

# Updated California automatic renewal law: what businesses need to know

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On October 4, 2021, Governor Gavin Newsom signed into law Assembly Bill No. 390, amending California's Automatic Renewal law ("ARL"). The existing ARL was originally passed on January 1, 2010 as part of a regulatory effort by California legislature to "end the practice of ongoing charging of consumer credit or debit cards or third-party payment accounts" without first obtaining the consumer's explicit consent for ongoing shipments or deliveries of service.

The ARL applies to businesses that sell and offer subscription services or products on an automatic renewal or continuous service basis to California consumers. Taking effect on July 1, 2022, the amended ARL includes new cancellation and notice requirements for subscription-based products and services and will augment the already-stringent California law.

## Existing ARL requirements

The existing ARL require that businesses selling and offering subscription services or products on an automatic renewal or continuous service basis to first obtain the consumer's affirmative consent prior to invoicing the consumer for the applicable automatic renewal fees.

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Additionally, the business must present the automatic renewal terms or continuous service offer terms (the "Offer Terms") in a clear and conspicuous<sup>1</sup> manner 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.

The Offer Terms must contain the following disclosures:

- 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.
- The minimum purchase obligation, if any.
- 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.

## New ARL requirements

Beginning on July 1, 2022, businesses who offer and sell subscription services or products on an automatic renewal or continuous service (until cancelled), to consumers in the State of California, will be required to comply with the following:

- (1) Businesses must send notices of the renewal term to California consumers who have signed up for an automatic renewal plan with an initial term of "one year or longer" between 15 and 45 days before the renewal date;
- (2) Businesses must send notices of the renewal term to California consumers who have accepted a free trial, promotional, gift, or discounted price for a period lasting longer than 31 days. Here, businesses must send a similar notice three to 21 days before the applicable trial period ends; and
- (3) Businesses must allow California consumers to cancel "without any further steps that obstruct or delay the consumer's ability to terminate the automatic renewal or continuous service immediately." A California consumer must be able to cancel online either through: (i) a "prominently located direct link or button" within the consumer's profile or device; and

(ii) an “immediately accessible termination email formatted and provided by the business that a consumer can send to the business without additional information.” Consumers must also have the option to cancel through an offline mechanism that is timely, cost-effective, and easy to use.

### How to comply

In order to comply with the new and existing ARL requirements, businesses should ensure its business practices and end user agreements meet the ARL requirements mentioned above. This may include:

- Providing 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, disclosing 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.
- For immediate online cancellation, providing an electronic mail address or in-app cancellation option.
- For offline cancellation, providing a toll-free telephone number or postal address if the business directly bills the consumer.

### About the authors



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Although the ARL does not provide a California resident with a private right of action to directly sue a business for violating the ARL, the ARL has considerable teeth and should be taken seriously by businesses from an enforcement standpoint. The California Auto Renewal Task Force, a group of city and district attorneys who strive to enforce the ARL, has filed numerous lawsuits against businesses who fail to comply with the ARL.

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For example, in July 2021, Match Group Inc., an international online dating service agreed to pay \$2 million to settle a lawsuit alleging the company did not obtain consumers express consent before charging them for the automatic renewal.

### Notes

<sup>1</sup> “Clear and conspicuous” 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.