

ASSEMBLY, No. 2462

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 3, 2020

Sponsored by:

Assemblyman DANIEL R. BENSON

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**Assemblymen Danielsen, Holley, Assemblywomen Timberlake, Jimenez,
Assemblyman Freiman, Assemblywomen Mosquera, Downey, Swain and
Assemblyman Tully**

SYNOPSIS

Establishes notification standards for certain service contracts with automatic renewal.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 7/30/2020)

1 AN ACT concerning service contracts and supplementing P.L.1960,
2 c.39 (C.56:8-1 et seq.).

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. As used in this act:

8 “Automatic renewal provision” means a provision under which a
9 service contract is renewed for a specified period of more than one
10 month if: (1) the renewal causes the service contract to be in effect
11 more than six months after the day of the initiation of the service
12 contract; and (2) the renewal is effective unless the consumer gives
13 notice to the seller of the consumer’s intention to terminate the
14 service contract.

15 “Consumer” means a natural person who buys other than for
16 purposes of trade any tangible personal property that is distributed
17 in commerce and that is normally used for personal, family, or
18 household purposes and not for business or research purposes.

19 “Propane gas marketer” means a person engaged primarily in the
20 sale of odorized liquefied petroleum gas to the ultimate consumer or
21 to a retail liquefied petroleum gas dispenser, and includes the owner
22 or operator of a bulk plant.

23 “Seller” means any natural person, firm, partnership, company,
24 corporation, association, or other similar legal entity engaged in
25 commerce that sells, leases, or offers to sell or lease any service to a
26 consumer pursuant to a service contract.

27 “Service contract” means a written contract for the performance
28 of service, maintenance, or repair over a fixed period of time or for
29 a specified duration in connection with any real property or that
30 provides a benefit to any real property.

31 “Warranty” means a warranty made solely by the manufacturer,
32 importer, or seller of property or services without consideration,
33 that is incidental to, and not negotiated or separated from, the sale
34 of the property or services, that guarantees indemnity for defective
35 materials, parts, mechanical or electrical breakdown, labor, or
36 workmanship, or provides other remedial measures, including repair
37 or replacement of the property or repetition of services.

38

39 2. a. Any seller that sells, leases or offers to sell or lease any
40 service to a consumer pursuant to a service contract that has an
41 automatic renewal provision shall disclose the automatic renewal
42 provision clearly and conspicuously in the contract or contract
43 offer.

44 b. Any seller that sells or offers to sell any service to a
45 consumer pursuant to a service contract the term of which is a
46 specified period of 12 months or more and that automatically

1 renews for a specified period of more than one month, unless the
2 consumer cancels the contract, shall provide the consumer with
3 written or electronic notification of the automatic renewal
4 provision. Notification shall be provided to the consumer not less
5 than 30 days nor more than 60 days before the cancellation deadline
6 pursuant to the automatic renewal provision. This notification shall
7 disclose clearly and conspicuously:

8 (1) That unless the consumer cancels the contract the contract
9 will automatically renew; and

10 (2) Methods by which the consumer may obtain details of the
11 automatic renewal provision and cancellation procedure, whether by
12 contacting the seller at a specified telephone number or address, by
13 referring to the contract, or by any other method.

14 c. As part of the seller's routine business practice, where an
15 error has caused the failure to comply with the provisions of this
16 section, the unearned portion of the contract subject to the
17 automatic renewal provision shall be refunded as of the date on
18 which the seller is notified of the error.

19 d. The seller shall provide written or electronic notification to
20 the consumer not less than 30 days nor more than 60 days before
21 any change in the procedures required of the consumer to cancel the
22 automatic renewal provision.

23

24 3. The following shall be exempt from the provisions of this
25 act:

26 a. a warranty;

27 b. a service contract on tangible property if the tangible
28 property for which the service contract is sold has a purchase price
29 of \$250 or less, excluding sales tax;

30 c. a service contract with a bank, trust company, savings bank,
31 savings and loan association, credit union, insurance company, or
32 health maintenance organization organized under the laws of any
33 state or the United States;

34 d. a service contract issued, offered, or sold:

35 (1) by a cable, electric, gas, telecommunication, or water public
36 utility regulated by the Board of Public Utilities, by a propane gas
37 marketer, by a person providing central heating and air conditioning
38 services, or by a New Jersey-licensed burglar alarm or fire alarm
39 business which provides integrated security and life safety systems
40 and which may be required to maintain alarm system compliance,
41 on an ongoing basis, pursuant to applicable statutory or regulatory
42 requirements or insurance company standards; or

43 (2) to any person other than a consumer;

44 e. except as provided in subsection b. of section 5 of this act, a
45 service contract containing a provision allowing the consumer to
46 cancel the service contract at any time, if the service contract

1 permits the consumer to cancel: by telephone; in writing, by mail;
2 or by email. In order to be exempt under this subsection, the
3 service contract shall make each method of cancellation available to
4 a consumer and only shall require a consumer to cancel by one
5 method; and

6 f. news media, to the extent that the news media accept or
7 publish any advertising that falls within the scope of this act.
8

9 4. a. This act shall not limit rights or remedies available to a
10 consumer under any other law.

11 b. If a seller does not comply with the provisions of this act,
12 the automatic renewal provision shall be void and unenforceable
13 and the seller shall refund the consumer for the unearned portion of
14 the automatically renewed service contract.
15

16 5. a. Except as provided in subsection b. of this section, a
17 violation of section 2 of this act shall be an unlawful practice and a
18 violation of P.L.1960, c.39 (C.56:8-1 et seq.).

19 b. A seller of a service contract with an automatic renewal
20 provision that allows a consumer to cancel the service contract at
21 any time during the contract and provides proper notification to a
22 consumer pursuant to subsections a., b., and d. of section 2 of this
23 act shall not be subject to the penalties set forth in subsection a. of
24 this section if the seller refunds the consumer the unearned portion
25 of the contract subject to the automatic renewal provision.
26

27 6. This act shall take effect on the first day of the third month
28 next following the date of enactment, and shall apply to service
29 contracts entered into on or after that date.
30

31

32

33 STATEMENT

34

35 This bill establishes notification standards regarding service
36 contracts which contain automatic renewal provisions.

37 A service contract is defined to mean a written contract for the
38 performance of service, maintenance, or repair over a fixed period
39 of time in connection with real property. A service contract does
40 not include a warranty offered by a manufacturer, importer, or seller
41 of property or services that is incidental to the sale of the property
42 or service. Excluded from the bill's provisions are:

- 42 • a warranty;
- 43 • service contracts on tangible property valued under \$250;
- 44 • service contracts offered by certain financial institutions,
45 certain entities regulated by the Board of Public Utilities,
46 propane gas marketers, persons providing central heating

- 1 and air conditioning services; and New Jersey-licensed
2 burglar alarm or fire alarm businesses which provide integrated
3 security and life safety systems and may be required to
4 maintain alarm system compliance, on an ongoing basis,
5 pursuant to applicable statutory or regulatory requirements or
6 insurance company standards;
- 7 • service contracts containing a provision allowing the consumer
8 to cancel the service contract at any time, if the service contract
9 permits the consumer to cancel: (1) by telephone; (2) in
10 writing, by mail; or (3) by email. In order to be exempt under
11 this paragraph, the service contract is to make each method of
12 cancellation available to a consumer and only require a
13 consumer to cancel by one method; and
 - 14 • news media, to the extent that the news media accept or publish
15 any advertising that falls within the scope of the bill.

16 Specifically, the bill provides that if a service contract contains
17 an automatic renewal provision for a specified period of more than
18 one month, the seller is required to disclose the automatic renewal
19 provision clearly and conspicuously in the contract or contract
20 offer. Additionally, if the service contract is for 12 months or
21 longer, and the renewal is for a period of one month or longer, the
22 seller is required to provide either written or electronic notification
23 to the consumer at least 30 days but not more than 60 days prior to
24 the cancellation deadline provided in the contract. This notification
25 would indicate methods by which the consumer may obtain details
26 of the automatic renewal provision and cancellation procedure and
27 also disclose that a contract will automatically renew unless the
28 consumer cancels it.

29 The bill also requires the seller to notify the consumer of any
30 change in the procedures required to cancel the automatic renewal.

31 If an error has caused the seller to fail to comply with the
32 provisions of the bill, the unearned portion of the contract subject to
33 the automatic renewal provision would be refunded as of the date
34 on which the seller is notified of the error. An automatic renewal
35 provision would be void and unenforceable if the notification
36 requirements stipulated in the bill are not met. The bill requires a
37 seller to refund a consumer for the unearned portion of the
38 automatically renewed service contract if the service contract is
39 void and unenforceable as a result of the seller not complying with
40 the bill's provisions.

41 A violation of the bill's provisions constitutes an unlawful
42 practice under the consumer fraud act. An unlawful practice is
43 punishable by a monetary penalty of not more than \$10,000 for a
44 first offense and not more than \$20,000 for any subsequent offense.
45 Additionally, a violation can result in cease and desist orders issued
46 by the Attorney General, the assessment of punitive damages, and

1 the awarding of treble damages and costs to the injured. However,
2 the bill provides that the consumer fraud act penalties would not be
3 imposed if a seller of a service contract with an automatic renewal
4 provision allows a consumer to cancel the service contract at any
5 time during the contract, provides proper notification to the
6 consumer, and refunds the unearned portion of the contract subject
7 to the automatic renewal provision.