

**Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019**

HOUSE BILL NO. 1195
(Representatives Keiser, D. Ruby)

AN ACT to create and enact section 51-07-30 and chapter 51-37 of the North Dakota Century Code, relating to customer contract clauses and the use of certain marketing practices involving automatic renewal; to provide a penalty; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 51-07-30 of the North Dakota Century Code is created and enacted as follows:

51-07-30. Customer contract clauses - Billing examples - Enforcement - Penalty.

1. As used in this section:
 - a. "Customer" means a person that borrows, buys, leases, or obtains services or property under a service contract. The term does not include a government entity.
 - b. "Service contract" 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 personal property, real property, or services for valuable consideration.
 - c. "Terms and conditions" means general and special arrangements, provisions, requirements, rules, specifications, and standards that form an integral part of an agreement or contract.
2. If a service contract contains terms and conditions clauses, the service contract must be accepted by the customer for the service contract to be enforceable.
3. If a service contract contains a liquidated damages clause, the clause must provide specific examples of how any fees or charges will be calculated.
4. The attorney general may enforce this section. The attorney general, in enforcing this section, has the powers provided in chapter 51-15 and may seek the remedies in chapter 51-15. Each act in violation of this section constitutes a separate violation of chapter 51-15. The remedies, duties, prohibitions, and penalties of this section are not exclusive and are in addition to all other causes of action, remedies, and penalties in chapter 51-15, or otherwise provided by law.

SECTION 2. Chapter 51-37 of the North Dakota Century Code is created and enacted as follows:

51-37-01. Definitions.

As used in this chapter:

1. "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. "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.

51-37-02. Use of automatic renewal.

1. A person that sells or offers to sell merchandise 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 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 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.

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
3. A bank, bank holding company, credit union, or other financial institution or trust company regulated under title 6.

51-37-04. Remedies.

An agreement for sale of merchandise in violation of this chapter is unenforceable and void. If a person sends merchandise as a result of an automatic renewal of agreement without complying with the requirements of section 51-37-02 or sends merchandise after a buyer undertook an affirmative act to cancel or otherwise avoid charges, the merchandise 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.

51-37-05. Enforcement - Powers - Remedies - Penalty.

The attorney general may enforce this chapter. The attorney general, in enforcing this chapter, has the powers provided in chapter 51-15 and may seek the remedies in chapter 51-15. Each act in violation of this chapter constitutes a separate violation of chapter 51-15. The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties in chapter 51-15, or otherwise provided by law.

51-37-06. Private enforcement.

A person aggrieved by a violation of this chapter may bring an action to enjoin the violation or for restitution, or both. The court may award the plaintiff costs, expenses, and reasonable attorney's fees. This section does not limit any other claims the plaintiff may have against a seller subject to this chapter.

SECTION 3. APPLICATION. This Act applies to contracts entered after July 31, 2019.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1195.

House Vote: Yeas 90 Nays 4 Absent 0

Senate Vote: Yeas 45 Nays 0 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2019.

Approved at _____ M. on _____, 2019.

Governor

Filed in this office this _____ day of _____, 2019,

at _____ o'clock _____ M.

Secretary of State