

SB1040_Consumer_Protection_-_Automatic_Renewals_ML

Uploaded by: Cecilia Plante

Position: FAV



TESTIMONY FOR SB1040 Consumer Protection - Automatic Renewals

Bill Sponsor: Senator Gile

Committee: Finance

Organization Submitting: Maryland Legislative Coalition

Person Submitting: Aileen Alex, co-chair

Position: FAVORABLE

I am submitting this testimony in favor of SB1040 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of activists - individuals and grassroots groups in every district in the state. We are unpaid citizen lobbyists, and our Coalition supports well over 30,000 members.

Because subscription services have gotten so out-of-control, I've started my own password-protected spreadsheet with the login information for my various subscriptions. The purpose is to 1) track what subscriptions I have and 2) facilitate the cancellation process. If it appears that the subscription is difficult to cancel and would automatically renew after I wanted to cancel, like certain gym memberships, I won't sign up(!)

I don't think subscription services understand how much business is lost because of their flawed and aggressive business model. So, while this bill is intended to protect consumers, it also may be beneficial to commerce, protecting businesses from their own bad behavior.

Most importantly, SB1040 requires that businesses provide a notice between 15 and 45 days in advance of automatic renewal to allow the consumer to cancel the service. Furthermore, in this era of credit card fraud, businesses making automatic renewal offers are prohibited from automatically charging the consumer's credit card unless it's done in a clear and conspicuous manner.

It is only fair the consumers be able to cancel subscriptions with the same ease they had in signing up for them without fear of fraud.

Our Coalition supports this bill and recommends a **FAVORABLE** report in committee.

testimony2024sb1040.pdf

Uploaded by: Franz Schneiderman

Position: FAV



Testimony to the Senate Finance Committee
SB 1040 – Consumer Protection– Automatic Renewals
Position: Favorable

The Honorable Pam Beidle
Senate Finance Committee
3 East, Miller Senate Building
Annapolis, MD 21401
cc: Members, Senate Finance Committee

March 13, 2024

Honorable Chair Beidle and Members of the Committee:

I'm a consumer advocate and Executive Director of Consumer Auto, a nonprofit group that works to protect Maryland consumers and secure safety, transparency, and fair treatment for Maryland drivers and car buyers.

We support **SB 1040** because it takes overdue and important steps to protect Marylanders against automatic renewal practices – and make sure we are notified about recurring charges before they're added to our accounts -- that can be very costly and frustrating for many consumers.

This kind of marketing often uses deceptive tricks to get people to sign up for products they may not really want or to turn attractive trial offers into enduring (and costly) obligations or to extend short-term subscriptions year after year – and can make it difficult and confusing for consumers to decline renewals or cancel subscriptions. Consumer frustration with these practices is commonplace. In 2020 the Better Business Bureau reported it had received 58,400 consumer complaints about “free trials” and automatic renewals over the last three years.¹

In response to consumer concerns, federal consumer regulators are taking significant steps to rein in such abuses. In Jan. 2023, the Consumer Financial Protection Bureau issued strong new guidance on “negative option” subscription services and warned of abusive “dark patterns” that trap consumers into expensive obligations.² In March 2023, the Federal Trade Commission issued a notice of new rules calling for stronger protections of consumers against automatic renewal contracts including a “click or cancel” provision requiring vendors to make it as easy to cancel a subscription as to sign up.³ At least 31 states have also now acted to regulate automatic renewal contracts – and states including California, New York, Maine, and Virginia have established fairly rigorous requirements in recent years.

Yet in Maryland, somehow, state law still mostly regulates automatic renewal contracts only from health clubs. That falls far short of giving state consumers the protection we need.

¹ <https://stateline.org/2022/03/04/it-turns-out-state-lawmakers-hate-auto-renew-contracts-too/>

² <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-guidance-to-root-out-tactics-which-charge-people-fees-for-subscriptions-they-dont-want/>

³ <https://www.ftc.gov/news-events/news/press-releases/2023/03/federal-trade-commission-proposes-rule-provision-making-it-easier-consumers-click-cancel-recurring>



It's also worth noting that it isn't just small-time, fly-by-night operators guilty of using "dark patterns" or other abuses in subscriptions and renewals. The New York Times (\$3.9 million), the Washington Post (6.7 million), weight-loss marketer Noom (\$62 million), Sirius XM (\$3.8 million), Vonage (\$100 million), McAfee (\$80 million), TransUnion, and Epic Games (\$520 million) are among the well-known marketers that have had to pay multi-million settlements for such practices.

Last year, the FTC also filed strong action against perhaps the biggest abusive modern marketer of all, Amazon, charging that it had "knowingly duped millions of consumers into unknowingly enrolling in Amazon Prime." As the complaint detailed, Amazon employees apparently also pushed consumers who sought to cancel the service into a process so lengthy and confusing that company officials themselves called it "the Iliad" – after Homer's epic, long and redundant 16,000-line history of the Trojan War.⁴

Maryland consumers urgently need stronger protection against such commonplace abuses. **SB 1040** takes a number of important steps to provide such protections. It mandates, among other things, that automatic renewal contracts must:

- Present their terms in a clear and conspicuous way before the consumer signs on.
- Give consumers clear information about how they may cancel.
- Allow consumers to end their subscription without undue delay or difficulty.
- Explain clearly the prices and terms that will take effect once a free trial period expires.
- Provide a widely-accessible mechanism (i.e. toll-free number or an email address or a direct link in a consumer's account) for cancelling the contract.
- Give consumers timely notice of when a free trial period will end, that the contract will renew unless cancelled by that date, and also about how they can cancel.

Importantly, the bill also requires merchants using automatic renewals to give clear and conspicuous notice to consumers before making an automatic charge to our credit cards. It greatly strengthens consumer protections by making failing to live up to these obligations an Unfair and Deceptive Trade Practice under Maryland consumer law.

The bill is broadly modeled on legislation that states like California and Maine have used effectively to protect consumers against automatic renewal abuses. It will give consumers considerable (and overdue) protections under state law against a very common form of abuse.

We strongly support SB 1040 and ask you to give it a FAVORABLE report.

Sincerely,
Franz Schneiderman
Consumer Auto

⁴ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-guidance-to-root-out-tactics-which-charge-people-fees-for-subscriptions-they-dont-want/>

DG Written Testimony_SB1040.pdf

Uploaded by: Senator Gile

Position: FAV

DAWN D. GILE
Legislative District 33
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Finance Committee

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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Testimony in Support of SB1040 - SB1040 - Consumer Protection – Automatic Renewals

Madame Chair, Madame Vice Chair, and Fellow Members of the Senate Finance Committee:

SB1040 would establish a regulatory framework to govern “automatic renewals,” which the bill defines as 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. Violation of the bill is an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to civil and criminal penalty provisions.

Why the Bill is Important

In numerous instances consumers are exposed to unfair, abusive, or deceptive trade practices in which there is a subscription or purchasing agreement is renewed. While intentional or not, this bill looks to improve consumer knowledge, disclosure, and transparency of transaction involving subscriptions or purchasing agreement.

To provide some specific details, the following are included in the bill:

- Require that consumers are provided with the terms of the offer in a clear and conspicuous manner before the subscription or purchasing agreement is fulfilled and in visual proximity to, or in the case of an offer conveyed orally, at the same time as, the request for consent to the offer, include the price that will be charged after the initial term ends or the way the subscription or purchasing agreement will change at the end of the initial term.
- Present consumers with an easily accessible disclosure of the methods that the consumer may use to cancel the automatic renewal; and allow the consumer to terminate the offer in a manner that does not delay, hinder, or obstruct the consumer’s ability to terminate the automatic renewal. If the offer includes a free gift or trial, the offer must include a clear and conspicuous explanation of the price that will be charged after the trial ends and the manner in which the subscription or purchasing agreement pricing will change at the end of the trial.
- Updates provisions regarding if a person makes an automatic renewal offer online, especially as it pertains to communication and the mechanisms in which an individual can cancel their automatic renewal.

The Consumer Protection Division is responsible for enforcing the 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.

SB1040 is very similar to legislation that are in effect in states such as Maine and California, so there are many retailers that are already following these same laws.

I have submitted amendments that clarifies that:

- The bill does not apply to month-to-month contracts.
- An entity covered by existing state or federal regulations on contract renewal procedures would not be subject to the bill.

Per the Fiscal Note, this bill will not require additional state resources. For these reasons, I respectfully request a favorable report on SB1040.

SB1040_Sponsor Amendment.pdf

Uploaded by: Senator Gile

Position: FAV



SB1040/493220/1

AMENDMENTS
PREPARED
BY THE
DEPT. OF LEGISLATIVE
SERVICES

12 MAR 24
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BY: Senator Gile
(To be offered in the Finance Committee)

AMENDMENTS TO SENATE BILL 1040
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 9, after “card;” insert “establishing that compliance with certain regulations shall be considered to be compliance with this Act.”

AMENDMENT NO. 2

On page 2, in line 14, after “**TERM**” insert “**OF MORE THAN 1 MONTH**”.

On page 2 in line 15, on page 3 in line 27, and on page 4 in line 24, in each instance, strike “**A**” and substitute “**EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION, A**”.

On page 4, in line 27, after “**(E)**” insert “**A PERSON THAT COMPLIES WITH THE REQUIREMENTS FOR CONTRACT RENEWAL PROCEDURES ESTABLISHED BY THE STATE OR FEDERAL REGULATORY AGENCY THAT IS RESPONSIBLE FOR REGULATING THE PERSON SHALL BE DEEMED TO BE IN COMPLIANCE WITH THIS SECTION.**

(F)”.

SB 1040 Support Letter.pdf

Uploaded by: Steven M. Sakamoto-Wengel

Position: FAV

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March 13, 2024

To: The Honorable Pamela Beidle
Chair, Finance Committee

From: Karen S. Straughn, Assistant Attorney General
Steven M. Sakamoto-Wengel, Consumer Protection Counsel for Regulation, Legislation
and Policy
Consumer Protection Division.

Re: Senate Bill 1040 – Consumer Protection – Automatic Renewals (SUPPORT)

The Consumer Protection Division of the Office of the Attorney General submits the following written testimony in support of Senate Bill 1040 submitted by Senators Gile, Beidle and Lam. This bill establishes protections for consumers who enter into a contract with an automatic renewal or a free trial period. Senate Bill 1040 will help to reduce the number of complaints from consumers who are stuck in contracts that renewed automatically without the consumers' knowledge.

There may be many benefits to automatic renewal contracts for both the buyer and the seller. If the parties are happy with the arrangement, the contract can continue with little effort by either side. Alternatively, however, the consumer may be caught by an automatically renewing contract, having simply not realized it was time for renewal. If proactive action is needed to cancel a contract, it may be more difficult to remember. Parties should be able to make a fully informed decision as to whether they want to continue to do business with each other rather than be surprised into another term of a contract they no longer wish to be in.

Under this bill, businesses selling contracts that make an automatic renewal must include a clear notice that the contract will renew if the consumer does not cancel. They must also provide the terms of the renewal as well as the means by which a consumer may easily cancel should they choose. If the length of the initial contract is for a year or more, notice must be provided between 15 and 45 days before the renewal date.

In addition, if companies offer a “free trial” as part of the automatic renewal, they must give the price that will be incurred and any changes that may occur after the free trial period ends. This notice must be provided between 3 and 15 days before the renewal.

Senate Bill 1040 is comparable to laws in effect in California and Maine, so the bill’s notice and cancellation provisions should not be substantially different from requirements that retailers are currently following. However, the Division has been discussing possible amendments to the bill with the sponsors and stakeholders to address concerns raised, including making sure month-to-month contracts do not have to give notice each month and that entities that comply with renewal standards set by their primary regulator are deemed to be in compliance.

By providing notice in advance and allowing a consumer to make an informed decision, both parties share the benefit of a healthy business relationship. For these reasons, the Consumer Protection Division asks that the Finance Committee return a favorable report on this bill.

cc: The Honorable Dawn Gile
The Honorable Clarence Lam
Members, Finance Committee

SB 1040 Consumer Contracts Automatic Renewals SWA

Uploaded by: Nancy Egan

Position: FWA



Testimony of
American Property Casualty Insurance Association (APCIA)
Senate Finance Committee
Senate Bill 1040- Consumer Protection - Automatic Renewals
March 13, 2024

Support with Amendments

The American Property Casualty Insurance Association (APCIA) is a national trade organization whose members write approximately 67.1% of the total property casualty insurance market in the U.S. APCIA appreciates the opportunity to provide written comments on SB 1040.

The bill adds a new section under Title 14 which provides for consumer protection to address automatic renewals. Automatic renewal is when a contract renews automatically at the end of its term without any action taken by the contracted parties and continues indefinitely until an act to cancel takes place. Nearly all subscription services use automatic renewals. Subscription models have become popular over the last decade with customers choosing the convenience of being automatically charged for continuous service (e.g., magazines, fitness centers, home security, music streaming, etc.) However, this convenience has occasionally been met with consumer frustration at the time of cancellation and/or at the surprise of continuous service when consumers consider a product to be no longer used.

A critical feature of many service contracts, insurance, and other products such as technical support, is a provision that allows the consumer contract to automatically renew at the end of each term and continue until cancelled (i.e., month-to-month, year-to-year, or continuous until cancelled). These types of contracts are oftentimes swept into the autorenewal laws targeted at other (generally unregulated) industries mentioned above that have historically made it hard for consumers to cancel.

Insurers are exempt from the Consumer Protection Act under 13-104 and we are looking for similar language for our industry and for providers of service contracts such as home warranties or extended warranties on vehicles. Insurers are already under the regulation of the Maryland Insurance Administration and therefore should be exempt from the proposed new provisions

We have been working with the sponsor on the bill and request the following amendments:

1. On page 2, in line 11, after “(A)” insert “(1)”; in the same line, strike “ANY” and substitute “A”; in line 12, before “PLAN” insert “A”; in the same line before “AGREEMENT” insert “AN”; and after line 14, insert:

“(2) “AUTOMATIC RENEWAL” INCLUDES A CONTRACT, PLAN, OR AGREEMENT FOR AN INITIAL TERM THAT IS LONGER THAN 1 MONTH THAT CONVERTS TO A CONTRACT, A PLAN, OR AN AGREEMENT THAT RENEWS ON A MONTHLY OR MORE FREQUENT BASIS AT THE EXPIRATION OF THE INITIAL TERM.

(3) “AUTOMATIC RENEWAL” DOES NOT INCLUDE A CONTRACT, A PLAN, OR AN AGREEMENT THAT RENEWS ON A MONTHLY OR MORE FREQUENT BASIS OR THE MONTHLY OR MORE

FREQUENT RENEWAL PORTION OF A CONTRACT, A PLAN, OR AN AGREEMENT THAT INCLUDES A TERM THAT IS LONGER THAN 1 MONTH.”.

. “2. ADD language to exempt insurance contracts that are regulated by the Maryland Insurance Administration:

(F) A BUSINESS THAT IS SUBJECT TO REQUIREMENTS FOR CONTRACT RENEWAL PROCEDURES UNDER THE RULES, REGULATIONS, PROCEDURES, OR GUIDELINES ESTABLISHED BY THE PRIMARY OR FUNCTIONAL FEDERAL OR STATE REGULATOR OF THE BUSINESS IS EXEMPT FROM THIS SECTION

With these amendments, APCIA urges the Committee to provide a favorable report on Senate Bill 1040.

Nancy J. Egan,

State Government Relations Counsel, DC, DE, MD, VA, WV

Nancy.egan@APCIA.org Cell: 443-841-4174

[MD] SB 1040_TechNet_pdf.pdf

Uploaded by: margaret durkin

Position: UNF



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March 12, 2024

The Honorable Pam Beidle
Chair
Senate Finance Committee
Maryland Senate
3E Miller Senate Office Building
11 Bladen Street
Annapolis, MD 21401

RE: SB 1040 (Gile) - Consumer Protection - Automatic Renewals.

Dear Chair Beidle and Members of the Committee,

On behalf of TechNet, I'm writing to offer comments on SB 1040 related to automatic renewals.

TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level. TechNet's diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents over 4.2 million employees and countless customers in the fields of information technology, e-commerce, the sharing and gig economies, advanced energy, cybersecurity, venture capital, and finance. TechNet has offices in Austin, Boston, Chicago, Denver, Harrisburg, Olympia, Sacramento, Silicon Valley, and Washington, D.C.

Consumers sign up for automatic renewals as convenient, easy to use and hassle-free options to continue services they value. We can support legislation where the convenience we seek to ensure is tempered with responsible protections. It is important to establish clear, workable requirements for paid subscriptions that align with most other states' renewal notification obligations in the absence of a national standard. Consumers should be provided a clear, up-front notice of the key terms and conditions of the service agreement for automatic renewals or continuous service programs.

However, this bill contains various provisions that would primarily require revisions and changes to user interfaces and stipulations on when and how some notifications are made specifically for Maryland consumers, rather than giving them meaningfully different protections from the model outlined above. The cancellation methods outlined in the bill are helpful, but we ask that the criteria for the cancellations be aligned with numerous other states that have such laws. Other states require the

method to be cost-effective, timely, and easy to use. We believe these criteria are important for consumers. In addition, the means of communicating information over a computer network seem to require either a direct link or a pre-formatted email. We ask that it be clearer that these are examples, but that any means of communication over a computer network be allowed.

Further, SB 1040 requires additional provisions regarding cancellation that are overly specific and interfere with consumers' ability to receive meaningful warnings about important information critical to their decision making. For example, a consumer needs to know that they may lose information in their account if they cancel and how to deal with this challenge. They should be able to receive increased incentives from the company if the consumer will continue, or warnings that the rates they have been enjoying as a continuing customer may not be available in the future. Marylanders should not be prevented from receiving this important information when evaluating their cancellation choices.

In addition, the enforcement regime is of concern. These provisions are placed into the Consumer Protection Act, which allows for a private right of action. This is an entirely disproportionate enforcement mechanism compared to any potential harm. Studies show that attorneys, not consumers, benefit from such enforcement, with one study showing that attorneys' fees often represent 300-400 percent of the actual aggregate class recovery. As a result, businesses may restrict these popular features rather than increase the likelihood of being the target of potentially frivolous lawsuits and class actions.

Instead, enforcement of any violation of this act should rest solely with the state Attorney General, who is best poised to develop a thoughtful, consistent approach to marketplace regulation. Therefore, we request any bill moving forward clearly states that only the attorney general may enforce violations of the statute.

Consumers want hassle-free services that do not require them to take action at the end of each term. Businesses providing valuable consumer services want consistency in laws concerning automatic renewals and continuous services. In its current form, SB 1040 imposes inconvenience and unnecessary costs on Maryland businesses, while also creating a regime that could be bothersome to consumers. Thank you for your consideration and we look forward to continuing these discussions with you.

Sincerely,

Margaret Durkin

Margaret Durkin
TechNet Executive Director, Pennsylvania & the Mid-Atlantic