

HOUSE BILL NO. 1195

Introduced by

Representatives Keiser, D. Ruby

1 A BILL for an Act to create and enact section 51-07-30 and chapter 51-37 of the North Dakota
2 Century Code, relating to consumer contract clauses and the use of certain marketing practices
3 involving automatic renewal; to provide a penalty; and to provide for application.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

7 **51-07-30. Consumer contract clauses - Billing examples - Enforcement - Penalty.**

8 1. As used in this section:

9 a. "Consumer" means an individual who borrows, buys, leases, or obtains services
10 or property under a consumer contract.

11 b. "Consumer contract" means a written agreement between a consumer and a
12 party acting in the usual course of business, made primarily for personal, family,
13 or household purposes, in which a consumer borrows, buys, leases, or obtains
14 personal property, real property, or services for valuable consideration.

15 2. If a consumer contract contains a condition or terms clauses, each clause must be
16 initialed by the consumer for the clause to be enforceable.

17 3. If a consumer contract contains a liquidated damages clause, the clause must provide
18 specific examples of how any fees or charges will be calculated.

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

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

3 **51-37-01. Definitions.**

4 As used in this chapter:

5 1. "Automatic renewal" means a plan or arrangement in which a paid subscription or
6 purchasing agreement is automatically renewed at the end of a definite period for a
7 subsequent period.

8 2. "Clear and conspicuous" means in a larger type than the surrounding text, in
9 contrasting type, font, or color to the surrounding text of the same size, or set off from
10 the surrounding text of the same size or symbols or other marks, in a manner that
11 clearly calls attention to the language and makes the language readily apparent,
12 readable, and understandable to the person to which the language is disclosed. In the
13 case of an audio disclosure, "clear and conspicuous" means in a volume and cadence
14 sufficient to be readily audible and understandable. A statement that contradicts or is
15 inconsistent with any other information with which the statement is presented is not
16 clear and conspicuous.

17 **51-37-02. Use of automatic renewal.**

18 1. A person that sells or offers to sell merchandise for a specified period under an
19 agreement containing a provision for automatic renewal shall:
20 a. Present the terms of the automatic renewal offer in a clear and conspicuous
21 manner before a subscription or purchasing agreement is fulfilled and in proximity
22 to the offer;
23 b. Provide an acknowledgment that includes the terms of the automatic renewal
24 offer and information regarding how to cancel in a manner which is capable of
25 being retained by the buyer; and
26 c. Provide a cost-effective, timely, and simple procedure for cancellation which must
27 be described in the acknowledgment required by subdivision b.
28 2. A person that sells or offers to sell merchandise for a specified period under an
29 agreement that contains a provision for automatic renewal for a period of more than
30 thirty-one days at the end of the time period specified in the agreement shall provide a
31 clear and conspicuous written notice via registered mail to the buyer stating the buyer

- 1 may cancel the contract and avoid automatic renewal. The notice must include the
2 procedure for canceling and must be given at least thirty days and not more than sixty
3 days before the date upon which the agreement will be renewed or the expiration of
4 the period for cancellation, whichever is earlier.
- 5 3. If there is a material change in the terms of an agreement that contains a provision for
6 automatic renewal, the seller shall provide the buyer with clear and conspicuous notice
7 of the material change and provide information regarding how to cancel in a manner
8 which is capable of being retained by the buyer.
- 9 4. A person that sells or offers to sell merchandise for a specified period under an
10 agreement that contains a provision for automatic renewal may not make or submit
11 any charge to a buyer's credit card, debit card, bank account, account with a third
12 party, or other financial account, unless the person has complied with the
13 requirements of subsection 1 and obtained the buyer's affirmative consent to the
14 agreement containing the terms of the automatic renewal.
- 15 5. The renewal period in a provision for automatic renewal of an agreement for sale of
16 merchandise may not exceed twelve months.

17 **51-37-03. Exceptions.**

18 This chapter does not apply to:

- 19 1. The sale of insurance regulated under title 26.1;
20 2. The sale of public utilities regulated under title 49 or the federal communications
21 commission; or
22 3. A bank, bank holding company, credit union, or other financial institution or trust
23 company regulated under title 6.

24 **51-37-04. Remedies.**

25 An agreement for sale of merchandise in violation of this chapter is unenforceable and void.

26 If a person sends merchandise as a result of an automatic renewal of agreement without
27 complying with the requirements of section 51-37-02 or sends merchandise after a buyer
28 undertook an affirmative act to cancel or otherwise avoid charges, the merchandise is
29 considered to be an unconditional gift to the buyer who may dispose of the gift in any manner
30 the buyer sees fit without any obligation to the person.

1 **51-37-05. Enforcement - Powers - Remedies - Penalty.**

2 The attorney general may enforce this chapter. The attorney general, in enforcing this
3 chapter, has the powers provided in chapter 51-15 and may seek the remedies in chapter
4 51-15. Each act in violation of this chapter constitutes a separate violation of chapter 51-15.
5 The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in
6 addition to all other causes of action, remedies, and penalties in chapter 51-15, or otherwise
7 provided by law.

8 **51-37-06. Private enforcement.**

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

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