

# SENATE BILL REPORT

## SB 5507

---

As of February 13, 2017

**Title:** An act relating to the use of automatic renewal provisions in business contracts.

**Brief Description:** Concerning the use of automatic renewal provisions in business contracts.

**Sponsors:** Senators Zeiger, O'Ban, Liias, Fain and Saldaña.

**Brief History:**

**Committee Activity:** Commerce, Labor & Sports: 2/08/17.

**Brief Summary of Bill**

- Requires that for contracts after May 1, 2018, with automatic renewals or extensions for more than a month, a seller must provide a disclosure with the initial contract or include a disclosure in the contract in a conspicuous manner and get the customer's initials.
- Requires that for contracts with automatic renewals or extensions for more than a year and the deadline to decline is more than 60 days after May 1, 2018, the provision is not enforceable unless at least 15 days but not more than 60 days before the deadline to decline, a notice about the renewal or extension is provided.
- Prevents a requirement in a contract that a seller be permitted to match another's offer for contracts after May 1, 2018.
- Allows a customer to sue for damages.

---

### SENATE COMMITTEE ON COMMERCE, LABOR & SPORTS

**Staff:** Susan Jones (786-7404)

**Background:** When a person signs a contract, in most cases the person cannot change their mind and cancel. However, under both state and federal law, Washington consumers have the right to cancel a contract in some cases. Examples include under the Camping Resort Act, Credit Services Organization Act, Business Opportunity Fraud Act, Health Studio Services Act, Hearing Aid and Speech Services Law, Federal Trade Commission Regulation —3-business-day cancellation period on door-to-door sales of more than \$25, Retail

---

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Installment Plans, Washington's Commercial Telephone Solicitation Act, and Timeshare Regulation Act.

Some contracts may contain an automatic renewal clause which provides that at the end of the term of the contract, the contract term automatically renews for a subsequent time period, often for the same length of time as the initial term, unless either party gives the other party notice of termination within a certain time period before end of the current term. These automatic renewal clauses are often included in service, distribution, and supply contracts. Some states have laws restricting enforcement of these clauses unless certain requirements are met, including that conspicuous disclosure of the automatic renewal clause is provided in the contract and that a reminder notice is given prior to the expiration of the current contract term.

**Summary of Bill:** Renewal for More than One Month - Contracts after May 1, 2018. If a business contract that is entered into after May 1, 2018, provides that the contract will be automatically renewed or extended for an additional period unless the customer declines renewal or extension, and the duration of the additional period is more than one month, the seller must do one of the following:

- at the time the customer enters into the contract, present to the customer a form that includes the certain disclosures and obtain the customer's signature on the form; or
- include these disclosures in the contract in a conspicuous manner and obtain the customer's initials on the contract on a page where a disclosure appears.

The required disclosure must contain:

- a statement that the contract will be renewed or extended unless the customer declines renewal or extension;
- a statement indicating the duration of the additional contract period that would result from an automatic renewal or extension period;
- a statement indicating whether an increase in charges to the customer will apply upon an automatic renewal or extension;
- a description of action the customer must take to decline renewal or extension; and
- the date of the deadline for the customer to decline renewal or extension.

If a seller fails to comply, the automatic renewal or extension provision is unenforceable and the contract terminates at the end of the current contract term.

The required disclosures do not apply to a contract in effect on May 1, 2018, or to subsequent renewals of such a contract.

Renewal for More than One Year. If a business contract that has an initial term of more than one year provides that the contract will be automatically renewed or extended for an additional term of more than one year unless the customer declines renewal or extension and the deadline for the customer to decline renewal or extension of the contract is more than 60 days after May 1, 2018, the provision is not enforceable and the contract will terminate at the end of the current contract term unless the seller provides to the customer, at least 15 days but not more than 60 days before the deadline for the customer to decline renewal or extension, a written notice containing:

- a statement that the contract will be renewed or extended unless the customer declines renewal or extension;
- the deadline for the customer to decline renewal or extension;
- a description of any increase in charges to the customer that will apply after renewal or extension; and
- a description of action that the customer must take to decline renewal or extension.

The written notice must be given by:

- mailing a copy of the notice by US mail, first-class, to the customer at the customer's last known business address, unless the contract requires the customer to notify the seller by certified mail of the customer's intent to cancel;
- mailing a copy of the notice by registered or certified mail to the customer at the customer's last known business address;
- giving a copy of the notice personally to an owner, officer, director, or managing agent of the customer's business; or
- including the notice on the first page of a monthly invoice sent to the customer; notice must be prominently displayed in bold face type and in a type size no smaller than 12-point.

If the contract permits, the customer may use these methods to notify the seller that the customer declines renewal or extension of the contract by sending:

- a fax to the customer's last known fax number;
- an email message to the customer at the customer's last known email address; or
- via a recognized overnight courier service.

Restriction on Required Offer Matching. No business contract between a seller and a customer that is entered into, modified, or renewed after May 1, 2018, may require that the customer permit the seller to match any offer the customer receives from or makes to another seller for services to be provided after the end of the stated term of the contract or renewal period of the contract. A provision that violates this restriction is void and unenforceable.

Action for Damages. An action or counterclaim for damages against a seller may be brought by a customer:

- who has notified a seller that the customer declines renewal or extension of a business contract if the seller has failed to give the required notice and the seller has refused to terminate the contract; or
- where a seller has attempted to enforce an unenforceable provision.

If a seller who fails to give a customer a required notice subsequently receives notice that the customer declines renewal or extension and agrees to terminate the contract as of the date the customer notified the seller, the customer is responsible for charges before the date of notification. The customer may not bring an action against the seller, unless the seller's failure to provide the required notice was willful or malicious.

A customer who prevails in an action or counterclaim is entitled to damages in either an amount that equals twice the amount of the damages incurred by the customer; or an amount that equals twice the amount of the periodic payment specified in the contract or \$1,000,

whichever is less. The court must award a prevailing customer costs, including reasonable attorneys' fees.

However, a seller is not liable if the court finds either of the following:

- the seller has established and implemented written procedures for compliance, the seller's failure to comply, or the seller's attempt to enforce an unenforceable as not willful or malicious, and the seller properly paid a refund; or
- the customer requested, in writing, renewal or extension and the customer was aware of the renewal or extension terms.

Definitions are provided for the terms business contract, customer, and seller.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: Some people entered into a contract. After five years, they were just getting around to thinking about changing their provider but there was an evergreen clause in the contract. They were five days over the cancellation time. The contract required 30 days notice to cancel the contract. The company wouldn't let them out of it and it obligated them to another 5 year contract period. No one knew or remembered what was signed five years before. The companies need to notify somebody that these contracts are going to be automatically renewed and if you don't to renew it, this is how you cancel it.

**Persons Testifying:** PRO: Michael Stanzel, citizen.

**Persons Signed In To Testify But Not Testifying:** No one.