

AMENDED IN ASSEMBLY MAY 12, 2020

AMENDED IN ASSEMBLY MAY 4, 2020

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2811**

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**Introduced by Assembly Member Berman**

February 20, 2020

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An act to amend Section 17602 of the Business and Professions Code, relating to business regulation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2811, as amended, Berman. Advertising: automatic renewal and continuous service offers: notice and online termination.

Existing law regulates automatic renewal offers and continuous service offers that businesses make to California consumers. Existing law makes it unlawful for a business that makes an automatic renewal offer or continuous service offer to a consumer in this state, among other things, to fail to present the automatic renewal or continuous service offer terms in a clear and conspicuous manner, to charge the consumer for an automatic renewal or continuous service without first obtaining the consumer's affirmative consent, and to fail to provide an acknowledgment that includes the automatic renewal or continuous service offer terms, cancellation policy, and information regarding how to cancel in a manner that is capable of being retained by the consumer, as specified.

This bill would also make it unlawful for the business to fail to provide a consumer ~~who has accepted a free gift or trial included in an automatic renewal offer or continuous service offer, or an automatic renewal offer or continuous service offer that is made at a promotional or discounted~~

~~price for a limited period of time, with 3 to 7 days' notice before the first charge is made to the consumer's credit or debit card or the consumer's account with a third party. The bill would require the notice to explain how to cancel with a notice explaining how to cancel an automatic renewal offer or continuous service offer if the consumer accepted a free gift or trial, lasting for a predetermined period of time, that was included in an automatic renewal offer or continuous service offer or accepted an automatic renewal offer or continuous service offer at a promotional or discounted price, and the applicability of that price was limited to a predetermined period of time. The bill would require the notice to be provided at least 3 days before and at most 7 days before the expiration of the predetermined period of time and, if sent electronically, to include a link that directs the consumer to the cancellation process. The bill would exempt from the notice requirement a business that charges the consumer on a consumption basis according to their usage of the goods or services.~~

Under existing law, if a consumer accepts an automatic renewal or continuous service offer online, then the business is required to allow the consumer to terminate the offer exclusively online, which may include a termination email formatted and provided by the business.

This bill would revise and recast those provisions to additionally require the business to allow a consumer to terminate the automatic renewal or continuous service offer at will, and without engaging any further steps that impact or restrict the consumer's ability to terminate immediately. The bill would require the business to provide a method of termination that is either on the internet website in the form of a direct link or button to cancel or by the email described above.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 17602 of the Business and Professions
- 2 Code is amended to read:
- 3 17602. (a) It is unlawful for any business that makes an
- 4 automatic renewal offer or continuous service offer to a consumer
- 5 in this state to do any of the following:
- 6 (1) Fail to present the automatic renewal offer terms or
- 7 continuous service offer terms in a clear and conspicuous manner
- 8 before the subscription or purchasing agreement is fulfilled and

1 in visual proximity, or in the case of an offer conveyed by voice,  
2 in temporal proximity, to the request for consent to the offer. If  
3 the offer also includes a free gift or trial, the offer shall include a  
4 clear and conspicuous explanation of the price that will be charged  
5 after the trial ends or the manner in which the subscription or  
6 purchasing agreement pricing will change upon conclusion of the  
7 trial.

8 (2) Charge the consumer's credit or debit card, or the consumer's  
9 account with a third party, for an automatic renewal or continuous  
10 service without first obtaining the consumer's affirmative consent  
11 to the agreement containing the automatic renewal offer terms or  
12 continuous service offer terms, including the terms of an automatic  
13 renewal offer or continuous service offer that is made at a  
14 promotional or discounted price for a limited period of time.

15 (3) Fail to provide an acknowledgment that includes the  
16 automatic renewal offer terms or continuous service offer terms,  
17 cancellation policy, and information regarding how to cancel in a  
18 manner that is capable of being retained by the consumer. If the  
19 automatic renewal offer or continuous service offer includes a free  
20 gift or trial, the business shall also disclose in the acknowledgment  
21 how to cancel, and allow the consumer to cancel, the automatic  
22 renewal or continuous service before the consumer pays for the  
23 goods or services.

24 (4) (A) ~~Fail to provide a consumer who has accepted a free gift~~  
25 ~~or trial included in an automatic renewal offer or continuous service~~  
26 ~~offer, or an automatic renewal offer or continuous service offer~~  
27 ~~that is made at a promotional or discounted price for a limited~~  
28 ~~period of time, with three to seven days' notice before the first~~  
29 ~~charge is made to the consumer's credit or debit card or the~~  
30 ~~consumer's account with a third party. The notice shall explain~~  
31 ~~how to cancel and, if the notice is sent electronically, include a~~  
32 ~~link that directs the consumer to the cancellation process. with a~~  
33 ~~notice explaining how to cancel an automatic renewal offer or~~  
34 ~~continuous service offer if either of the following is true:~~

35 (i) *The consumer accepted a free gift or trial, lasting for a*  
36 *predetermined period of time, that was included in an automatic*  
37 *renewal offer or continuous service offer.*

38 (ii) *The consumer accepted an automatic renewal offer or*  
39 *continuous service offer at a promotional or discounted price, and*

1 *the applicability of that price was limited to a predetermined period*  
2 *of time.*

3 ~~(B) This paragraph shall not apply to a business if it charges~~  
4 ~~the consumer on a consumption basis according to their usage of~~  
5 ~~the goods or services. The notice required pursuant to~~  
6 ~~subparagraph (A) shall be provided at least three days before and~~  
7 ~~at most seven days before the expiration of the predetermined~~  
8 ~~period of time for which the free gift or trial, or promotional or~~  
9 ~~discounted price, applies.~~

10 (C) *If the notice required pursuant to subparagraph (A) is sent*  
11 *electronically, the notice shall include a link that directs the*  
12 *consumer to the cancellation process.*

13 (b) A business that makes an automatic renewal offer or  
14 continuous service offer shall provide a toll-free telephone number,  
15 electronic mail address, a postal address if the seller directly bills  
16 the consumer, or it shall provide another cost-effective, timely,  
17 and easy-to-use mechanism for cancellation that shall be described  
18 in the acknowledgment specified in paragraph (3) of subdivision  
19 (a).

20 (c) In addition to the requirements of subdivision (b), a business  
21 that allows a consumer to accept an automatic renewal or  
22 continuous service offer online shall allow a consumer to terminate  
23 the automatic renewal or continuous service exclusively online,  
24 at will, and without engaging any further steps that impact or  
25 restrict the consumer's ability to terminate the automatic renewal  
26 or continuous service immediately. The business shall provide a  
27 method of termination that is either on the internet website in the  
28 form of a direct link or button to cancel or by a termination email  
29 formatted and provided by the business that a consumer can send  
30 to the business without additional information.

31 (d) In the case of a material change in the terms of the automatic  
32 renewal or continuous service that has been accepted by a consumer  
33 in this state, the business shall provide the consumer with a clear  
34 and conspicuous notice of the material change and provide  
35 information regarding how to cancel in a manner that is capable  
36 of being retained by the consumer.

37 (e) The requirements of this article shall apply only prior to the  
38 completion of the initial order for the automatic renewal or  
39 continuous service, except as follows:

- 1 (1) The requirement in paragraph (3) of subdivision (a) may be
- 2 fulfilled after completion of the initial order.
- 3 (2) The requirement in subdivision (d) shall be fulfilled prior
- 4 to implementation of the material change.
- 5 (f) This section shall become operative on July 1, 2018.

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