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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 4408

02/28/2024 Authored by Koegel and Bahner The bill was read for the first time and referred to the Committee on Commerce Finance and Policy

1.1 A bill for an act
1.2 relating to contracts; defining indefinite subscription agreement and related terms;
1.3 regulating certain contracts subject to automatic renewal clauses or continuous
1.4 service; requiring seller notice to consumers; providing for consumer rights in
1.5 connection with the termination of certain contracts; providing civil penalties;
1.6 proposing coding for new law in Minnesota Statutes, chapter 325G.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. 325G.56 DEFINITIONS.

1.9 Subdivision 1. Scope. For purposes of sections 325G.56 to 325G.62, the terms defined
1.10 in this section have the meanings given them.

1.11 Subd. 2. Automatic renewal. "Automatic renewal" means a plan or arrangement in
1.12 which a subscription or purchasing agreement is automatically renewed at the end of a
1.13 definite term for a subsequent term.

1.14 Subd. 3. Clear and conspicuous. "Clear and conspicuous" means the display of text in
1.15 a manner that clearly calls attention to the text, including but not limited to displaying the
1.16 text: (1) in larger type than the surrounding text; (2) in contrasting type, font, or color to
1.17 the surrounding text of the same size; or (3) set off from the surrounding text of the same
1.18 size by symbols or other marks. In the case of an audio disclosure, clear and conspicuous
1.19 means in a volume and cadence sufficient to be readily audible and understandable.

1.20 Subd. 4. Consumer. "Consumer" means any individual who seeks or acquires, by
1.21 purchase or lease, any goods, services, money, or credit for personal, family, or household
1.22 purposes.

2.1 Subd. 5. **Continuous service.** "Continuous service" means a plan or arrangement in
 2.2 which a subscription or purchasing agreement continues until the consumer terminates the
 2.3 agreement.

2.4 Subd. 6. **Indefinite subscription agreement.** "Indefinite subscription agreement" means
 2.5 a subscription or purchasing agreement:

2.6 (1) between a seller and a consumer in Minnesota; and

2.7 (2) subject to automatic renewal or continuous service.

2.8 Indefinite subscription agreements include but are not limited to contracts, as defined in
 2.9 section 325G.23, subdivision 3, subject to automatic renewal or continuous service.

2.10 Subd. 7. **Offer terms.** "Offer terms" means the following disclosures:

2.11 (1) the indefinite subscription agreement continues until the consumer terminates the
 2.12 agreement;

2.13 (2) the description of the cancellation policy that applies to the indefinite subscription
 2.14 agreement;

2.15 (3) the recurring charges that are charged to the consumer's credit or debit card or payment
 2.16 account with a third party as part of the plan or arrangement and that the amount of the
 2.17 charge may change, if that is the case, and the amount to which the charge changes, if
 2.18 known;

2.19 (4) the length of the automatic renewal term or that the service is continuous, unless the
 2.20 length of the term is definite and chosen by the consumer; and

2.21 (5) the minimum purchase obligation, if any.

2.22 Subd. 8. **Seller.** "Seller" means: (1) a seller, lessor, licensor, or professional who
 2.23 advertises, solicits, or engages in consumer transactions; or (2) a manufacturer, distributor,
 2.24 or licensor who advertises and sells, leases, or licenses goods or services to be resold, leased,
 2.25 or sublicensed by other persons in consumer transactions.

2.26 Sec. 2. **[325G.57] REQUIREMENTS FOR AUTOMATIC RENEWAL OR**
 2.27 **CONTINUOUS SERVICE.**

2.28 Subdivision 1. **Notices upon offer.** A seller making an offer for an indefinite subscription
 2.29 agreement must, before the consumer accepts the offer, present the offer terms: (1) in a
 2.30 clear and conspicuous manner to the consumer; and (2) in visual proximity or, in the case
 2.31 of an offer conveyed by voice, in temporal proximity to the offer's proposal.

3.1 Subd. 2. **Confirmation upon consumer consent.** A seller making an offer for an
3.2 indefinite subscription agreement must, in a timely manner after the consumer accepts the
3.3 offer, provide the consumer with confirmation of the consumer's acceptance of the offer.
3.4 The confirmation must be provided in a manner that is capable of being retained by the
3.5 consumer and must include the following:

3.6 (1) the offer terms;

3.7 (2) if the offer includes a free trial, information indicating how to cancel the free trial
3.8 before the consumer pays or becomes obligated to pay for any goods or services in connection
3.9 with the free trial; and

3.10 (3) the following options to terminate the indefinite subscription agreement, which
3.11 options must be easy to use, expeditious, and accessible for all consumers:

3.12 (i) a toll-free telephone number;

3.13 (ii) an email address;

3.14 (iii) a postal address;

3.15 (iv) if a seller makes offers for an indefinite subscription agreement through an online
3.16 website, a clear and conspicuous online option; and

3.17 (v) if a consumer enters into the indefinite subscription agreement through any means
3.18 other than those described in items (i) to (iv), an option substantially similar to, as easy to
3.19 use, and as accessible as the initial means used for the consumer to accept the agreement.

3.20 Subd. 3. **Material changes.** (a) Upon a material change in the terms of the indefinite
3.21 subscription agreement, the seller must provide to the consumer in a timely manner, and in
3.22 any case prior to the implementation of the material change, a clear and conspicuous notice
3.23 of the material change and provide information indicating how to terminate the agreement.
3.24 The notice must be provided in a manner that is capable of being retained by the consumer.

3.25 (b) A material change in the terms of an indefinite subscription agreement that violates
3.26 this subdivision is void and unenforceable.

3.27 Subd. 4. **Free trials.** A seller making an offer for an indefinite subscription agreement
3.28 that includes a free trial lasting more than 30 days must notify the consumer of the consumer's
3.29 option to cancel the free trial before the end of the trial period to avoid an obligation to pay
3.30 for the goods or services. The notice under this subdivision must be provided no fewer than
3.31 five days and no more than 30 days before the date the free trial period ends.

4.1 Subd. 5. **Notice in advance of automatic renewal.** (a) If an indefinite subscription
4.2 agreement is subject to automatic renewal, the seller must give the consumer written notice
4.3 of the automatic renewal no fewer than five days and no more than 30 days before the last
4.4 date on which the consumer may terminate the contract before the contract renews for
4.5 another term.

4.6 (b) The notice required under this subdivision must include the information required in
4.7 the confirmation described in subdivision 2.

4.8 (c) The notice required under this subdivision must be provided in a separate, individual
4.9 mailing.

4.10 Subd. 6. **Periodic notice of continuous service.** (a) If an indefinite subscription
4.11 agreement is subject to continuous service, the seller must give the consumer written notice
4.12 of the continuous service at intervals that are reasonable in relation to the goods or services
4.13 provided under the agreement, but no less frequent than once per calendar year.

4.14 (b) The notice required under this subdivision must include the information required in
4.15 the confirmation described in subdivision 2.

4.16 (c) The notice required under this subdivision must be provided in a separate, individual
4.17 mailing.

4.18 **Sec. 3. [325G.58] PROHIBITED CONDUCT.**

4.19 Subdivision 1. **Charges prior to effective date.** A seller must not charge the consumer's
4.20 credit or debit card or the consumer's account with a third party in connection with an
4.21 indefinite subscription agreement before the agreement has been (1) duly authorized by the
4.22 seller and consumer, and (2) made effective.

4.23 Subd. 2. **Right of first refusal.** An indefinite subscription agreement must not require
4.24 the consumer to permit the seller to match any offer the consumer has received. A provision
4.25 in an indefinite subscription agreement that violates this subdivision is void and
4.26 unenforceable.

4.27 **Sec. 4. [325G.59] CONSUMER'S RIGHT TO TERMINATE.**

4.28 Subdivision 1. **Termination of agreement subject to automatic renewal.** A consumer
4.29 may terminate an indefinite subscription agreement subject to automatic renewal at any
4.30 time by following the procedure set forth in the confirmation described in section 325G.57,
4.31 subdivision 2. A termination under this subdivision is effective at the end of the term in
4.32 which notice of termination is provided by the consumer, unless the consumer specifies a

5.1 termination date occurring at the end of a subsequent term, in which event the termination
5.2 is effective on the date specified by the consumer.

5.3 Subd. 2. **Termination of agreement subject to continuous service.** A consumer may
5.4 terminate an indefinite subscription agreement subject to continuous service at any time by
5.5 following the procedure set forth in the confirmation described in section 325G.57,
5.6 subdivision 2. A termination under this subdivision is effective immediately unless the
5.7 consumer specifies a future termination date, in which event the termination is effective on
5.8 the date specified by the consumer.

5.9 Subd. 3. **Termination in absence of confirmation or notice.** If the seller fails to provide
5.10 either the confirmation required under section 325G.57, subdivision 2, or a notice required
5.11 by section 325G.57, subdivision 5 or 6, the consumer may terminate the indefinite
5.12 subscription agreement at any time by any reasonable means, including but not limited to
5.13 by mail, email, telephone, an online option, or the means by which the consumer entered
5.14 into the agreement, at no cost to the consumer.

5.15 **Sec. 5. [325G.60] UNCONDITIONAL GIFTS.**

5.16 Any good, including but not limited to any ware, merchandise, or product, is an
5.17 unconditional gift to the consumer if a seller sends the good under an indefinite subscription
5.18 agreement without first obtaining the consumer's affirmative consent to the agreement and
5.19 to receive the good, in accordance with section 325G.57. The consumer may use or dispose
5.20 of the good in any manner without any obligation to the seller, including but not limited to
5.21 any obligation relating to shipping the good.

5.22 **Sec. 6. [325G.61] EXEMPTION.**

5.23 Sections 325G.56 to 325G.62 do not apply to contracts governed by another state or a
5.24 federal statute or regulation specifically intended to regulate automatic renewal or continuous
5.25 service.

5.26 **Sec. 7. [325G.62] ENFORCEMENT.**

5.27 (a) Sections 325G.56 to 325G.61 may be enforced by the attorney general under section
5.28 8.31.

5.29 (b) A seller is not subject to civil penalties under paragraph (a) if the seller has made a
5.30 good faith effort to comply with each applicable provision of sections 325G.56 to 325G.61.

6.1 Sec. 8. **EFFECTIVE DATE.**

6.2 This act is effective January 1, 2024, and applies to contracts entered into, modified, or
6.3 renewed on or after that date.