
THIRD READING

Bill No: SB 1428
Author: Hernandez (D)
Introduced: 5/10/16
Vote: 21

SENATE JUDICIARY COMMITTEE: 4-2, 5/3/16
AYES: Jackson, Leno, Monning, Wieckowski
NOES: Moorlach, Anderson
NO VOTE RECORDED: Hertzberg

SUBJECT: Online contracts

SOURCE: Author

DIGEST: This bill requires that businesses offering automatic renewal or continuous service offers provide an email address or option on their Internet Web Site for the purpose of communicating the consumer's decision to not renew the contract or service.

ANALYSIS:

Existing law:

- 1) Establishes requirements governing automatic purchase renewals and states the Legislature's intent to end the practice of ongoing charging of consumer accounts without the consumer's explicit consent. (Bus. & Prof. Code Sec. 17600 et seq.)
- 2) Prohibits a business making an automatic renewal or continuous service offer from doing any of the following:
 - failing to present the terms in a clear and conspicuous manner before the subscription or purchasing agreement is fulfilled, as specified;

- charging the consumer's credit or debit card or the consumer's account with a third party for an automatic renewal or continuous service without first obtaining the consumer's affirmative consent; and
 - failing to provide an acknowledgment that includes the automatic renewal or continuous service offer terms, cancellation policy, and information regarding how to cancel, as specified. (Bus. & Prof. Code Sec. 17602(a).)
- 3) Requires a business making an automatic renewal or continuous service offer to provide a toll-free telephone number, electronic mail address, or other cost-effective, timely, and easy-to-use mechanism for cancellation, as specified. (Bus. & Prof. Code Sec. 17602(a).)
- 4) Exempts certain services and businesses from the above provisions, including:
- a business or affiliate that is regulated by the California Public Utility Commission, the Federal Communications Commission, or the Federal Energy Regulatory Commission;
 - an entity regulated by the Department of Insurance;
 - alarm company operators;
 - licensed banks and bank holding companies; and
 - service contract sellers and service contract administrators regulated by the Bureau of Electronic and Appliance Repair.
- 5) Provides for the modification and cancellation of contracts. (Civ. Code Sec. 1697 et seq.)

This bill:

- 1) Requires that businesses making automatic renewal or continuous service offers shall provide an electronic mail address or option on their Internet Web site for the purpose of a consumer to communicate to the business his or her decision to not renew the subscription or purchasing agreement.
- 2) Requires the business to, within 24 hours, notify the consumer of receipt of the communication, and requires that the business honor the consumer's decision to not renew the contract or service.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 5/11/16)

None received

OPPOSITION: (Verified 5/11/16)

California Chamber of Commerce
Direct Marketing Association

ARGUMENTS IN SUPPORT: The author writes:

Current law establishes that companies must provide a toll free number, email, or other “easy method” to cancel contracts. [...] There have been numerous news stories that reference customers who must spend hours on the phone with customer service agents just to simply cancel service. While these are egregious examples, even spending short amounts of time having to navigate the system of customer service can be burdensome to someone who is solely looking to cancel. This bill seeks to address this problem by providing an online cancellation method, which will be good for consumers and potentially allow companies to provide better customer support by alleviating some call volume.

The bill seeks to allow consumers a means to cancel services online. Currently, it targets automatic renewal contracts and states that if allowed to sign up online, then a similar means of cancellation should be provided to consumers.

ARGUMENTS IN OPPOSITION: A coalition, in opposition to the prior version of this bill, wrote, “Clearly, direct contact with retailers or service providers – whether in person or through a phone call – prior to cancellation may be helpful to consumers, not harmful. If companies or service providers are not clear or are combative – as in the case of the few notorious examples – there is ample law already to set them straight, making **SB 1428** unnecessary.”

That coalition removed its opposition with the adoption of the amendments taken in the Senate Judiciary Committee, with the exception of the Direct Marketing Association and the California Chamber of Commerce, which both remain opposed.

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