

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 514
Finance

(Senator Pinsky)

Commercial Law - Automatic Renewals

This bill requires a person that offers an “automatic renewal” offer online to allow a consumer who accepts such an offer online to terminate the renewal exclusively online. (An “automatic renewal” means any contract, plan, or agreement between a consumer and a seller in which a paid subscription or purchasing agreement is automatically renewed at the end of a definite term for a subsequent term.) The online termination may include a termination email formatted and provided by the person that a consumer can send to the person without additional information. If an automatic renewal offer includes a free gift or trial, the offer must include a clear and conspicuous notice of (1) the price that will be charged after the trial ends or (2) the manner in which the subscription or purchasing agreement pricing will change upon conclusion of the trial.

Violation of the bill is an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA’s civil and criminal penalty provisions.

Fiscal Summary

State Effect: The bill’s imposition of existing penalty provisions does not have a material impact on State finances or operations. The Office of the Attorney General, Consumer Protection Division, can handle the bill’s requirements with existing resources.

Local Effect: The bill’s imposition of existing penalty provisions does not have a material impact on local government finances or operations.

Small Business Effect: Minimal.

Analysis

Current Law:

Contracts, Generally

State law does not specifically address automatic renewal contracts between buyers and sellers.

However, in the absence of specific law to the contrary, the law governing the creation of contracts in arms-length transactions between parties applies. Title 2 of the Uniform Commercial Code specifies, among other things, that:

- a contract for the sale of goods may be made in any manner sufficient to show agreement, including conduct by the parties which recognizes the existence of such a contract;
- an agreement to constitute a contract for sale may be found, even if the moment of its making is undetermined;
- unless otherwise unambiguously specified, an offer to make a contract must be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;
- the obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract; and
- if a court, as a matter of law, finds a contract, or any clause of it, to have been unconscionable at the time it was made, the court may refuse to enforce the contract, or enforce that portion of the contract without the unconscionable clause, or it may limit application of the contract to avoid an unconscionable result.

Unfair, Abusive, or Deceptive Trade Practices

An unfair, abusive, or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair, abusive, or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$10,000 for each violation and up to \$25,000 for each repetition of the same violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division);
Department of Legislative Services

Fiscal Note History: First Reader - February 26, 2019
sb/kdm

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