

HB0382S01 compared with HB0382

~~deleted text~~ shows text that was in HB0382 but was deleted in HB0382S01.

inserted text shows text that was not in HB0382 but was inserted into HB0382S01.

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Representative Cheryl K. Acton proposes the following substitute bill:

AUTOMATIC RENEWAL CONTRACT REQUIREMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Cheryl K. Acton

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses automatic renewal contract requirements.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires a person who offers a contract with an automatic renewal provision to disclose certain information to the consumer regarding the renewal and cancellation of the contract;
- ▶ requires a person who offers a trial period offer to disclose certain information to the consumer regarding the expiration of the trial period and purchase obligations upon expiration;
- ▶ authorizes the Division of Consumer Protection (division) to enforce the provisions

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in this bill;

- ▶ provides fines and civil penalties for a violation of the provisions in this bill;
- ▶ requires fines and civil penalties received by the division for a violation of the provisions in this bill to be placed in the Consumer Protection Education and Training Fund;
- ▶ ~~{authorizes the attorney general to represent the division in an action to enforce the provisions in this bill; and~~
- ▶ ~~allows a person to bring a civil action for injunctive relief, rescission of a contract, or damages for a violation of the provisions in this bill.}~~ grants administrative rulemaking authority; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

~~{ None }~~ This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

13-2-1 (Superseded 12/31/23), as last amended by Laws of Utah 2022, Chapter 201

13-2-1 (Effective 12/31/23), as last amended by Laws of Utah 2022, Chapters 201, 462

ENACTS:

13-63-101, Utah Code Annotated 1953

13-63-201, Utah Code Annotated 1953

13-63-301, Utah Code Annotated 1953

~~{ 13-63-302, Utah Code Annotated 1953~~

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 13-2-1 (Superseded 12/31/23) is amended to read:

13-2-1 (Superseded 12/31/23). Consumer protection division established --

Functions.

(1) There is established within the Department of Commerce the Division of Consumer Protection.

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(2) The division shall administer and enforce the following:

(a) Chapter 5, Unfair Practices Act;

(b) Chapter 10a, Music Licensing Practices Act;

(c) Chapter 11, Utah Consumer Sales Practices Act;

(d) Chapter 15, Business Opportunity Disclosure Act;

(e) Chapter 20, New Motor Vehicle Warranties Act;

(f) Chapter 21, Credit Services Organizations Act;

(g) Chapter 22, Charitable Solicitations Act;

(h) Chapter 23, Health Spa Services Protection Act;

(i) Chapter 25a, Telephone and Facsimile Solicitation Act;

(j) Chapter 26, Telephone Fraud Prevention Act;

(k) Chapter 28, Prize Notices Regulation Act;

(l) Chapter 32a, Pawnshop, Secondhand Merchandise, and Catalytic Converter

Transaction Information Act;

(m) Chapter 34, Utah Postsecondary Proprietary School Act;

(n) Chapter 34a, Utah Postsecondary School State Authorization Act;

(o) Chapter 41, Price Controls During Emergencies Act;

(p) Chapter 42, Uniform Debt-Management Services Act;

(q) Chapter 49, Immigration Consultants Registration Act;

(r) Chapter 51, Transportation Network Company Registration Act;

(s) Chapter 52, Residential Solar Energy Disclosure Act;

(t) Chapter 53, Residential, Vocational and Life Skills Program Act;

(u) Chapter 54, Ticket Website Sales Act;

(v) Chapter 56, Ticket Transferability Act; [and]

(w) Chapter 57, Maintenance Funding Practices Act[-]; and

(x) Chapter 63, Automatic Renewal Contracts Act.

Section 2. Section 13-2-1 (Effective 12/31/23) is amended to read:

13-2-1 (Effective 12/31/23). Consumer protection division established --

Functions.

(1) There is established within the Department of Commerce the Division of Consumer Protection.

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(2) The division shall administer and enforce the following:

(a) Chapter 5, Unfair Practices Act;

(b) Chapter 10a, Music Licensing Practices Act;

(c) Chapter 11, Utah Consumer Sales Practices Act;

(d) Chapter 15, Business Opportunity Disclosure Act;

(e) Chapter 20, New Motor Vehicle Warranties Act;

(f) Chapter 21, Credit Services Organizations Act;

(g) Chapter 22, Charitable Solicitations Act;

(h) Chapter 23, Health Spa Services Protection Act;

(i) Chapter 25a, Telephone and Facsimile Solicitation Act;

(j) Chapter 26, Telephone Fraud Prevention Act;

(k) Chapter 28, Prize Notices Regulation Act;

(l) Chapter 32a, Pawnshop, Secondhand Merchandise, and Catalytic Converter

Transaction Information Act;

(m) Chapter 34, Utah Postsecondary Proprietary School Act;

(n) Chapter 34a, Utah Postsecondary School State Authorization Act;

(o) Chapter 41, Price Controls During Emergencies Act;

(p) Chapter 42, Uniform Debt-Management Services Act;

(q) Chapter 49, Immigration Consultants Registration Act;

(r) Chapter 51, Transportation Network Company Registration Act;

(s) Chapter 52, Residential Solar Energy Disclosure Act;

(t) Chapter 53, Residential, Vocational and Life Skills Program Act;

(u) Chapter 54, Ticket Website Sales Act;

(v) Chapter 56, Ticket Transferability Act;

(w) Chapter 57, Maintenance Funding Practices Act; [and]

(x) Chapter 61, Utah Consumer Privacy Act[-]; and

(y) Chapter 63, Automatic Renewal Contracts Act.

Section ~~{H}3~~3. Section **13-63-101** is enacted to read:

CHAPTER 63. AUTOMATIC RENEWAL CONTRACTS ACT

Part 1. General Provisions

13-63-101. Definitions.

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As used in this chapter:

(1) "Automatic renewal provision" means a provision under a contract that is automatically renewed at the end of a definite term for a subsequent term or on a recurring basis.

(2) "Clearly and conspicuously disclose" means to disclose:

(a) in print:

(i) in larger type than the surrounding text;

(ii) in contrasting type, font, or color to the surrounding text of the same size; or

(iii) in a manner set off from the surrounding text of the same size by symbols or other marks that clearly call attention to the language; or

(b) through audio, in a volume and cadence sufficient to be readily audible and understandable.

(3) "Division" means the Division of Consumer Protection established in Section 13-2-1.

(4) "Trial period offer" means an offer to provide a period of time to sample or use a product or service without payment.

Section ~~{2}~~4. Section **13-63-201** is enacted to read:

Part 2. Automatic Renewal ~~{Contracts}~~Contract

13-63-201. Automatic renewal provisions -- Trial period offers -- Notice --

Exceptions.

(1) ~~{A}~~Except as provided in Subsection (3), a person who provides ~~{a consumer}~~an individual a product or service under a contract with an automatic renewal provision shall:

(a) if the automatic renewal provision renews annually, provide a notice to the individual, at least three but not more than five days before the day on which the automatic renewal provision renews ~~{under the contract}~~, ~~{provide a notice to the consumer}~~ that clearly and conspicuously discloses:

~~{a}~~i) the renewal date;

~~{b}~~ii) the total renewal cost; and

~~{c}~~iii) options for cancellation of the contract ~~{~~

~~{2}~~A}; and

(b) if the automatic renewal provision renews monthly or at the end of another definite

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term that is not an annual term, provide a notice to the individual, at least three but not more than five days before the day on which the automatic renewal provision has been in place for one year, that clearly and conspicuously discloses:

- (i) the contract is ongoing; and
- (ii) options for cancellation of the contract.

(2) Except as provided in Subsection (3), a person who provides ~~fa consumer~~an individual a trial period offer shall provide a notice to the individual, at least three but not more than five days before the day on which the period of time under the trial period offer expires, ~~f provide a notice to the consumer~~ that clearly and conspicuously discloses:

- (a) the trial period offer expiration date; and
- (b) the price to be charged for the product or service, or any further purchase

obligations to be imposed on the ~~fconsumer~~individual, after the expiration date.

(3) This section does not apply to a contract for:

- (a) insurance; or
- (b) electricity, gas, water, sewer, or another utility service.

Section ~~{3}~~5. Section 13-63-301 is enacted to read:

Part 3. Enforcement

13-63-301. Administration and enforcement -- Division powers -- ~~fAttorney general~~Fees -- ~~fFees~~Rulemaking.

~~f~~~~(1)~~~~(a)~~ The division shall administer and enforce ~~f the provisions of~~ this chapter in accordance with Chapter 2, Division of Consumer Protection.

~~f~~~~(b)~~ The attorney general, upon request, shall act as counsel for the division in the exercise of the division's responsibilities under this chapter.

~~f~~ (2) In addition to the division's enforcement powers under Chapter 2, Division of Consumer Protection:

(a) the division director may ~~f impose an administrative fine of up to \$2, f500~~ for each violation of this chapter, impose an administrative fine up to an amount equal to the amount of money received after a violation of this chapter plus \$100; and

(b) the division may bring ~~f an~~a civil action to enforce ~~f a provision of~~ this chapter.

(3) In ~~f an~~a civil action by the division to enforce ~~f a provision of~~ this chapter, the court may:

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- (a) declare that an act or practice violates ~~fa provision of~~ this chapter;
- (b) issue an injunction for a violation of this chapter;
- (c) order disgorgement of any money received ~~fin~~ after a violation of this chapter;
- (d) order payment of disgorged money to an injured ~~consumer~~ individual;
- (e) impose a fine ~~of~~ up to ~~2,500 for each~~ an amount equal to the amount of money received after a violation of this chapter plus \$100; or

(f) award any other relief that the court deems reasonable and necessary.

(4) If a court grants judgment or injunctive relief to the division, the court shall award the division:

- (a) reasonable attorney fees;
- (b) court costs; and
- (c) investigative fees.

(5) (a) A person who violates an administrative or court order issued for a violation of this chapter is subject to a civil penalty of no more than \$5,000 for each violation.

(b) A civil penalty authorized under this section may be imposed in any civil action brought by the ~~attorney general on behalf of the~~ division.

(c) ~~Money~~ The division shall deposit money received for the payment of a fine or civil penalty ~~imposed~~ under this section ~~shall be deposited~~ into the Consumer Protection Education and Training Fund created in Section 13-2-8.

~~{Section 4. Section 13-63-302 is enacted to read:~~

~~13-63-302. Private right of action:~~

~~(1) A consumer may bring an action against a person who:~~

- ~~(a) offers a contract with an automatic renewal provision; and~~
- ~~(b) does not comply with this chapter.~~

~~(2) If the court finds that the person violated this chapter, the consumer is entitled to:~~

- ~~(a) rescission of the contract;~~
- ~~(b) an award of reasonable attorney fees and costs in an action to enforce the right of rescission; and~~

~~(c) an amount equal to the greater of:~~

- ~~(i) actual damages; or~~
- ~~(ii) \$2,000.~~

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†(6) The division may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to enforce this chapter.

Section 6. Effective date.

This bill takes effect on May 3, 2023, except that the amendments to Section 13-2-1 (Effective 12/31/23) take effect on December 31, 2023.