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FISCAL IMPACT REPORT

ORIGINAL DATE 02/09/11

SPONSOR Herrell LAST UPDATED _____ HB 144

SHORT TITLE Automatic Renewals in Some Contracts SB _____

ANALYST Graeser

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI	Recurring	NA

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
Regulation and Licensing Department (RLD)

SUMMARY

Synopsis

House Bill 144 prohibits any contract for services provided to a consumer, for or on the consumer's residential property, to automatically renew for a term greater than one month. A violation of this prohibition would constitute an unfair or deceptive trade practice.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

None

SIGNIFICANT LEGAL ISSUES

The AGO points out the following, "...this bill does not raise significant legal issues, but if HB 144 constitutes a new section of the Unfair Practices Act, Section 57-12-1 through 57-12-22, this automatic renewal prohibition, for clarity purposes, should also be included in the definition section for unfair or deceptive practices at Section 57-12-2D."

SIGNIFICANT ISSUES

This bill was apparently modeled on similar legislation enacted in 2004 in Connecticut and in 2009 in Florida.

The fiscal note from Florida explained:

Contracts with automatic renewal provisions are designed to continuously renew unless a party takes an action to cancel the contract. The burden is generally placed on the consumer, who may not always notice the provisions, to terminate the contract. Therefore, consumers may ultimately contract for a period longer than anticipated. Federal law provides protection against unfair or deceptive contract provisions under the Federal Trade Commission Act (FTC Act), and state law provides similar protection under the Florida Deceptive and Unfair Trade Practices Act (FDUTP Act); however, state law does not explicitly regulate the notification of automatic renewal provisions to consumers.

The bill makes automatic renewal provisions void and unenforceable if any notification requirements are not met, except under certain circumstances. It also provides exemptions from the notification requirements for: financial institutions; health studios; insurance providers; warranty associations; electric utilities; private companies providing certain local or municipal services; and certain types of healthcare organizations and programs [but not telecommunications companies].

The Connecticut bill provides similar consumer protection in a different way:

Any person, firm, partnership, association or corporation that sells or offers to sell any products or services used primarily for personal, family or household purposes pursuant to a trial offer or at an introductory rate that will change at the end of the introductory rate period, shall provide the recipient of such products or services with clear and conspicuous written notice that the recipient may cancel such products or services upon the expiration of such trial offer or introductory rate period. ... The provisions of this subsection shall not apply to (1) any trial offer or introductory rate period provided by a public service company, ... or any certified telecommunications provider. ... (c) No person, firm, partnership, association or corporation shall sell or offer to sell any products or services used primarily for personal, family or household use for a period of time exceeding twelve months pursuant to a written contract. No contract for the sale of such products or services shall provide for the automatic renewal of the contract for more than thirty-one days for each renewal. (d) The provisions of this section shall not apply to any banking, insurance or securities product or service...

Unlike the Connecticut law, HB-144 does not provide exceptions for public service or telecommunications companies who provide services “for or on the consumer’s residential property.” By inference, then, the primary impact of this bill might be to allow individual consumers to escape from long-term mobile phone contracts. It is not certain if invoking the remedies under state law against unfair or deceptive trade practice would include voiding a penalty clause for early termination of a contract.

OTHER SIGNIFICANT ISSUES

State law provides remedies and recompense against individuals who engage in unfair or deceptive trade practices. Section 57-12-10 NMSA 1978 is the principal section dealing with remedies.

57-12-10. Private remedies. (2005)

A. A person likely to be damaged by an unfair or deceptive trade practice or by an unconscionable trade practice of another may be granted an injunction against it under the principles of equity and on terms that the court considers reasonable. Proof of monetary damage, loss of profits or intent to deceive or take unfair advantage of any person is not required. Relief granted for the copying of an article shall be limited as to the prevention of confusion or misunderstanding as to source.

B. Any person who suffers any loss of money or property, real or personal, as a result of any employment by another person of a method, act or practice declared unlawful by the Unfair Practices Act may bring an action to recover actual damages or the sum of one hundred dollars (\$100), whichever is greater. Where the trier of fact finds that the party charged with an unfair or deceptive trade practice or an unconscionable trade practice has willfully engaged in the trade practice, the court may award up to three times actual damages or three hundred dollars (\$300), whichever is greater, to the party complaining of the practice.

C. The court shall award attorney fees and costs to the party complaining of an unfair or deceptive trade practice or unconscionable trade practice if the party prevails. The court shall award attorney fees and costs to the party charged with an unfair or deceptive trade practice or an unconscionable trade practice if it finds that the party complaining of such trade practice brought an action that was groundless.

POSSIBLE QUESTIONS

Could this law be used to break cell phone contracts?

LG/bym