of this list, or whether demonstration of one or more of the elements is sufficient.

⁸ Section 501.143(4)(g), F.S.

⁹ Section 501.017(1)(e), F.S.

¹⁰ See Section 634.1(2)(195), F.S. (governing motor vehicle service agreements); section 634.414, F.S. (governing home warranties); and section 634.312(8), F.S. (governing service warranties).

¹¹ "Seller" is defined as any person, firm, partnership, association, or corporation 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 any written contract for performance of services over a certain period of time or for a specific duration.

¹² "Individual" is defined in section 501.603(7), F.S. as "a single human being and does not mean a firm, association of individuals, corporation, partnership, joint venture, sole proprietorship, or any other entity."

¹³ For example, California's disclosure law defines clearly and conspicuously to mean, "in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size...in a matter that clearly calls attention to the language." Section 17601(5)(c), CA Stat. Anon.

¹⁴ See *supra* note 10 (defining "service contract").

Exemptions from the Notification Requirements:

The bill exempts the following entities from the notification requirements:

- Federal and state financial institutions and any subsidiary or affiliate thereof;¹⁵
- health studios;¹⁶
- insurance providers;¹⁷
- warranty associations;¹⁸
- healthcare service organizations and programs;¹⁹
- electric utilities;²⁰ and
- private companies providing certain types of municipal services.²¹

The warranty association exemption includes an exemption for motor vehicle service agreement companies, home warranty associations, and service warranty associations.²² The exemption for healthcare service organizations and programs include: prepaid limited health service organizations, discount medical plan organizations,²³ health maintenance organizations, prepaid health clinics, and healthcare services.²⁴

The exemption for private companies providing municipal services includes any company authorized to construct or operate water works systems, sewerage systems, sewage treatment works, garbage collection, and garbage disposal plants.²⁵ It also encompasses any other service enumerated in ch. 180, F.S. that may be performed by private companies, including:

- cleaning and improving street channels or other bodies of water;
- regulating the flow of streams;
- providing water and alternative water supplies;
- collecting and disposing of sewage or garbage;
- constructing, maintaining, operating, or repairing hospitals, jails, and golf courses; and
- constructing, operating, or maintaining gas plants.²⁶

B. SECTION DIRECTORY:

Section 1 provides that automatic renewal provisions must be clearly and conspicuously disclosed and that certain contracts require the seller to provide written or electronic notification to the consumer before the deadline of the contract. It also provides for the requirements for notification and exemptions of certain licensed entities, financial institutions, and private companies.

Section 2 provides an effective date of July 1, 2010 and that the requirements would only apply to service contracts entered into on or after the effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

¹⁵ See section 655.005(1)9h, F.S.; and 12 U.S.C.A. § 1813(c)(2).

¹⁶ See Section 501.0125(1), F.S.

¹⁷ See Ch. 624, F.S.; and ch. 627, F.S.

¹⁸ See Ch. 634, F.S.

¹⁹ See Ch. 636, F.S.; and ch. 641, F.S.

²⁰ See Section 366.02(2), F.S.

²¹ See Section 180.05, F.S.

²² See Ch. 634, F.S.

²³ See Ch. 636, F.S.

²⁴ See Ch. 641, F.S.

²⁵ Section 180.05, F.S.

²⁶ Section 180.06, F.S.

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a negative impact on sellers who must provide refunds to consumers when they have not complied with the notification requirements of the bill.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None..

2. Other::

None..

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 501.603, F.S. does not specifically define "consumer." It does define "consumer goods or services" and "individual," but it does not provide a definition of "consumer" as is stated within the bill.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES