



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB2970

by Rep. Mike Smiddy

SYNOPSIS AS INTRODUCED:

815 ILCS 601/5
815 ILCS 601/10
815 ILCS 601/20

Amends the Automatic Contract Renewal Act. Expands scope of the Act to cover contracts containing a negative option feature. Defines terms. Requires additional disclosures regarding those contracts. Provides that it is a violation of the Act to fail to promptly terminate a contract upon written request or to ship substituted merchandise without the express consent of the consumer. Effective immediately.

LRB098 08222 JLS 38320 b

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Automatic Contract Renewal Act is amended by
5 changing Sections 5, 10, and 20 as follows:

6 (815 ILCS 601/5)

7 Sec. 5. Definition. In this Act:

8 "Contract" means a written agreement between 2 or more
9 parties.

10 "Contract-complete consumer" means a consumer who has
11 purchased the minimum quantity of merchandise required by the
12 terms of a negative option plan.

13 "Negative option feature" means a contractual plan or
14 arrangement under which a seller periodically sends to
15 consumers an announcement that identifies merchandise (other
16 than annual supplements to previously acquired merchandise) it
17 proposes to send to consumers under the plan and the consumers
18 thereafter receive and are billed for the merchandise
19 identified in each announcement, unless by a date or within a
20 time specified by the seller with respect to each announcement
21 the consumers, in conformity with the provisions of the plan,
22 instruct the seller not to send the identified merchandise.

23 "Parties" include individuals and other legal entities,

1 but do not include the federal government, this State or
2 another state, a unit of local government, or a school
3 district.

4 "Seller" means a person, firm, partnership, association,
5 corporation, limited liability company, or any other entity
6 that sells or offers to sell products or services.

7 (Source: P.A. 91-674, eff. 6-1-00.)

8 (815 ILCS 601/10)

9 Sec. 10. Automatic renewal; requirements.

10 (a) Any person, firm, partnership, association, or
11 corporation that sells or offers to sell any products or
12 services to a consumer pursuant to a contract, where such
13 contract automatically renews unless the consumer cancels the
14 contract, shall disclose the automatic renewal clause clearly
15 and conspicuously in the contract, including the cancellation
16 procedure.

17 (b) Any person, firm, partnership, association, or
18 corporation that sells or offers to sell any products or
19 services to a consumer pursuant to a contract, where such
20 contract term is a specified term of 12 months or more, and
21 where such contract automatically renews for a specified term
22 of more than one month unless the consumer cancels the
23 contract, shall notify the consumer in writing of the automatic
24 renewal. Written notice shall be provided to the consumer no
25 less than 30 days and no more than 60 days before the

1 cancellation deadline pursuant to the automatic renewal
2 clause. Such written notice shall disclose clearly and
3 conspicuously:

4 (i) that unless the consumer cancels the contract it
5 will automatically renew; and

6 (ii) where the consumer can obtain details of the
7 automatic renewal provision and cancellation procedure
8 (for example, by contacting the business at a specified
9 telephone number or address or by referring to the
10 contract).

11 (b-5) A seller that sells or offers to sell products or
12 services to a consumer under a contract that includes a
13 negative option feature must disclose truthfully in a clear and
14 conspicuous manner all material terms and conditions of the
15 negative option feature including, but not limited to, the fact
16 that the consumer's account will be charged unless the consumer
17 takes an affirmative action to avoid the charge, the date the
18 charge will be submitted for payment, and the specific steps
19 the consumer must take to avoid the charge. It is a violation
20 of this Act for a seller to fail to terminate promptly the
21 contract of a properly identified contract-complete consumer
22 upon his written request. It is a violation of this Act for a
23 seller to ship without the express consent of the consumer,
24 substituted merchandise for that ordered by the consumer.

25 (c) A person, firm, partnership, association, or
26 corporation will not be liable for a violation of this Act or

1 the Consumer Fraud and Deceptive Business Practices Act if such
2 person, firm, partnership, association, or corporation
3 demonstrates that, as part of its routine business practice:

4 (i) it has established and implemented written
5 procedures to comply with this Act and enforces compliance
6 with the procedures;

7 (ii) any failure to comply with this Act is the result
8 of error; and

9 (iii) where an error has caused a failure to comply
10 with this Act, it provides a full refund or credit for all
11 amounts billed to or paid by the consumer from the date of
12 the renewal until the date of the termination of the
13 account, or the date of the subsequent notice of renewal,
14 whichever occurs first.

15 (Source: P.A. 93-950, eff. 1-1-05.)

16 (815 ILCS 601/20)

17 Sec. 20. Applicability.

18 (a) This Act does not apply to a contract entered into
19 before the effective date of this Act.

20 (b) This amendatory Act of the 93rd General Assembly does
21 not apply to a contract entered into before the effective date
22 of this amendatory Act of the 93rd General Assembly. This
23 amendatory Act of the 98th General Assembly does not apply to a
24 contract entered into before the effective date of this
25 amendatory Act of the 98th General Assembly.

1 (c) This Act does not apply to business-to-business
2 contracts.

3 (d) This Act does not apply to banks, trust companies,
4 savings and loan associations, savings banks, or credit unions
5 licensed or organized under the laws of any state or the United
6 States, or any foreign bank maintaining a branch or agency
7 licensed or organized under the laws of any state of the United
8 States, or any subsidiary or affiliate thereof.

9 (e) This Act does not apply to a contract that is extended
10 beyond the original term of the contract as the result of the
11 consumer's initiation of a change in the original contract
12 terms.

13 (Source: P.A. 93-950, eff. 1-1-05.)

14 Section 99. Effective date. This Act takes effect upon
15 becoming law.