

2023 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1228

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1228
1/18/2023

Relating to the use of certain marketing practices involving an agreement containing a provision for automatic renewal; and to provide for application.

Chairman Louser called to order 8:39 AM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Christy, Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer, Thomas, Tveit, Wagner.
Member Absent: Representative Warrey.

Discussion Topics:

- Lease renewal of real property
- Renewal of policies
- Property service contracts
- Cancel at any time policy.

In favor:

Representative Dan Ruby, District 38, prime bill sponsor (no written testimony)
Tavis Moore, General Counsel for Service Contract Industry Council ("SCIC") #14017, 14018

Chairman Louser closes the hearing 9:11 AM

Representative Kasper moved a do pass.
Representative Koppelman seconded.

Roll call vote:

Representatives	Vote
Representative Scott Louser	Y
Representative Mitch Ostlie	Y
Representative Josh Boschee	AB
Representative Josh Christy	AB
Representative Hamida Dakane	Y
Representative Jorin Johnson	Y
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Austen Schauer	AB
Representative Paul J. Thomas	Y
Representative Bill Tveit	Y
Representative Scott Wagner	Y
Representative Jonathan Warrey	AB

House Industry, Business and Labor Committee
HB 1228
01/18/2023
Page 2

Motion passed 10-0-4

Representative Ruby will carry the bill.

Chairman Louser adjourned the meeting 9:14 AM

Diane Lillis, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1228: Industry, Business and Labor Committee (Rep. Louser, Chairman)
recommends **DO PASS** (10 YEAS, 0 NAYS, 4 ABSENT AND NOT VOTING). HB
1228 was placed on the Eleventh order on the calendar.

2023 SENATE INDUSTRY AND BUSINESS

HB 1228

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

HB 1228
3/14/2023

A bill relating to the use of certain marketing practices involving an agreement containing a provision for automatic renewal; and to provide a penalty.

9:00 AM Chairman D. Larsen called the meeting to order. Members present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Klein, Senator Boehm.

Discussion Topics:

- Automatic renewal
- Renewal notifications
- Service contracts
- Coverage lapse

9:00 AM Representative Dan Ruby, District 28, introduced HB 1228 and testified in favor. No written testimony.

9:16 AM Dennis Pathroff, Attorney with The GA Group, introduced Travis Moore, General Counsel for the Service Contract Industry Council, testified in support and proposed amendments to HB 1228. #24535

9:34 AM Todd D. Kranda, Attorney with the law firm of Kelsch Ruff Nagle & Ludwig testified on behalf of Verizon Wireless, in Support of HB 1228 with the proposed amendment. #24723

9:38 AM David Edmonson, Internet Coalition's Consumer Convenience in Contracts Coalition, testified in support of HB 1228 via video along with a proposed amendment. #24519

9:42 AM Chairman D. Larsen closed the hearing on HB 1228.

Brenda Cook, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

HB 1228
3/21/2023

A bill relating to the use of certain marketing practices involving an agreement containing a provision for automatic renewal; and to provide for an application.

2:20 PM Chairman D. Larsen called the meeting to order. Members present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Klein, Senator Boehm.

Discussion Topics:

- Committee action

2:28 PM Senator Klein moved to adopt an amendment to HB 1228. #LC 23.0332.01001

2:28 PM Senator Barta seconded the motion.

Roll call vote:

Senators	Vote
Senator Doug Larsen	Y
Senator Greg Kessel	Y
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Jerry Klein	Y

Vote: 5-0-0- DO ADOPT AMENDMENT TO HB 1228.

2:30 PM Senator Barta moved to DO PASS HB 1228 AS AMENDED.

2:30 PM Senator Boehm seconded the motion,

Roll call vote:

Senators	Vote
Senator Doug Larsen	Y
Senator Greg Kessel	Y
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Jerry Klein	Y

Vote 5-0-0- DO PASS AS AMENDED HB 1228.

Senator Barta will carry the bill.

2:30 PM Chairman D. Larsen closed the meeting.

Brenda Cook, Committee Clerk

23.0332.01001
Title.02000

Adopted by the Senate Industry and Business
Committee

March 21, 2023

24
03/21/23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1228

Page 3, line 12, overstrike "agreement"

Page 3, line 12, after "merchandise" insert "automatic renewal provision"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1228: Industry and Business Committee (Sen. Larsen, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1228 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 3, line 12, overstrike "agreement"

Page 3, line 12, after "merchandise" insert "automatic renewal provision"

Renumber accordingly

TESTIMONY

HB 1228

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1228

Page 3, after line 8, insert:

“Section 3. Amendment. Section 51-37-03 of the North Dakota Century Code is amended and reenacted as follows:

51-37-03. Exceptions.

This chapter does not apply to:

1. The sale of insurance regulated under title 26.1;
2. The sale of public utilities regulated under title 49 or the federal communications commission, or services provided by public utilities; ~~or~~
3. A bank, bank holding company, credit union, or other financial institution or trust company regulated under title 6;~~or~~
4. Any person or entity providing a property service contract as described in section 9-01-21 or an affiliate of that person or entity.”

Renumber accordingly



Travis Moore, General Counsel
Written Testimony in Support of Amendments
to North Dakota HB 1228

1/18/2023

Introduction

Chairman Louser and members of the House Industry, Business, and Labor Committee. My name is Travis Moore, and I am General Counsel for the Service Contract Industry Council (SCIC). Thank you for the opportunity to testify in support of amendments to HB 1228.

Background

The SCIC is the national trade association representing providers, administrators, and sellers of service contracts covering motor vehicles, homes, and consumer goods. The association was established in 1991 and has collaborated with lawmakers and regulators around the country as well as the National Association of Insurance Commissioners ("NAIC") in defining and regulating service contracts throughout the country. The SCIC monitors state legislative and regulatory activities, contributes to relevant legislative and administrative proceedings, and educates businesses and consumers about the value and benefits of service contracts.

About Service Contracts

Also known as "home warranties," "extended warranties" or "extended service plans," service contracts are popular among consumers as a cost-effective way to protect electronic devices, consumer goods, appliances and new and used autos beyond the terms provided by the manufacturer's or seller's original warranty. Approximately 250 million are sold annually nationwide, spanning:

- Protection afforded for **consumer goods** can include discounted product repair, product (e.g., phone) replacement, access to pre-qualified technicians, accidental damage from handling and 24-hour technical assistance.
- On the **home** front, typical service contracts cover repair or replacement of a home's major systems, such as heating, air conditioning, electrical and plumbing and major appliances.
- Traditional **vehicle** service contracts provide reimbursement for operational or structural failure, as well as some incidental payment of indemnity benefits, such as emergency roadside and towing assistance.

In addition to protecting their assets and helping stabilize household cashflows, high accessibility affords

consumers with a convenient means to secure their peace of mind.

In North Dakota, service contracts are clearly defined in section 9-01-21 of the North Dakota Century Code. The definition is substantially similar to that promulgated by the NAIC and utilized in the vast majority of states. The definition further includes specific perils that, although they may resemble insurance, are better suited to the service contract model. This definition recognizes both the similarity to, and the importance of distinguishing these products from insurance.

Automatic Renewal

Automatic renewal provisions are an essential component of many service contracts. Like insurance, service contracts provide coverage for potentially costly repairs and help consumers spread out the cost of maintaining and repairing certain goods and systems. Any lapse in coverage means a consumer may be on the hook for those repairs unexpectedly. Imagine your house burning down and realizing you forgot to renew your homeowner's insurance. Fortunately, these types of insurance products automatically renew so you don't have to worry about that. Now, imagine your furnace breaks down unexpectedly. It isn't an insurable event, and the original manufacturer warranty is expired. Fortunately, you have a service contract to help cover the cost of repairs. By automatically renewing, the coverage provided by service contracts is always there for consumers. This is true of homes, vehicles, and the various consumer goods protected by these products.

While HB 1228 does not prohibit automatic renewal, we are concerned that the added requirements could cause some providers to not include automatic renewal clauses in their contracts. This would be to the detriment of North Dakota consumers as described above. We are aware of various instances where automatic renewal clauses are abused by purveyors of certain goods or services. To that end, we support this legislation and would hope to end abusive practices by bad actors. However, the service contract industry has for many years offered automatically renewing contracts without issue. Cancellation anytime, notice and pro rata refunds are standard practices throughout the industry. Therefore, we propose that HB 1228 be amended to include the following exemption:

"Any person or entity providing a property service contract as described in section 9-01-21 or an affiliate of that person or entity."

Conclusion

The SCIC supports the objective of HB 1228 and applauds the effort to stop abusive automatic renewal practices. We respectfully request that the importance of automatic renewal for certain industries be considered in including exemptions to this bill.

I'm happy to answer any questions the committee may have on this testimony,

Thank you,

Travis Moore

Consumer Convenience in Contracts Coalition

February 8, 2023

The Honorable Doug Larsen, Chair
Senate Industry and Business Committee
North Dakota Legislature
600 E. Boulevard Avenue
Bismarck, ND 58501

RE: House Bill 1228 – Support with Amendments

Dear Chairman Larsen:

Internet Coalition's Consumer Convenience in Contracts Coalition ("IC CCCC") appreciates the opportunity to write in favor of HB 1228 with amendments. IC CCCC consists of trade associations including the Entertainment Software Association, Internet Coalition, News/Media Alliance, and TechNet. Collectively this group represents hundreds of the country's leading technology companies in the high-tech manufacturing, computer networking and information technology, clean energy, life sciences, ecommerce, on and off-line media and entertainment, education and sharing economy sectors. Members are committed to advancing public policies and private sector initiatives that make the U.S. the most innovative country in the world.

Requested Amendments to update the North Dakota Automatic Renewal law

We have no concerns with expanding the bill to services, including online services provided by members of our coalition, but would ask that outlier provisions in the underlying law be amended or that more traditional timeframes and procedures found in most other states' automatic renewal laws be applied to these services.

For instance, of the 25 states that regulate automatic renewals, five states don't have reminder provisions at all (LA, NY, OR, TN and VA). Seven states apply reminders only to contracts one year or more (DC, FL, GA, HI, IL, ME, and VT). Eight states have provisions that apply only to specific industries for such reminders, and five states have laws that are unique. North Dakota is one of those unique states.

Therefore, as you consider this bill, we ask that a reminder for online services apply only to contracts that are one year or more. This will enable online services wishing to serve multiple state customers to avoid redesigning reminder schedules specifically for North Dakota.

However, North Dakota law currently prohibits any autorenewal of a contract for merchandise longer than one year. We understand the state may be concerned about locking consumers into long term contracts, but some companies provide significant price reductions to consumers willing to agree to longer time periods, and this is common for some services. We ask that you remove this restriction so that North Dakota consumers may determine whether or not they would like longer term contracts.

We are sure you often hear concerns about a patchwork of state laws, making it more difficult for companies providing services across multiple states to offer products and services to consumers. We respectfully request that expansion of this law to services be done in line with the prevailing model for reminders and allow North Dakota consumers continue to receive the benefits and convenience some longer automatic renewals provide.

Please feel to contact Tammy Cota, Executive Director of the Internet Coalition at tammy@theinternetcoalition.com / 802-279-3534 with questions or if you would like to discuss this further.

Sincerely,

Internet Coalition
Entertainment Software Association
News/Media Alliance
TechNet

enc: Proposed Amendments to HB 1228
cc: Senate Industry and Business Committee members
email: douglarsen@ndlegis.gov; gkessel@ndlegis.gov; jbarta@ndlegis.gov; kboehm@ndlegis.gov;
jklein@ndlegis.gov



Travis Moore, General Counsel
Written Testimony in Support of Amendments
to North Dakota HB 1228

3/14/2023

Introduction

Chairman Larsen and members of the Senate Industry and Business Committee. My name is Travis Moore, and I am General Counsel for the Service Contract Industry Council (SCIC). Thank you for the opportunity to testify in support of amendments to HB 1228.

Background

The SCIC is the national trade association representing providers, administrators, and sellers of service contracts covering motor vehicles, homes, and consumer goods. The association was established in 1991 and has collaborated with lawmakers and regulators around the country as well as the National Association of Insurance Commissioners ("NAIC") in defining and regulating service contracts throughout the country. The SCIC monitors state legislative and regulatory activities, contributes to relevant legislative and administrative proceedings, and educates businesses and consumers about the value and benefits of service contracts.

About Service Contracts

Also known as "home warranties," "extended warranties" or "extended service plans," service contracts are popular among consumers as a cost-effective way to protect electronic devices, consumer goods, appliances and new and used autos beyond the terms provided by the manufacturers or seller's original warranty. Approximately 250 million are sold annually nationwide, spanning:

- Protection afforded for **consumer goods** can include discounted product repair, product (e.g., phone) replacement, access to pre-qualified technicians, accidental damage from handling and 24-hour technical assistance.
- On the **home** front, typical service contracts cover repair or replacement of a home's major systems, such as heating, air conditioning, electrical and plumbing and major appliances.
- Traditional **vehicle** service contracts provide reimbursement for repairs made due to

operational or structural failure, as well as some incidental payment of indemnity benefits, such as emergency roadside and towing assistance.

In addition to protecting their assets and helping stabilize household cashflows, high accessibility affords consumers with a convenient means to secure their peace of mind.

In North Dakota, service contracts are clearly defined in section 9-01-21 of the North Dakota Century Code. The definition is substantially similar to that promulgated by the NAIC and utilized in the vast majority of states. This definition recognizes both the similarity to, and the importance of distinguishing these products from insurance.

Automatic Renewal

Automatic renewal provisions are an essential component of many service contracts. Service contracts provide coverage for potentially costly repairs and help consumers spread out the cost of maintaining and repairing certain goods and systems. Any lapse in coverage means a consumer may be on the hook for those repairs unexpectedly. By automatically renewing, the coverage provided by service contracts is always there for consumers.

While HB 1228 does not prohibit automatic renewal, we are concerned that the added requirements could cause some providers to not include automatic renewal clauses in their contracts. This would be to the detriment of North Dakota consumers as described above. We are aware of various instances where automatic renewal clauses are abused by purveyors of certain goods or services. To that end, we support this legislation and would hope to end abusive practices by bad actors. However, the service contract industry has for many years offered automatically renewing contracts without issue. Contract disclosures, cancellation anytime, advance notice and pro rata refunds are standard practices throughout the industry.

Special Considerations for Service Contracts

All kinds of businesses are getting into the subscription service practice. Often time with direct-to-consumer sales over the internet. While service contracts can be sold in a similar method, usually they are sold via third party. If it is a home service contract it may be part of a real estate transaction, vehicles service contracts are frequently sold by dealers, and consumer goods service contracts can be purchased at big box retailers in connection with the protected product. Take, for example, an item purchased at a big box retailer through a check-out kiosk. You may be able to simply check a box to sign-up for a protection plan on whatever you are buying. It isn't clear that type of transaction would comply with the requirements of HB 1228.

Proposed Amendments

Considering the foregoing, SCIC would suggest a few amendments to HB 1228. While an express exemption for service contracts as defined in Section 9-01-21 of the North Dakota

Century Code would be ideal, it is our understanding this committee would prefer not to carve-out specific industries. Therefore, we propose the following:

- 1) Exempt any contract that may be cancelled at anytime for a refund of any unearned portion.
- 2) Extend the effective date to January 1, 2024 to allow time for any retailers or sellers who require adjustments to their point of sale processes and systems.
- 3) Amend Section 51-37-04 to better reflect the intent of the legislation:
 - a. Failure to comply with 51-37-02 should result in rendering the automatic renewal void and not the underlying agreement. “51-37-04 Remedies. An **automatic renewal provision** ~~agreement~~ in violation of this chapter is unenforceable and void.”
 - b. Limit the unconditional gift provision to instances where the buyer does not request the merchandise or service. For example, if a homeowner requests and receives repair of their furnace after the automatic renewal date but the home service contract provider mistakenly forgot to send the notice required by 51-37-02, those repairs should not be considered an “unconditional gift.”

Conclusion

The SCIC supports the objective of HB 1228 and applauds the effort to stop abusive automatic renewal practices. We respectfully request that the importance of automatic renewal for certain industries be considered including these proposed amendments.

I’m happy to answer any questions the committee may have on this testimony,

Thank you,



Travis Moore
General Counsel
Service Contract Industry Council
travis@ppami.com
913-634-8001

**Testimony in Support of
HOUSE BILL NO. 1228
Senate Industry and Business Committee**

- March 14, 2023 -

Chairman Larsen, Senate Industry and Business Committee members, for the record my name is Todd D. Kranda. I am an attorney with the Mandan law firm of Kelsch Ruff Kranda Nagle & Ludwig. I appear before you today as a lobbyist on behalf of Verizon Wireless to express support for HB 1228 with a proposed amendment.

HB 1228 seeks to amend North Dakota law, namely Chapter 51-37 of the North Dakota Century Code regarding customer contract clauses and automatic renewals, and specifically to clarify the scope of the auto-renewal statutes to include the term "services" within the definitions. Verizon believes that this clarification with the addition of the term services, while well-intended, may be broader in scope and meaning than anticipated in that it may inadvertently capture an already excluded entity, specifically public utilities as defined in state law and regulated by the federal communications commission.

Section 51-37-03 of the North Dakota Century Code currently provides for the exclusion of "public utilities regulated under title 49 or the federal communications commission, or services provided by the public utilities".

The reason HB 1228 may infringe on the exceptions found in Section 51-37-03 of the North Dakota Century Code is due to the fact that Verizon operates approximately 325 affiliates nationally, some of which are nationally known entities currently doing business in North Dakota including MCI, and Tracfone.

By adding these three words: "and its affiliates" to the exceptions found in Section 51-37-03, namely subsection 2, to HB 1228, as shown in the Proposed Amendment attached, effectively closes the door on any unintended ambiguity that would arise if this distinction was not included in this bill. West Virginia and Kentucky inserted identical language in similar auto-renewal bills under consideration this year.

Please consider adding the Proposed Amendment as provided and then give HB 1228, as amended, a DO PASS recommendation. I am happy to try to answer any questions you may have.

**PROPOSED AMENDMENTS TO
HOUSE BILL NO. 1228**

Page 1, line 1, after the second comma insert "51-37-03,"

Page 3, after line 8, insert:

"SECTION 3. AMENDMENT. Section 51-37-03 of the North Dakota Century Code is amended and reenacted as follows:

51-37-03. Exceptions.

This chapter does not apply to:

1. The sale of insurance regulated under title 26.1;
2. The sale of public utilities regulated under title 49 or the federal communications commission, or services provided by the public utilities or their affiliates; or
3. A bank, bank holding company, credit union, or other financial institution or trust company regulated under title 6."

Renumber accordingly