

HOUSE BILL NO. 744

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Labor and Commerce

on _____)

(Patron Prior to Substitute--Delegate Maldonado)

A BILL to amend and reenact §§ 59.1-207.45 and 59.1-207.46 of the Code of Virginia, relating to consumer protection; automatic renewal or continuous service offers.

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-207.45 and 59.1-207.46 of the Code of Virginia are amended and reenacted as follows:

§ 59.1-207.45. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Automatic renewal" means a plan or arrangement in which a paid subscription or purchasing agreement is automatically renewed at the end of a definite term for a subsequent term of more than one month.

"Automatic renewal offer terms" means the following clear and conspicuous disclosures:

- 1. That the subscription or purchasing agreement will continue until the consumer cancels;
- 2. The description of the cancellation policy that applies to the offer;
- 3. The recurring charges that will be charged to the consumer's credit or debit card or payment account with a third party as part of the automatic renewal plan or arrangement and that the amount of the charge may change, if that is the case, and the amount to which the charge will change, if known;
- 4. The length of the automatic renewal term or that the service is continuous, unless the length of the term is chosen by the consumer; and
- 5. The minimum purchase obligation, if any.

"Clear and conspicuous" or "clearly and conspicuously" means in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the

27 surrounding text of the same size by symbols or other marks, in a manner that clearly calls attention to the
28 language. In the case of an audio disclosure, "clear and conspicuous" or "clearly and conspicuously" means
29 in a volume and cadence sufficient to be readily audible and understandable.

30 "Consumer" means any individual who seeks or acquires, by purchase or lease, any goods,
31 services, money, or credit for personal, family, or household purposes. "Consumer" includes a small
32 business.

33 "Continuous service" means a plan or arrangement in which a subscription or purchasing
34 agreement continues until the consumer cancels the service.

35 "Small business" means a business that is at least 51 percent independently owned and controlled
36 by one or more individuals, or in the case of a cooperative association organized pursuant to Chapter 3 (§
37 13.1-301 et seq.) of Title 13.1 as a nonstock corporation, is at least 51 percent independently controlled
38 by one or more members, who are U.S. citizens or legal resident aliens and, together with affiliates, has
39 250 or fewer employees or annual gross receipts of \$10 million or less averaged over the previous three
40 years. One or more of the individual owners or members shall control both the management and daily
41 business operations of the small business.

42 "Supplier" has the same meaning ascribed thereto in § 59.1-198.

43 **§ 59.1-207.46. Making automatic renewal or continuous service offer to consumer;**
44 **affirmative consent required; disclosures; prohibited conduct.**

45 A. No supplier making an automatic renewal or continuous service offer to a consumer in the
46 Commonwealth shall do any of the following:

47 1. ~~Fail~~ Prior to the completion of the initial order for the automatic renewal or continuous service,
48 fail to present the automatic renewal offer terms or continuous service offer terms in a clear and
49 conspicuous manner before the consumer becomes obligated on the automatic renewal or continuous
50 service offer and in visual proximity, or in the case of an offer conveyed by voice, in temporal proximity,
51 to the request for consent to the offer.

52 2. ~~Charge~~ Prior to the completion of the initial order for the automatic renewal or continuous
53 service, charge the consumer's credit or debit card or the consumer's account with a third party for an

54 automatic renewal or continuous service without first obtaining the consumer's affirmative consent to the
55 agreement containing the automatic renewal offer terms or continuous service offer terms.

56 3. Fail to provide an acknowledgment that includes the automatic renewal or continuous service
57 offer terms, cancellation policy, and information regarding how to cancel in a manner that is capable of
58 being retained by the consumer. If the offer includes a free trial, the supplier shall also disclose in the
59 acknowledgment how to cancel the free trial before the consumer pays or becomes obligated to pay for
60 the goods or services.

61 B. A supplier making automatic renewal or continuous service offers shall provide a toll-free
62 telephone number, an electronic mail address, a postal address only when the supplier directly bills the
63 consumer, or another cost-effective, timely, and easy-to-use mechanism for cancellation that shall be
64 described in the acknowledgment specified in subdivision A 3. Each supplier making automatic renewal
65 or continuous service offers through an online website shall make available a conspicuous online option
66 to cancel a recurring purchase of a good or service.

67 C. In the case of a material change in the terms of the automatic renewal or continuous service
68 offer that has been accepted by a consumer in the Commonwealth, the supplier shall, prior to
69 implementation of the material change, provide the consumer with a clear and conspicuous notice of the
70 material change and provide information regarding how to cancel in a manner that is capable of being
71 retained by the consumer.

72 D. A supplier making automatic renewal or continuous service offers that include a free trial lasting
73 more than 30 days shall, within 30 days of the end of any such free trial, notify the consumer of his option
74 to cancel the free trial before the end of the trial period to avoid an obligation to pay for the goods or
75 services.

76 E. ~~The requirements of this section shall apply only prior to the completion of the initial order for~~
77 ~~the automatic renewal or continuous service, except:~~

- 78 1. ~~The requirement in subdivision A 3 may be fulfilled after completion of the initial order; and~~
- 79 2. ~~The requirement in subsection C shall be fulfilled prior to implementation of the material~~
80 ~~change.~~

81 A supplier making automatic renewal or continuous service offers that will automatically renew
82 after a period of more than 30 days and extend the automatic renewal or continuous service offer for a
83 period of more than 12 months shall notify the consumer of his option to cancel the automatic renewal or
84 continuous service offer no less than 30 days and no more than 60 days before the cancellation deadline
85 or the end of the current contract term. Such notice shall conspicuously disclose (i) that the automatic
86 renewal or continuous service offer will automatically renew unless the consumer cancels, (ii) the date by
87 which the consumer must cancel to avoid automatic renewal or continuous service, (iii) the method by
88 which the consumer may cancel, and (iv) a copy of the automatic renewal or continuous service offer
89 provisions.

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