Sixty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1228

Introduced by

Representatives D. Ruby, Klemin, Louser, Prichard, Thomas, VanWinkle

Senators Bekkedahl, Hogue, Klein, J. Roers, Wanzek

A BILL for an Act to amend and reenact sections 51-37-01, 51-37-02, and 51-37-04, relating to the use of certain marketing practices involving an agreement containing a provision for automatic renewal; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-37-01 of the North Dakota Century Code is amended and reenacted as follows:

51-37-01. Definitions.

As used in this chapter:

1. "Agreement" means a written agreement between a customer and a party acting in the usual course of business in which a customer borrows, buys, leases, or obtains merchandise, personal property, real property, or services for valuable consideration.
2. "Automatic renewal" means a plan or arrangement in which a paid subscription or purchasing agreement is automatically renewed for a period of more than one month at the end of a definite period for a subsequent period.
~~2.~~3. "Clear and conspicuous" means in a larger type than the surrounding text, in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size or symbols or other marks, in a manner that clearly calls attention to the language and makes the language readily apparent, readable, and understandable to the person to which the language is disclosed. In the case of an audio disclosure, "clear and conspicuous" means in a volume and cadence sufficient to be readily audible and understandable. A statement that contradicts or is inconsistent with any other information with which the statement is presented is not clear and conspicuous.

SECTION 2. AMENDMENT. Section 51-37-02 of the North Dakota Century Code is amended and reenacted as follows:

51-37-02. Use of automatic renewal.

1. A person that sells or offers to sell merchandise or a service for a specified period under an agreement containing a provision for automatic renewal shall:
   a. Present the terms of the automatic renewal offer in a clear and conspicuous manner before a subscription or purchasing agreement is fulfilled and in proximity to the offer;
   b. Provide an acknowledgment that includes the terms of the automatic renewal offer and information regarding how to cancel in a manner which is capable of being retained by the buyer; and
   c. Provide a cost-effective, timely, and simple procedure for cancellation which must be described in the acknowledgment required by subdivision b.
2. A person that sells or offers to sell merchandise or a service for a specified period under an agreement that contains a provision for automatic renewal for a period of more than six months at the end of the time period specified in the agreement shall provide a clear and conspicuous written notice to the buyer stating the buyer may cancel the contract and avoid automatic renewal.
   a. The written notice must be provided by:
      (1) First-class mail;
      (2) Electronic mail; or
      (3) Any easily accessible form of communication, including text message or a mobile application, if the consumer specifically authorizes the person to provide notice in such form.
   b. The written notice must include the procedure for canceling and must be given at least thirty days and not more than sixty days before the date upon which the agreement will be renewed or the expiration of the period for cancellation.
3. If there is a material change in the terms of an agreement that contains a provision for automatic renewal, the seller shall provide the buyer with clear and conspicuous notice of the material change and provide information regarding how to cancel in a manner which is capable of being retained by the buyer.

4. A person that sells or offers to sell merchandise or a service for a specified period under an agreement that contains a provision for automatic renewal may not make or submit any charge to a buyer's credit card, debit card, bank account, account with a third party, or other financial account, unless the person has complied with the requirements of subsection 1 and obtained the buyer's affirmative consent to the agreement containing the terms of the automatic renewal.
5. The renewal period in a provision for automatic renewal of an agreement ~~for sale of merchandise~~ may not exceed twelve months.

SECTION 3. AMENDMENT. Section 51-37-04 of the North Dakota Century Code is amended and reenacted as follows:

51-37-04. Remedies.

An agreement ~~for sale of merchandise~~ in violation of this chapter is unenforceable and void. If a person sends merchandise or provides a service as a result of an automatic renewal of agreement without complying with the requirements of section 51-37-02 or sends merchandise or provides a service after a buyer undertook an affirmative act to cancel or otherwise avoid charges, the merchandise or service is considered to be an unconditional gift to the buyer who may dispose of the gift in any manner the buyer sees fit without any obligation to the person.

SECTION 4. APPLICATION. This Act applies to contracts entered after July 31, 2023.