

**International
Health, Racquet &
Sportsclub Association**

The Honorable Dylan Roberts
Chair, House Committee on Business Affairs and Labor
Room HCR 0112, Colorado State Capitol,
Denver, CO 80203-1784

April 5, 2021

RE: House Bill 21-1239 *Protections In Consumer Sales Transactions*

Dear Members of the Committee on Business Affairs and Labor,

My name is Jeff Perkins. I am Assistant Vice President of Government Relations for the International Health, Racquet & Sportsclub Association (IHRSA), the leader in education, research and advocacy for the health and fitness industry, representing health clubs and fitness businesses worldwide, as well as in Colorado. I am writing in regards to House Bill 21-1239 and to express our concerns about the financial and administrative burdens that the legislation could pose to health clubs, including those smaller health club businesses.

IHRSA supports contract provisions that allow for automatic continuation of service at the end of the original term on a month-to-month, at-will basis, as it offers consumers increased choice and flexibility. Such agreements are common in the health club industry, which offers a range of choices for consumers.

H.B.21-1239 proposes to regulate automatic renewal offers and continuous service offers by requiring all businesses to obtain the consumer's affirmative consent to the automatic renewal and provide a notice 30 to 60 days prior to the initial automatic renewal and for each subsequent renewal, if the initial term of the contract is at least 12 months.

Requiring individual and frequent notification of automatic renewals would pose an administrative and financial challenge to health clubs in processing numerous renewal notifications, especially for clubs that are smaller businesses. Since not all health club contracts renew on the same day (e.g. the 1st of the month or 15th of the month), requiring clubs to calendar and track each renewal date as it corresponds to each consumer is especially time-consuming. The additional staff-time necessary to track automatic renewal dates and notify consumers would likely increase operating expenses for clubs and create service interruptions for consumers.



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Thank you for considering our concerns. We welcome any comments and questions you might have to Jeff Perkins, assistant vice president of government relations, at jdp@ihrsa.org or (617) 951-0055.

Sincerely,
Jeff Perkins



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Health, Racquet &
Sportsclub Association**

The Honorable Dylan Roberts
Chair, House Committee on Business Affairs and Labor
Room HCR 0112, Colorado State Capitol,
Denver, CO 80203-1784

April 15, 2021

RE: House Bill 21-1239 *Protections In Consumer Sales Transactions*

Dear Members of the Committee on Business Affairs and Labor,

My name is Jeff Perkins. I am Assistant Vice President of Government Relations for the International Health, Racquet & Sportsclub Association (IHRSA), the leader in education, research and advocacy for the health and fitness industry, representing health clubs and fitness businesses worldwide, as well as in Colorado. I am writing in regards to House Bill 21-1239 and to express our concerns with a number of provisions of the bill and the financial and administrative burdens that the legislation could pose to fitness businesses still contending with the effects of COVID-19 on the health and fitness industry.

IHRSA supports contract provisions that allow for automatic continuation of service at the end of the original term on a month-to-month, at-will basis, as it offers consumers increased choice and flexibility. Such agreements are common in the health club industry, which offers a range of choices for consumers.

H.B.21-1239 proposes to regulate automatic renewal offers and continuous service offers by requiring all businesses to obtain the consumer's affirmative consent to the automatic renewal and provide a notice 30 to 60 days prior to the initial automatic renewal and for each subsequent renewal, if the initial term of the contract is at least 12 months.

We are particularly concerned by Section 6, which amends Colorado Revised Statute 6-1-732. This provision is unclear and subject to multiple possible interpretations, including making all automatically renewing contracts cancellable after six months. Section 6 provides:

“(6) A contract or stipulation with an initial term of twelve months automatically terminates unless: (1) The person that sold a good or service to a consumer pursuant to the contract can

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demonstrate that the consumer used the good or service during the preceding six months; and (2) the consumer affirmatively agrees in writing to continue the contract or subscription for the rest of the initial term or for any subsequent term.”

While unclear, it seems the intent of this section is to create the presumption that contracts with an initial term of twelve months conclude at the end of the twelfth month. A contract may continue however, as long as two conditions are satisfied: 1. The business provides proof the consumer has used the good or service in the last six months; AND 2. The consumer provides written consent to the renewal.

The reason for including and the benefit provided by the first condition is not clear. Depending on the good or service being provided, it might be very difficult, if not impossible, for a business to demonstrate that the consumer has used the good or service in the last six months. It is also unclear what added protection or benefit this condition provides the consumer, particularly as condition two requires the consumer’s affirmative consent in writing, prior to renewing the contract, thus providing the consumer the opportunity to determine if they wish to continue the good or service. This first condition places an unnecessary burden on businesses without providing much tangible benefit to the consumer.

The second condition of obtaining affirmative written consent from the consumer prior to renewing the contract creates additional confusion, as the phrase “continue the contract or subscription for the rest of the **initial term** (*emphasis added*) or for any subsequent term” implies that the business must receive affirmative consent from the consumer to complete the second half of the initial, already agreed to contract. It is unclear if this provision is to be applied to all contracts of twelve months, requiring the business to reacquire consent after six months or if it applies to contracts longer than twelve months, requiring renewed consent after the twelfth month. This condition as written could effectively reduce all twelve month contracts to six month contracts, while creating a tremendous compliance and administrative burden for businesses and confusing consumers as to why they have to re-agree to a contract they are only part way through the term of.



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Another concern with H.B.21-1239 is the notification requirement for each subsequent automatic renewal. As written, businesses would be required to provide written notification of automatic renewal between 30 and 60 days prior to the auto renewal. Many health and fitness membership contracts are structured with an initial twelve month term that renews on a month-to-month basis thereafter. This structure provides the business with the ability to project their staffing and equipment needs and the consumer with flexibility and choice. In order to comply with the proposed notification requirement businesses which operate with contracts that renew on a month-to-month basis following the initial term would have to notify a customer about their next automatic renewal immediately after the current renewal. In months such as February, which is shorter than 30 days, it would be impossible for businesses which operate using month-to-month contracts to comply with the 30 day requirement without notifying the customer of an auto renew which is after another auto renew. This would cause unnecessary confusion for both the customer and the business.

Finally, requiring individual and frequent notification of automatic renewals would pose an administrative and financial challenge to health and fitness businesses in processing numerous renewal notifications, especially for smaller operators. Since not all health and fitness contracts renew on the same day (e.g. the 1st of the month or 15th of the month), requiring clubs to calendar and track each renewal date as it corresponds to each consumer is especially time-consuming. The additional staff-time necessary to track automatic renewal dates and notify consumers would likely increase operating expenses for clubs and create service interruptions for consumers.

Thank you for considering our concerns. We believe H.B.21-1239 would benefit from greater clarity in certain provisions and we would be happy to work with the Committee and the bill sponsors to address the specific concerns we have highlighted. We welcome any comments and questions you might have to Jeff Perkins, assistant vice president of government relations, at jdp@ihrsa.org or (617) 951-0055.

Sincerely,
Jeff Perkins

TESTIMONY IN OPPOSITION TO SECTION 6-1-732 OF HB 21-1239
HOUSE BUSINESS AFFAIRS AND LABOR COMMITTEE
APRIL 15, 2021

Submitted via online filing

MPA - the Association of Magazine Media (MPA) must respectfully oppose Section 6-1-732 of HB 21-1239 and the amendments you are considering today. We appreciate the effort to amend troubling provisions of HB 21-1239 and remain committed to working with the committee and the Attorney General's office to ensure a law that is workable for both businesses and consumers, using well-understood and widely applicable approaches to autorenewal contracts. However, as currently proposed, we have concerns that a number of the bill's provisions would adversely impact Colorado consumers and the businesses that provide them with much desired goods and services utilizing the convenience of automatic renewals. We appreciate the opportunity to further explain our position below.

MPA represents about 500 magazine media brands. From large publishers with many magazines and global reach to small independent publications, MPA members inform, inspire and entertain 4 million Coloradoans, with an average of 1.8 subscriptions per Colorado household. Our readers depend on our publications for reliable news and information – needed by society now more than ever. Magazines are an important part of the Colorado economy, as part of the arts, sports and media industry that employs more than 39,000 people in Colorado. In addition, the arts, sports, and media industry supports thousands of indirect and induced jobs in Colorado.

Magazine publishers care about subscriber satisfaction and support consistent and workable consumer protection laws.

The overwhelming majority of magazines in the U.S. are sold by subscription. A significant percentage of these subscriptions are sold with automatic renewal features that provide subscribers the benefit of uninterrupted delivery of their favorite titles. Automatic renewal subscriptions facilitate a long-term relationship between publishers and readers and provide a seamless and easy customer service experience. This includes transparent notifications at purchase and renewal and simple, convenient cancellation procedures.

Many magazines are distributed throughout the country, even titles of local interest. Further, many magazines communicate with subscribers by postal mail and send physical notices that are prepared by fulfillment bureaus we employ. Therefore, we seek to employ consistent procedures for all subscribers, using a universal template for acknowledgments and renewal notices and sending such notices in a common timeframe. In our comments below we focus on several provisions of HB 21-1239 that are not consistent with other states and autorenewal practices in common use today, and would be difficult or even impossible to implement and cause subscriber confusion and dissatisfaction.

- **Automatic termination of service**

Many magazine subscriptions have annual terms, so the provision that would require automatic termination of automatic renewal contracts in two instances would apply to the vast majority of our automatic renewal contracts with Colorado subscribers. We are very concerned that this provision would:

- Be impossible to implement for printed magazines mailed to a consumer's home. We would have no way to verify that the consumer read the contents of the magazine or when.

- Eliminate the possibility of automatic renewal contracts for bi-monthly or quarterly magazines. Depending on when a consumer subscribed, they might not get an issue during the final month of their initial term.
 - Disrupt and contravene the original contract with the consumer. Our agreement with subscribers guarantees them uninterrupted service unless they cancel.
 - Cause customer confusion, dissatisfaction, and complaints. Subscribers with automatic renewal contracts expect uninterrupted service. But they would suddenly no longer receive the magazine. Many would call to complain about their missed issue. If they have digital access to magazine content and tried to log-in, they would be denied access.
 - Completely upend current renewal procedures. Our fulfillment bureaus mail annual renewal notices 30-60 days before renewal. Prior to creating the mailing list for the next issue of the magazine, they remove names of subscribers that cancelled in response to the renewal notice. This would require an entirely different process for Colorado consumers, with no apparent workable solution.
- **Definition of clear and conspicuous**

In states with current automatic renewal laws, the definition of clear and conspicuous has become standardized. HB 21-1239 picks up some of that standardized language, requiring notifications to be in larger type than surrounding text, contrasting type, font, or color from surrounding text, or set off from surrounding text by symbols or other marks in a manner that clearly calls attention to the language. But HB 21-1239 is not consistent in terms of placement of notifications. Other states require notifications to be in visual proximity to the action required. HB 21-1239 requires disclosures to be immediately adjacent to a weblink. We are concerned that this definition:

- Does not make sense for notifications sent by mail. Such notices would not have weblinks.
 - Appears to apply to all the notices required in HB 1239, including notices that do not require consumer action. It is not clear in some instances what disclosures should be immediately adjacent to.
 - Placement of notifications depends on device or method by which a notice is delivered, including mail, email, mobile apps, texts, etc. Visual proximity is a clear standard that can accommodate placement on a variety of devices and formats and should be substituted here.
- **Notice required for end of trial offer period**

A number of state laws include a requirement for an acknowledgment or confirmation to be sent to consumers following an automatic renewal sale in a manner that can be retained by the consumer. However, we don't believe any states combine this requirement with an additional notice for a trial period offer, as is proposed in HB 21-1239. Magazine publishers sometimes offer consumers a free issue, or several issues for weekly or bi-weekly magazines. In keeping with state laws and good customer service, the terms of the trial period are clearly laid out in the offer and will be given to the subscriber to keep in the acknowledgment sent after the sale. To then require an end of trial period notice does nothing to enhance the consumer's understanding of the sale, could confuse the subscriber who recently received an acknowledgment with the same information, and would add an unnecessary burden on publishers, especially if a magazine communicates with a subscriber by mail and would have to have their fulfillment bureau create and mail an additional notice. An end of trial period notice is not necessary nor helpful to consumers for short trial periods, such as one month or 31 days, or for longer trial periods when the full pricing schedule for the initial term is clearly presented in the offer, accepted by the consumer, and contained in retainable form in the acknowledgment.

- **Requirement that a renewal notice sent by email include a weblink to cancellation**

In HB 21-1239, automatic renewal contracts with an initial term of twelve months or longer must send a renewal notice 30-60 days before the cancellation deadline for the first automatic renewal. The bill specifies that if the notice is provided by email, the email must contain one or more active web links to allow the consumer to cancel the automatic renewal contract. In other parts of the bill, it is explicitly stated that reasonable procedures for authenticating the identity of a consumer are allowed. We believe the language on the emailed renewal notice should similarly make clear that it is allowable to provide a link to a customer portal where the consumer may log-in and cancel their subscription.

- **Definition of automatic renewal contract**

Many state autorenewal laws make explicit that they are applicable to offers involving recurring charges to customers' credit or debit cards or third party payment accounts. We suggest that this be added to the definition of automatic renewal contract in HB 21-1239. That will make clear that automatic renewal or continuous service programs where bills are sent are not covered.

We appreciate the work done thus far with the AG's office and sponsor in the amendments offered today, which address a number of issues. We ask the committee to consider our continuing concerns and make further amendments to Section 6-1-732 of HB 21-1239. In current form, the bill will adversely impact Colorado consumers, who may lose access to the benefits of automatic renewal offers. The bill will also hurt Colorado businesses by creating an unworkable situation for publishers and other businesses. Abrogating legal contracts and disrupting business operations will create an unfriendly business environment in the state.

For further information, please contact Rita Cohen, Senior Vice President at rcohen@magazine.org or (202) 369-1237.

Sincerely,

Rita Cohen
Senior Vice President, Legislative and Regulatory Policy
MPA – The Association of Magazine Media