October 2, 2023

RE: Opposition to HB 4843

The Honorable Jason Hoskins
Room N-697, Cora B. Anderson House Office Building
124 North Capitol Avenue
Lansing, MI 48933

Dear Chairman Hoskins:

Internet Coalition's Consumer Convenience in Contracts Coalition (IC CCCC) consists of companies and trade associations representing hundreds of the country's leading technology companies in the high-tech manufacturing, computer networking and information technology, clean energy, life sciences, ecommerce, on and off-line media and entertainment, education and sharing economy sectors. Our members are committed to advancing public policies and private sector initiatives that make the U.S. the most innovative country in the world.

IC CCCC includes a number of companies that are a part of the Michigan business community. As written, we oppose HB 4843 because it contains numerous outlier provisions not in other states' laws, will unnecessarily burden Michigan businesses with reminders for short-term automatic renewals and annoy consumers with frequent repeat communications.

Consumers sign up for automatic renewals as convenient, easy to use and hassle-free options to continue services they value. We can support legislation where the convenience we seek to ensure is tempered with responsible protections. It is important to establish clear, workable requirements for paid subscriptions and align with other states renewal notification obligations in the absence of a national standard. Consumers should be provided a clear, up-front notice of the key terms and conditions of the service agreement for Automatic Renewal or Continuous Service programs. The notice should include:

- that the subscription or purchasing agreement will continue until the consumer cancels;
- the description of the cancellation policy that applies to the offer;
- the recurring charges that will be charged to the consumer's credit or debit card or payment

account with a third party as part of the automatic renewal plan or arrangement, and that the amount of the charge may change, if that is the case, and the amount to which the charge will change, if known;
- the length of the automatic renewal term or that the service is continuous, unless the length of the term is chosen by the consumer; and
- the minimum purchase obligation, if any.

The consumer should also have to affirmatively agree to the terms prior to any charges or payment processing and should receive an acknowledgement that includes the offer terms, cancellation policy, and information regarding how to cancel – all in a manner that is capable of being retained by the consumer. Consumers can refer back to this acknowledgement at any time they wish to reference how to easily cancel. Should consumers determine they no longer want a given service, companies offering those services must have a cost-effective, timely, and easy-to-use mechanism for cancellation.

However, this bill contains various provisions that would primarily require revisions and changes to user interfaces and stipulations on when and how some notifications are made specifically for Michigan consumers rather than giving them meaningfully different protections from the model outlined above. In fact, the model mentioned provides some protections not envisioned in HB 4843. In addition, the enforcement regime is of concern.

One significant outlier provision concerns reminders to consumers. Most other states that have reminders for automatic renewal provisions don't require them to be sent unless the contract is one year or more (See CA, DC, FL, HI, IL, ME, and VT). It is important to note that several states do not have ANY reminders, but are instead focused on up-front notices to consumers. (See KY, LA, NY, OR, and TN). Reminders shouldn't be needed for shorter contracts because consumers are more aware of them, and they don't lock a consumer into a long contract before they can cancel. Many states have realized that reminders are costly for businesses and can be quite annoying to consumers, so they don't require them for shorter contracts.

With respect to enforcement, these provisions are placed into the Consumer Protection Act, which allows for a private right of action. This is an entirely disproportionate enforcement mechanism compared to any potential harm. A consumer who has suffered an actual loss may bring a suit to receive $5,000 or the actual loss, whichever is greater. This far outweighs any loss a consumer in Michigan may experience in connection with an automatic renewal agreement. Studies show that attorneys, not consumers, benefit from such enforcement, with one study showing that attorneys' fees often represent 300-400 percent of the actual aggregate class recovery. As a result, businesses may restrict these popular features rather than increase the likelihood of being the target of potentially frivolous lawsuits and class actions.

Instead, enforcement of any violation of this act should rest solely with the state attorney general, who is best poised to develop a thoughtful, consistent approach to marketplace regulation. Therefore, we request any bill moving forward clearly state that only the attorney general may enforce violations of the statute, and that violations make an automatic renewal clause void and unenforceable.

Consumers want hassle-free services that do not require them to take action at the end of each term. Businesses providing valuable consumer services want consistency in laws concerning automatic renewals and continuous services. In its current form, HB 4843 imposes inconvenience and unnecessary costs on Michigan businesses, while also creating a regime that could annoy consumers.

Please feel to contact Tammy Cota, Executive Director of the Internet Coalition at 802-279-3534/ tammy@theinternetcoaltion.com with questions or if you would like to discuss this further.

Sincerely,

Internet Coalition
Entertainment Software Association
News/Media Alliance
TechNet

cc:
Members of the House Economic Development and Small Business Committees
Rep. Abraham Aiyash