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Compliance Newsletter CONSUMER GOODS/HOME SERVICE

September 2023

Legislative Updates

The newsletters provide insight into newly introduced and updated legislation during the month. You should review each bill in its entirety to determine the impact and what actions are required, if any, to comply with states laws/regulations. Please note that not all the bills that are being actively pursued are represented in the newsletters.

California SB 814: Household Goods and Services

Legislative Update: Enrolled on September 14, 2023

This bill amends Sections 9812, 9814, and 9814.5 of the Business and Professions Code. Existing law requires that the Bureau of Home Goods and Services' director, by their own initiative, conduct spot check investigations of service dealers on a continuous basis. This bill adds that those spot checks shall occur no less than twice a year. The bill was also amended to add cellular devices to the definition of electronic set.

Delaware SB 125: Automatic renewal

Legislative Update: Passed by House on June 20, 2023

This bill makes technical corrections to various sections of the DE code including the automatic renewal law passed in 2021. The bill also adds that a contract offered online must include an online cancellation method. It also clarifies that a consumer may void a contract in violation of this section but is not required to. If this bill is enacted, it takes effect upon being signed into law.

Oregon HB 3243: Unlawful Trade Practices

Legislative Update: Failed in committee upon adjournment on June 25, 2023

This bill amends the current Oregon Unfair Trade Practices statute adding insurance to the current definition of real estate, goods and services covered under the Acts. The bill adds that a prosecuting attorney may not take action with respect to an act or practice relating to insurance that is unlawful unless the Director of the Department of Consumer and Business Services first requests the prosecuting attorney to take action.

Nevada AB 439: Automatic Renewal

Legislative Update: Vetoed by the Governor on June 16, 2023

This bill revises several chapters of the Nevada insurance code, revising the provisions governing contracts of insurance. Chapters 690C (Service Contracts) and 690D (GAP Waivers) are amended to state that no provision for arbitration contained in any service contract, contractual liability insurance policy, or GAP waiver delivered, issued for delivery, or renewed in this state is binding upon the named holder or any other person who makes a claim under the contract or policy.

Upcoming/Future Effective Dates

Connecticut HB 5314: Automatic Renewal

Effective Date: October 1, 2023

This bill is intended to require businesses that enter consumer agreements that contain an automatic renewal provision or continuous service provisions to provide consumer specific disclosures before entering into the agreement and allow for online termination. The bill also requires notice before any material change to an automatic renewal or continuous service provision. No business may charge for an automatic renewal without obtaining the consumer's "affirmative consent to such renewal or continuous consumer service." Online cancellation must be provided without any additional offline action required if the agreement was entered into online. The bill states that a consumer may be required to login to an account or enter authenticating information. Email is also permitted. Additionally, the bill creates a new section that would require businesses that bill electronically to provide paper copies to any consumer that requests it at no cost.

Montana HB 668: Service Contracts

Effective Date: October 1, 2023

This bill amends the Montana Code relating to service contracts by adding the MVPPA suite of products to the definition of service contract, including third-party EWU, and incorporates vehicle theft protection products to the current regulatory framework. Montana law currently requires service contracts providers comply with one of three financial assurance models: reimbursement insurance policy, funded reserve and security deposit, or parent company guarantee. The also contains some basic disclosure requirements consistent with the model act. There is no licensing or registration requirement in the statute and enforcement authority is granted to the Department of Justice.

Connecticut SB 1058: Consumer Protection

Effective Date: October 1, 2023

This bill is a comprehensive consumer protection bill, that includes an expansive update to its telemarketing law. Telemarketers will be prohibited from calling consumers without express written consent (EWC), even those **not** on a Do-Not-Call (DNC) list. This bill has the following exemptions, including calls:

- In response to a request or inquiry (would revert to Federal standard of 3 months)
- To a consumer who has purchased from you during the previous 12 months
- To existing customers who have not previously opted out
- As part of a business-to-business contact
- Relative to debt collection
- From nonprofits to consumers if the consumer is a listed member of the organization

Nevada SB 436: Network Adequacy

Effective Date: October 1, 2023

This bill amends Chapter 690C of the Nevada Revised Statutes regarding Service Contracts, specifically the new section that reads:

"1. A provider shall maintain or contract for an adequate network or workforce of employees or contractors that is sufficient to carry out its obligations to a holder under a service contract in a timely and reasonable manner,

including, without limitation, the duty to repair, replace or perform maintenance on goods that are described in the service contract.”

“2. If a provider fails to comply with the provisions of subsection 1, in addition to any other remedy available to a holder, a holder is entitled to reimbursement from the provider for any reasonable and necessary costs incurred by the holder to repair, replace or perform maintenance on the goods.”.

New Hampshire SB 31: Service Contracts

Effective Date: October 1, 2023

The bill amends the current insurance law by adding to the section regarding third party administrators to include an alternative to providing a positive net worth. Additionally, it would still exempt licensed insurers from the various requirements to do business for service guarantee providers, but not registration.

Oklahoma SB 593: Motor Vehicles

Effective Date: November 1, 2023

This bill prohibits manufacturer from denying a claim or implementing chargeback against auto dealer for failure of purchaser of new car to comply with title and registration law.

Georgia HB 528: Online Automatic Renewal Transparency

Effective Date: January 1, 2024

This bill is titled “Georgia Online Automatic Renewal Transparency Act” and is added to Article 15 of Chapter 1 of Title 10 relating to deceptive or unfair practices. This bill regulates certain acts and practices of businesses that offer paid subscriptions or purchasing agreements online subject to automatic renewals. The bill requires a business to provide the option for online cancellations of a continuous service in the form of: (1) clear and conspicuous direct link or button which may be located either within a customer account or profile or within the device or user setting; or (2) By an immediately accessible cancellation email formatted to not require additional steps or information.

Illinois SB 328: Service Contract Automatic Renewal

Effective Date: January 1, 2024

This bills amends the Automatic Contract Renewal Act and provides that the clear and conspicuous disclosure of an Reinserts the provisions of the introduced bill with the following changes: Provides that any person, firm, partnership, association, or corporation that sells or offers to sell any products or services to a consumer pursuant to a contract, where such contract automatically renews unless the consumer cancels the contract, shall (i) disclose the automatic renewal offer terms clearly and conspicuously in the contract before the subscription or purchasing agreement is fulfilled and in visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to the request for consent to the offer; (ii) not charge the consumer's credit or debit card or other payment mechanism for an automatic renewal service without first obtaining the consumer's consent to the contract containing the automatic renewal offer terms; (iii) provide an acknowledgment that includes the automatic renewal offer terms, cancellation policy, and information regarding how to cancel, which may be accomplished by linking to a resource that provides instructions that account for different platforms and services, in a manner that is capable of being retained by the consumer; and (iv) if the offer includes a free gift or trial, disclose how to cancel the contract, which may be accomplished by linking to a resource that provides instructions that account for different platforms and services, and allow the consumer to cancel before the consumer pays for the good or services. Provides that the Act does not apply to a contract for the sale of any product or service by a provider that is subject to Article XXII of the Public Utilities Act. Provides that the Act does not apply to a party regulated by the Director of the Department of Insurance or an affiliate of such party. Provides that the Act does not apply to a party, or an affiliate of the party, regulated by the Director of the Department of Insurance. Defines "automatic renewal offer terms".

Kentucky SB 30: Automatic Renewals

Effective Date: January 1, 2024

This bill creates new sections of KRS Chapter 365 to define "automatic renewal," "automatic renewal offer terms," "clear and conspicuous," "consumer," and "continuous service,;" require businesses to present automatic renewal or continuous service offer terms clearly and conspicuously to consumers before purchase; require businesses to obtain the consumer's consent before charging the consumer; require businesses to provide an acknowledgment that includes the terms, the cancellation policy, and information regarding how to cancel in a manner that can be retained by the consumer; require businesses to provide consumers with an easy-to-use mechanism for cancellation; require businesses to provide users who purchase in one medium the opportunity to terminate in the same medium, including online termination; require businesses to provide a notice regarding material term changes prior to implementation; exempt certain businesses and services; allow the Attorney General to bring an action for injunctive and monetary relief; and exempt contracts entered into prior to the effective date.

Tennessee HB 136/SB 1449: Automatic Renewal Exemptions

Effective Date: January 1, 2024

This bill amends the existing automatic renewal law TC § 47-18-133 by adding exemptions for affiliates of a business licensed under state insurance laws and a person or entity providing certain service contracts as defined in § 56-2-126, or an affiliate of the person or entity. As introduced, exempts an affiliate of a business licensed under state insurance laws and a person or entity providing certain service contracts, or an affiliate of the person or entity, from requirements governing businesses that make automatic renewal offers or continuous service offers to consumers.

California SB 793 – Privacy Notice

Effective Date: January 1, 2024

This bill would codify the requirement to annually provide a clear and conspicuous privacy notice to customers. The bill would state that an **insurance** institution or agent is in compliance with this requirement if specified criteria are met, including informing the consumer of the right to submit a written request to access, correct, amend, or delete their personal information. The bill would authorize the notice to be combined with the notice provided in connection with specified **insurance** transactions.

Indiana SB 005: Consumer Data Protection

Effective Date: January 1, 2026

This bill establishes a new article in the Indiana Code concerning consumer data protection, to take effect January 1, 2026. Sets forth the following within the new article: (1) Definitions of various terms that apply throughout the article. (2) Exemptions from the bill's requirements concerning the responsibilities of controllers of consumers' personal data. (3) The rights of an Indiana consumer to do the following: (A) Confirm whether or not a controller is processing the consumer's personal data. (B) Correct inaccuracies in the consumer's personal data that the consumer previously provided to a controller. (C) Delete the consumer's personal data held by a controller. (D) Obtain a copy or representative summary of the consumer's personal data that the consumer previously provided to the controller. (E) Opt out of the processing of the consumer's personal data for certain purposes. (4) The responsibilities of controllers of consumers' personal data. (5) The roles of controllers and processors with respect to a consumer's personal data. (6) Requirements for data protection impact assessments by controllers of consumers' personal data. (7) Requirements for processing de-identified data or pseudonymous data. (8) Limitations as to the scope of the new article. (9) The authority of the attorney general to investigate and enforce suspected or actual violations of the new article. (10) The preemption of local rules, regulations, and laws regarding the processing of personal data. Allows the attorney general to publish certain resources on the attorney general's website.

LEGISLATIVE SESSION STATUS

States In Regular Session:

District of Columbia, Massachusetts, Michigan, North Carolina, Ohio, Wisconsin

States In Recess:

New Jersey, Pennsylvania

States with Upcoming Session Dates:

November 15: Massachusetts - Adjourn

November 16: Wisconsin - Adjourn

December 4: California - Convene

December 21: Michigan - Adjourn

December 31: Ohio – Adjourn

FEDERAL UPDATES

The House and Senate are currently in session, focused on addressing several crucial agenda items. With government funding set to expire on September 30th, the appropriations fight is taking center stage as the House and Senate remain far apart on Fiscal Year (FY24) spending topline.

House Speaker Kevin McCarthy has reiterated his commitment to moving a short-term continuing resolution to ensure continuity of government funding while larger negotiations over FY24 spending priorities continue. However, he faces opposition from members of the Freedom Caucus, who continue to call for spending cuts below funding levels negotiated in the Fiscal Responsibility Act – upwards of \$100 billion – to bring topline to 2022 spending levels.

Meanwhile, Senate Majority Leader Chuck Schumer has run into procedural issues in the Senate that have delayed consideration of the Senate's first FY24 appropriations minibuss, which includes the Agriculture-FDA, Military Construction-Veterans Affairs, and Transportation-Housing and Urban Development funding bills.

Further complicating the negotiation, Congress is also considering the White House request for a \$40 billion emergency spending package, which includes \$24 billion for Ukraine aid, \$12 billion for the Federal Emergency Management Agency (FEMA), and \$4 billion towards border security this fall. Given the tight timeline, the House, Senate, and White House have less than two weeks to negotiate the White House's supplemental funding request and to pass some form of government appropriations to avoid a government shutdown.