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Utah Creates New Consumer Protection Model for Auto-Renewal and Trial-Period Contracts

An automatic renewal (auto-renewal) clause within a contract grants sellers the right to automatically renew its provisions of services to consumers when the initial subscription term expires *unless* the consumer affirmatively cancels the subscriptions. This contractual framework is widely used, especially regarding services purchased online (e.g., consumer goods, magazines, credit monitoring services). They are also becoming more controversial and subject to greater scrutiny and regulation. Utah recently enacted House Bill (HB) 174, which requires businesses to provide advanced notice to consumers before auto-renewal becomes effective and imposes costly damages for violations. It provides similar requirements for "trial period" contracts. Companies should work with counsel to design an appropriate compliance strategy to address HB 174, and similar (and in some instances more stringent) requirements set forth in other state laws.

Utah's HB 174

On March 13, 2024, Utah Governor Spencer Cox signed HB 174 into law. Its provisions will become effective on January 1, 2025. The law regulates both "automatic renewal provisions" and "trial period offers."

HB 174 defines an "automatic renewal provision" as "a provision under a contract that is automatically renewed at the end of a definite, paid term for a subsequent, paid term that is longer than 45 days." Accordingly, in plain terms, HB 174 does not apply to contracts having auto-renewal clauses extending contracts at less than 45-day intervals, presumably because such short-term contracts give consumers multiple times to cancel their contracts during any given year.

Under HB 174, a "trial period offer" means an "offer to provide a period of time to sample or use a product or service without payment."

New Requirements for Auto-Renewal Contracts

HB 174 mandates that businesses that provide an individual with a product or service pursuant to a contract that includes an "automatic renewal provision" must furnish notice to the individual of the following:

- the renewal date;
- the total renewal cost; and,
- the options for cancellation of the contract.

This notice must be provided by the business to the individual at least 30 but not more than 60 days before the day on which the automatic renewal provision takes effect.

New Requirements for Trial Period Contracts

Under HB 174, a business that provides a consumer with a "trial period offer" must provide the consumer with notice of the following:

- the trial period offer's expiration date;
- the price to be charged for the product or service, or any further purchase obligations, after the expiration date; and,
- options for cancellation of the contract.

A business that uses these trail period offers must provide the consumer with this notice, at least three days before the day on which the period of time under the trial period offer expires.

Clear and Conspicuous Notice Requirements

The auto-renewal and trial period notices must be provided to consumers in a *clear* and *conspicuous* manner. This means that they must be in print, (i) in larger type than the surrounding text, (ii) in contrasting type, font, or color to the surrounding text of the same size, or (iii) in a manner set off from the surrounding text of the same size by symbols or other marks that clearly call attention to the language. Alternatively, this notice could be communicated to the consumer through audio, in a volume and cadence sufficient to be readily audible and understandable.

Exceptions

HB 174 includes important exceptions. For instance, it does not apply to business-to-business contracts, and focuses exclusively protecting individual consumers. It does not apply to insurance agencies or similar businesses regulated by Utah's insurance code or to banks and financial institutions regulated by federal law. It also does not apply to public utilities and certain types of service contracts (e.g., car repair services). In addition, HB 174 also does not apply to certain types of rental agreements or property management agreements.

Enforcement

HB 174 clearly states that any automatic renewal provision included in a contract that does not satisfy the law's requirements "is void," which can significantly limit an organization's ability to recover losses it may have incurred when providing its goods or services under the contract.

In addition, under HB 174, Utah's Division of Consumer Protection is given authority to enforce the law, which includes (but is not limited to) the ability to impose an administrative fine of up to $2,500 for *each violation* of the law. For businesses that have executed hundreds or thousands of contracts with their customers, these damages could be staggering if applied to each contract that violates the law. In certain limited circumstances, a court may also impose reasonable attorney fees, court costs, and investigative fees on businesses subject to enforcement actions.

Recommendations

Organizations that have auto-renewal and trial period-to term related clauses in their contracts should undertake several measures to ensure they are in compliance with HB 174 and other similar federal and state requirements such as:

- Reassess how their contracts are drafted to ensure they contain proper consumer protection-related clauses (e.g., notice disclaimers, font size).
- Identify what mechanism (e.g., email, mail) will be used to provide advanced, recurring notice to consumers to comply with HB 174, including how such mechanisms will be documented and validated.
- Address how the advanced, recurring notice under HB 174 will be drafted to ensure it is clear and conspicuous.
- Ensure that "opt-out" contractual processes are properly established, operational, and verifiable.
- Identify whether consumer agreements are subject to other similar consumer protection-related statutes and requirements, such as the FTC's Negative Option Rule, or consumer protection and automatic renewal laws enacted in California, Colorado, Connecticut, Delaware, Vermont, the District of Columbia, Florida, Georgia, Hawaii, Illinois, North Carolina, New Mexico, New York, and other states.

As noted above, auto-renewal and trial period-related clauses are both widely used and are subject to a higher level of scrutiny and regulation. Companies should note that several states provide additional and more stringent legal requirements for consumer contracts than those under HB 174. Accordingly, companies should work with counsel to design an appropriate compliance strategy to address HB 174, and other state laws.

FOR MORE INFORMATION

For more information, please contact:

Steven G. Stransky
216.566.5646
202.263.4126
Steve.Stransky@ThompsonHine.com
Certified Information Privacy Professional/Government (CIPP/G)
Certified Information Privacy Professional/United States (CIPP/US)

Jennifer N. Elleman
937.443.6927
Jennifer.Elleman@ThompsonHine.com

Julie D. Honor
312.998.4246
Julie.Honor@ThompsonHine.com