

BILL ANALYSIS

C.S.H.B. 897
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Concerned parties report that many businesses lure consumers into signing contracts for certain services by offering introductory incentives. After the introductory period has expired, the consumer may receive a bill for the automatic renewal of the contract. Unless the consumer cancels the contract, the consumer may be charged for those services.

C.S.H.B. 897 seeks to address this problem by establishing provisions relating to restrictions on the automatic renewal of such contracts.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 897 amends the Business & Commerce Code to establish provisions relating to restrictions on the automatic renewal of contracts that are applicable only to the renewal of a contract if the original contract term is for six months or more and the contract automatically renews for a term of at least one month or if the price for goods and services under the renewed contract is greater than such price under the immediately preceding contract term. The bill exempts from its provisions a contract with a governmental entity; certain financial services entities, an insurance company, or a health maintenance organization organized under the laws of any state or the United States; certain electric utilities or a retail electric provider; certain gas utilities; a telecommunications provider; a cable service provider, video service provider, or a direct-to-home satellite service provider regulated by the Federal Communications Commission; an Internet service provider or provider of Internet protocol enabled services or broadband services; or a provider of municipal solid waste collection services. The bill exempts from its provisions a contract in which the terms of the original and renewal contracts meet certain requirements and have specified cancellation provisions or a contract for the sale, lease, or management of real property.

C.S.H.B. 897 requires the seller, if a contract between a seller and a consumer contains an automatic renewal clause and meets the applicability requirements of the bill with regard to the original contract and renewal terms, to clearly and conspicuously disclose to the consumer both the clause and the procedure for canceling the automatic renewal at the time the seller enters into the contract with the consumer or in writing not later than the 60th day after that date. The bill requires the seller, not before the 90th day and not after the 15th day before the last date on which the consumer may cancel the automatic renewal, to give the consumer written notice of the automatic renewal clause and the procedure for canceling the automatic renewal.

C.S.H.B. 897 specifies the content of and format requirements for the written notice and the methods by which the seller is authorized to send the notice to the consumer. The bill provides that the seller may assume that written notice deposited with the United States Postal Service

with first class postage paid will be received by the consumer on the third federal business day after the notice is so deposited.

C.S.H.B. 897 requires a seller to allow a consumer to cancel the automatic renewal of a contract by contacting a facsimile number, e-mail address, or mailing address provided by the seller. The bill authorizes a consumer to cancel the automatic renewal of a contract at no cost to the consumer at any time before the beginning of the automatic renewal period by following the procedure set out in the provided disclosure and notice or, if the seller fails to provide either the provided disclosure, if required, or the required notice, by any reasonable means at any time. The bill requires the seller to cancel the automatic renewal with no additional cost to the consumer if the consumer cancels the automatic renewal in the manner provided by the bill.

C.S.H.B. 897 provides that a violation of its provisions is a false, misleading, or deceptive act or practice under the Deceptive Trade Practices-Consumer Protection Act and makes available any remedy under that law for such a violation. The bill establishes certain circumstances under which a violation is not a false, misleading, or deceptive act or practice. The bill provides that the seller's prospective cancellation of a renewed contract within a reasonable time after becoming aware of an error on the seller's part that caused a violation does not relieve a consumer of the consumer's duties under the contract before the date the contract is canceled. The bill prohibits a court from certifying an action brought under the bill's provisions as a class action.

C.S.H.B. 897 defines "automatic renewal clause," "consumer," "insurance company," and "seller."

C.S.H.B. 897 makes its provisions applicable only to a contract executed on or after September 1, 2011.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 897 differs from the original by including in the types of contracts that are exempt from the bill's provisions a contract with a retail electric provider, a cable service provider, a video service provider, a direct-to-home satellite service provider regulated by the Federal Communications Commission, or an Internet service provider or provider of Internet protocol enabled services or broadband services. The substitute differs from the original by exempting a contract with a telecommunications provider, whereas the original exempts a contract with a telecommunications utility.

C.S.H.B. 897 contains a provision not included in the original defining "insurance company."

C.S.H.B. 897 omits a provision included in the original, in the requirement for a seller to allow a consumer to cancel the automatic renewal of a contract by certain specified methods of contact using information provided by the seller, that allowed cancellation using a telephone number provided by the seller. The substitute makes a conforming change relating to this omission.

C.S.H.B. 897 contains a provision not included in the original prohibiting a court from certifying an action brought under the bill's provisions as a class action.