

Senate Bill No. 313

CHAPTER 356

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

[Approved by Governor September 28, 2017. Filed with Secretary of State September 28, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

SB 313, Hertzberg. Advertising: automatic renewal and continuous service offers.

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. A violation of these provisions is subject to enforcement by any available civil remedies, except for specified activities exempt from these requirements.

This bill would, commencing on July 1, 2018, require a business that makes an automatic renewal offer or continuous service offer that includes a free gift or trial, to include in the offer 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. The bill would prohibit a business from charging a consumer's credit or debit card, or the consumer's account with a 3rd party, for an automatic renewal or continuous service that is made at a promotional or discounted price for a limited period of time without first obtaining the consumer's consent to the agreement. The bill would also specify that if the automatic service offer or continuous service offer includes a free gift or trial, the business is required to disclose how to cancel, and allow the consumer to cancel, the automatic renewal or continuous service before the consumer pays for the goods or services. The bill also would require a consumer who accepts an automatic renewal offer or continuous service offer online to be allowed to terminate the automatic renewal or continuous service exclusively, as specified. The bill would also make other clarifying and nonsubstantive changes.

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 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.

(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.

(3) 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. If the offer includes a free trial, the business shall also disclose in the acknowledgment how to cancel, and allow the consumer to cancel, before the consumer pays for the goods or services.

(b) A business that makes automatic renewal or continuous service offers shall provide a toll-free telephone number, electronic mail address, a postal address if the seller directly bills the consumer, or 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 the case of a material change in the terms of the automatic renewal or continuous service offer 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.

(d) 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 (c) shall be fulfilled prior to implementation of the material change.

(e) This section shall remain in effect until July 1, 2018, and on January 1, 2019, is repealed.

SEC. 2. Section 17602 is added to the Business and Professions Code, 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 become operative on July 1, 2018.

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