

AMENDED IN SENATE JUNE 27, 2024
AMENDED IN SENATE JUNE 17, 2024
AMENDED IN ASSEMBLY MARCH 21, 2024

CALIFORNIA LEGISLATURE— 2023–2024 REGULAR SESSION

ASSEMBLY BILL

NO. 2863

**Introduced by Assembly Member Schiavo
(Coauthor: Assembly Member Lowenthal)**

February 15, 2024

An act to amend Sections 17601 and 17602 of the Business and Professions Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

AB 2863, as amended, Schiavo. Automatic renewal and continuous service offers.

Existing law regulates automatic renewal offers and continuous service offers that businesses make to California consumers. Existing law defines “automatic renewal” for these purposes to mean 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. Existing law also defines “continuous service” to mean a plan or arrangement in which a subscription or purchasing agreement continues until the consumer cancels the service.

This bill would revise those definitions to include a provision of a contract containing those subscriptions or purchasing agreements and to include a plan, arrangement, or provision of a contract that contains a free-to-pay conversion. The bill would further define “free-to-pay conversion” to mean, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if they do not take affirmative action to cancel before the end of that period.

Existing law makes it unlawful for a business that makes an automatic renewal offer or continuous service offer to a consumer in this state to take or fail to take certain actions relating to the communication of, and consent to, the terms of the offer. In this regard, existing law requires, among other things, the business to present the terms in a clear and conspicuous manner before the subscription or purchasing agreement is fulfilled and in visual or temporal proximity to the request for consent to the offer, as specified. Existing law also requires the business to provide an acknowledgment that includes the automatic renewal offer terms or continuous service offer terms, cancellation policy, and information regarding how to cancel in a specified manner.

This bill would require the business to obtain the consumer’s affirmative consent to the automatic renewal or continuous service separately from any other portion of the contract. The bill would prohibit the business from including any information in the contract that undermines the ability of consumers to provide their affirmative consent, as specified. The bill would require the business to maintain verification of the consumer’s affirmative consent for at least 3 years, or one year after the contract is terminated, whichever period is longer. The bill would prohibit the misrepresentation of, or failure to disclose, material facts or terms related to the transaction, as provided. The bill would also require the business to send the consumer an annual reminder that discloses, as

specified, the product or service to which the automatic renewal or continuous service applies, the frequency and amount of the associated charges, and the means to cancel the service.

Existing law requires a business that makes an automatic renewal offer or continuous service offer to provide various methods for cancellation or termination, including by toll-free telephone number, email address, a postal address, another cost-effective, timely, and easy-to-use mechanism for cancellation, or online if specified requirements are met.

This bill would require the ability to cancel or terminate to be available in the same medium that the consumer used in the transaction that resulted in the activation of the automatic renewal or continuous service, or the same medium in which the consumer is accustomed to interacting with the business, as specified. The bill would require a mechanism for cancellation by toll-free telephone number to, among other things, be answered promptly during normal business hours, as defined, and not obstruct or delay the consumer's ability to cancel the service or feature. In this regard, the bill would also specify that it is not an ~~unreasonable~~ obstruction or delay to provide a discount offer or other consumer benefit or to inform a consumer of the effect of the cancellation if the consumer remains able to cancel or terminate the automatic renewal or continuous service.

Existing law requires, in the case of a material change in the terms of the automatic renewal or continuous service that has been accepted by a consumer in this state, the business to provide the consumer with a clear and conspicuous notice of the material change and information regarding how to cancel in a specified manner.

This bill would additionally require, in the case of the business changing the fee, including changes the consumer affirmatively consented to in an existing plan or arrangement, the business to provide a clear and conspicuous notice of the fee change and information regarding how to cancel in a specified manner no less than 7 days and no more than 30 days before the fee change takes effect.

Existing law requires a business that made an automatic renewal or continuous service offer that includes a free gift or trial, a promotional or discounted price, or an initial term of one year or longer, as specified, to provide the consumer with a certain notice a certain number of days before the promotional period expires or the offer automatically renews, as prescribed. Existing law requires the notice to clearly and conspicuously state specified information, including that the service will automatically renew unless the consumer cancels and the method by which the consumer can cancel the service.

This bill would also require the business to provide the notice to the consumer before confirming the consumer's billing information. The bill would also require the notice to include the amount or range of costs the consumer will be charged and, if applicable, the frequency of those charges a consumer will incur unless the consumer takes timely steps to prevent or stop those charges.

This bill would apply its provisions to contracts entered into, amended, or extended on or after ~~January~~ *July* 1, 2025.

Digest Key

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

Bill Text

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS
FOLLOWS:**

SECTION 1. Section 17601 of the Business and Professions Code is amended to read:

17601. (a) For the purposes of this article, the following definitions shall apply:

- (1) “Automatic renewal” means a plan, arrangement, or provision of a contract that contains a free-to-pay conversion or in which a paid subscription or purchasing agreement is automatically renewed at the end of a definite term for a subsequent term.
- (2) “Automatic renewal offer terms” means the following clear and conspicuous disclosures:
 - (A) That the subscription or purchasing agreement will continue until the consumer cancels.
 - (B) The description of the cancellation policy that applies to the offer.
 - (C) 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.
 - (D) The length of the automatic renewal term or that the service is continuous, unless the length of the term is chosen by the consumer.
 - (E) The minimum purchase obligation, if any.
- (3) “Clear and conspicuous” or “clearly and conspicuously” means in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks, in a manner that clearly calls attention to the language. In the case of an audio disclosure, “clear and conspicuous” and “clearly and conspicuously” means in a volume and cadence sufficient to be readily audible and understandable.
- (4) “Consumer” means any individual who seeks or acquires, by purchase or lease, any goods, services, money, or credit for personal, family, or household purposes.
- (5) “Continuous service” means a plan, arrangement, or provision of a contract that contains a free-to-pay conversion or in which a paid subscription or purchasing agreement continues until the consumer cancels the service.
- (6) “Free-to-pay conversion” means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if they do not take affirmative action to cancel before the end of that period.
- (7) “Normal business hours” means no fewer than ~~12~~ 10 hours between 6 a.m. to 10 p.m., inclusive, Pacific standard time or Pacific daylight saving time, as applicable, of each day from Monday to Friday, inclusive, other than state holidays.

(b) The amendments made to this section by the act adding this subdivision shall only apply to a contract entered into, amended, or extended under this article on or after ~~January~~ July 1, 2025.

SEC. 2. Section 17602 of the Business and Professions Code is amended to read:

17602. (a) It is unlawful for any business that makes an automatic renewal offer or continuous service offer to a consumer in this state to do any of the following:

- (1) Fail to present the automatic renewal offer terms or continuous service offer terms in a clear and conspicuous manner 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. If the

offer also includes a free gift or trial, the offer shall include a clear and conspicuous explanation of the price that will be charged after the trial ends or the manner in which the subscription or purchasing agreement pricing will change upon conclusion of the trial.

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

(3) Fail to provide an acknowledgment that includes the automatic renewal offer terms 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. If the automatic renewal offer or continuous service offer includes a free gift or trial, the business shall also disclose in the acknowledgment how to cancel, and allow the consumer to cancel, the automatic renewal or continuous service before the consumer pays for the goods or services.

(4) Fail to obtain the consumer's affirmative consent to the automatic renewal or continuous service separately from any other portion of the contract.

(5) Include any information in the contract that interferes with, detracts from, contradicts, or otherwise undermines the ability of consumers to provide their affirmative consent to the automatic renewal or continuous service.

(6) Fail to maintain verification of the consumer's affirmative consent for at least three years, or one year after the contract is terminated, whichever period is longer.

(7) Misrepresent, expressly or by implication, any material fact related to the transaction, including, but not limited to, the inclusion of an automatic renewal or continuous service, or any material fact related to the underlying good or service.

(8) Fail to provide a consumer with a notice, before confirming the consumer's billing information and as may be required by subdivision (b), that clearly and conspicuously states all of the following:

(A) That the automatic renewal or continuous service will automatically renew unless the consumer cancels.

(B) The length and any additional terms of the renewal period.

(C) The amount or range of costs the consumer will be charged and, if applicable, the frequency of those charges a consumer will incur unless the consumer takes timely steps to prevent or stop those charges.

(D) One or more methods by which a consumer can cancel the automatic renewal or continuous service.

(E) If the notice is sent electronically, the notice shall include either a link that directs the consumer to the cancellation process, or another reasonably accessible electronic method that directs the consumer to the cancellation process if no link exists.

(F) Contact information for the business.

(b) A business shall provide a consumer with a notice as specified in paragraph (8) of subdivision (a) if either of the following is true, provided that if an automatic renewal offer or a continuous service offer requires a notice under both paragraphs (1) and (2), only the notice specified in paragraph (2) shall be required:

(1) The consumer accepted a free gift or trial, lasting for more than 31 days, that was included in an automatic renewal offer or continuous service offer or the consumer accepted an automatic renewal offer or continuous service offer at a promotional or discounted price, and the applicability of that price was more than 31 days.

- (A) The notice shall be provided at least 3 days before and at most 21 days before the expiration of the predetermined period of time for which the free gift or trial, or promotional or discounted price, applies.
- (B) An offer shall be exempt from the requirements under this paragraph if the consumer does not enter into the contract electronically and the business has not collected or maintained the consumer's valid email address, phone number, or another means of notifying the consumer electronically.
- (C) For purposes of this paragraph, "free gift" does not include a free promotional item or gift given by the business that differs from the subscribed product.
- (2) The consumer accepted an automatic renewal offer or continuous service offer with an initial term of one year or longer, that automatically renews unless the consumer cancels the automatic renewal or continuous service. In this case, the notice shall be provided at least 15 days and not more than 45 days before the automatic renewal offer or continuous service offer renews.
- (c) (1) A business that makes an automatic renewal offer or continuous service offer shall provide a toll-free telephone number, email address, a postal address if the seller directly bills the consumer, or it shall provide another cost-effective, timely, and easy-to-use mechanism for cancellation that shall be described in the acknowledgment specified in paragraph (3) of subdivision (a).
- (2) If a business provides a mechanism for cancellation by toll-free telephone number, the business shall answer calls promptly during normal business hours and shall not obstruct or delay the consumer's ability to cancel the automatic renewal or continuous service.
- (d) (1) In addition to the requirements of subdivision (b), a business that allows a consumer to accept an automatic renewal or continuous service offer online shall allow a consumer to terminate the automatic renewal or continuous service exclusively online, at will, and without engaging any further steps that obstruct or delay the consumer's ability to terminate the automatic renewal or continuous service immediately. The business shall provide a method of termination that is online in the form of either of the following:
- (A) A prominently located direct link or button which may be located within either a customer account or profile, or within either device or user settings.
- (B) By an immediately accessible termination email formatted and provided by the business that a consumer can send to the business without additional information.
- (2) The termination requirements of this subdivision apply to the automatic renewal terms and continuous service terms of the contract and the remaining provisions of the contract continue to be governed by all applicable laws and regulations.
- (3) Notwithstanding paragraph (1), a business may require a consumer to enter account information or otherwise authenticate online before termination of the automatic renewal or continuous service online if the consumer has an account with the business. A consumer who is unwilling or unable to enter account information or otherwise authenticate online before termination of the automatic renewal or continuous service online shall not be precluded from authenticating or terminating the automatic renewal or continuous service offline using another method pursuant to subdivision (c).
- (e) For purposes of subdivisions (c) and (d), providing a discount offer or other consumer benefit or informing a consumer of the effect of the cancellation shall not be considered ~~unreasonable~~ *an* obstruction or delay, provided that the consumer remains able to cancel or terminate the automatic renewal or continuous service.
- (f) The ability to cancel or terminate an automatic renewal or continuous service pursuant to subdivision (c) or (d) shall be available to the consumer in the same medium that the consumer used in the transaction that resulted in the activation of the automatic renewal or continuous service, or the same medium in which the consumer is accustomed to interacting with the business, including, but not limited to, in person, by telephone, by mail, or by

email. If the activation was by telephone, a telephone number that is capable of being retained by the consumer shall be available to the consumer to cancel or terminate the automatic renewal or continuous service. The telephone number shall be clearly and conspicuously displayed on the company's website, if applicable.

(g) (1) In the case of a material change in the terms of the automatic renewal or continuous service that has been accepted by a consumer in this state, the business shall provide the consumer with a clear and conspicuous notice of the material change and provide information regarding how to cancel in a manner that is capable of being retained by the consumer.

(2) In the case of a change in the fee charged under an existing automatic renewal or continuous service offer that has been accepted by a consumer in this state, including changes the consumer affirmatively consented to in an existing plan or arrangement, the business shall provide, no less than 7 days and no more than 30 days before the fee change takes effect, the consumer with both of the following:

(A) A clear and conspicuous notice of the fee change.

(B) Information regarding how to cancel in a manner that is capable of being retained by the consumer.

(h) (1) A business shall send an annual reminder to a consumer under an annual automatic renewal agreement or continuous service agreement with the business in the same medium that resulted in the activation of the automatic renewal or continuous service, or the same medium in which the customer is accustomed to interacting with the business, including, but not limited to, by telephone, mail, or email. For originally in-person or voice-based transactions, the business shall send the reminder by telephone, mail, or any internet-based communication.

(2) The reminder sent pursuant to this subdivision shall disclose all of the following:

(A) The product or service to which the automatic renewal or continuous service applies.

(B) The frequency and amount of charges associated with the automatic renewal or continuous service.

(C) The means to cancel the automatic renewal or continuous service.

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

(1) The requirements in paragraphs (3) and (8) of subdivision (a) may be fulfilled after completion of the initial order.

(2) The requirements in subdivision (b) may be fulfilled after completion of the initial order.

(3) The requirement in subdivision (g) shall be fulfilled prior to implementation of the material change or fee change.

(4) The requirement in subdivision (h) shall be fulfilled annually.

(j) The amendments made to this section by the act adding this subdivision shall only apply to a contract entered into, amended, or extended under this article on or after ~~January~~ **July** 1, 2025.