

## **ASSEMBLY BILL No. 390**

### **CHAPTER 450**

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

[APPROVED by Governor 2021-10-04 Filed with Secretary of State October 04, 2021. ]

## **LEGISLATIVE COUNSEL'S DIGEST**

AB 390, 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, beginning July 1, 2022, revise and recast these provisions to also make it unlawful for the business to fail to provide a consumer with a notice containing specified information if the consumer accepted a free gift or trial, lasting 31 or more days 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 more than 31 days. In these circumstances, the bill would require the notice to be provided at least 3 days before and at most 21 days before the expiration of the period of time for which the free gift or trial, or promotional or discounted price, applies.

This bill would also require the notice, as specified, if the consumer accepted an automatic renewal offer or continuous service offer with an initial term of one year or longer that automatically renews for a subsequent term that is longer than one month, unless the consumer cancels the contract. In these circumstances, the bill would require the notice to be provided at least 15 days and not more than 45 days before the automatic renewal offer or continuous service offer renews. The bill would provide that if both types of notice are warranted, only the notice provisions requiring notice at least 15 days and not more than 45 days before the automatic renewal offer or continuous service offer renews apply.

If sent electronically, the bill would require the notice to include 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.

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 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 obstruct or delay the consumer's ability to terminate immediately. The bill would require the business to provide a method of termination that is either online in the form of a prominently located direct link or button to cancel or by a

termination email, as provided.

This bill would also authorize a business to require a consumer to enter account information or otherwise authenticate online before termination of the automatic renewal or continuous service online, provided that a consumer who is unwilling or unable to enter account information or otherwise authenticate online before termination is not precluded from authenticating or terminating offline using another method, as specified.

The bill would authorize these requirements to be fulfilled after completion of an initial order.

## Digest Key

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

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## Bill Text

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

**SECTION 1.** Section 17602 of the Business and Professions Code is amended to read:

**17602.** (a) It shall be 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.

(b) A business that makes an automatic renewal offer or continuous service offer shall provide a toll-free telephone number, electronic mail 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).

(c) In addition to the requirements of subdivision (b), a consumer who accepts an automatic renewal or continuous service offer online shall be allowed to terminate the automatic renewal or continuous service

exclusively online, which may include a termination email formatted and provided by the business that a consumer can send to the business without additional information.

(d) 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.

(e) 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 requirement in paragraph (3) of subdivision (a) may be fulfilled after completion of the initial order.

(2) The requirement in subdivision (d) shall be fulfilled prior to implementation of the material change.

(f) This section shall remain in effect only until July 1, 2022, and as of that date is repealed.

**SEC. 2.** Section 17602 is added to the Business and Professions Code, 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 provide a consumer with a notice, 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) One or more methods by which a consumer can cancel the automatic renewal or continuous service.

(D) 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.

(E) Contact information for the business.

(b) A business shall provide a consumer with a notice as specified in paragraph (4) 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) A business that makes an automatic renewal offer or continuous service offer shall provide a toll-free telephone number, electronic mail 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).

(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) 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.

(f) 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 (4) 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 (e) shall be fulfilled prior to implementation of the material change.

(g) This section shall become operative on July 1, 2022.