

Practice Update

Amendments to California's Automatic Renewal Law Take Effect

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Amendments to California's automatic renewal law (ARL)[1] enacted in October 2021 go into effect today, July 1, 2022. The amendments add enhanced procedural requirements related to the cancellation of subscription-based products that are offered to consumers in California.

The California ARL, which was initially adopted in 2010, requires businesses (other than certain regulated entities) making an automatic renewal offer[2] or a continuous service offer[3] to present the material terms of the offer to consumers in a clear and conspicuous manner prior to sale. In addition, such businesses must:

- if the offer includes a free gift or trial, clearly and conspicuously disclose the price that will be charged after the promotional period;
- obtain the consumer's affirmative consent to the automatic renewal offer or continuous service offer terms, including the terms of a promotional or discounted price for a limited period of time, prior to charging the consumer's credit or debit card or account with a third party;
- provide an acknowledgement that includes the automatic renewal offer terms or continuous service offer terms, the cancellation policy and information regarding how to cancel;[4]

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- if the offer includes a free gift or trial, clearly and conspicuously disclose the price that will be charged after the promotional period, disclose in the acknowledgment how to cancel, and allow the consumer to cancel, prior to payment;
- allow any consumer who accepts an automatic renewal offer or continuous service offer online to terminate the automatic renewal exclusively online; and
- notify consumers about any material changes to the automatic renewal terms or continuous service offer terms and provide information on how to cancel before such changes take effect.

In addition, under the new amendments to the California ARL, businesses must now:

- send a reminder notice between 3 and 21 days prior to the expiration of a free trial or promotional price offer that lasts 31 days or more;
- send a reminder notice between 15 and 45 days prior to the expiration of a free trial or promotional price offer that lasts 1 year or more;
- clearly and conspicuously disclose in the reminder notice that the automatic renewal or continuous service will automatically renew unless the consumer cancels; the length of any additional terms of the renewal period; the methods by which the consumer can cancel the automatic renewal or continuous service; if sent electronically, a link that directs the consumer to the cancellation process or another reasonably accessible electronic cancellation method; and contact information for the business; and
- for users who subscribe online, permit the user to cancel their subscription immediately and at will, “without engaging any further steps that obstruct or delay the consumer’s ability to terminate the automatic renewal or continuous service,” by either a direct link or button in the consumer’s profile, account or settings or the device settings

or a preformatted email that the user can send without any additional information.

The amendments to the California ARL require businesses making automatic renewal or continuous service offers in California to review their websites and mobile apps to ensure compliance with the ARL's new procedural requirements.

Colorado, Delaware, and Illinois have recently adopted or amended ARLs and ARLs are in place in a majority of states. At the federal level, the Restore Online Shoppers Confidence Act^[5] prohibits charging a consumer for goods or services sold on the internet through a “negative option feature” (including automatic renewal programs) unless the business clearly and conspicuously discloses the material terms of the transaction before obtaining the consumer’s billing information, obtains the consumer’s express consent before making the charge and provides simple mechanisms to stop recurring charges. Automatic renewal offers may also run afoul of Section 5 of the FTC Act,^[6] which prohibits unfair or deceptive practices in commerce, and related FTC regulations. Marketers must keep abreast of these and other federal and state laws when planning subscription-based offerings.

[1] Cal. Bus. & Prof. Code § 17600 *et seq.*

[2] “Automatic renewal” means a plan or arrangement in which a paid subscription or purchasing agreement is automatically renewed at the end of a definite term for a subsequent term.

[3] “Continuous service” means a plan or arrangement in which a subscription or purchasing agreement continues until the consumer cancels the service.

[4] The cancellation procedures must include a toll-free telephone number, electronic mail address,

postal address (if the seller directly bills the consumer) or other easy-to-use mechanism.

[5] 5 U.S.C. § 8403 *et seq.*

[6] 15 U.S.C. § 45(a).

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