

California Passes Updated Automatic Renewal Law

October 27, 2021

On October 4, 2021, California Gov. Gavin Newsom signed into law [Assembly Bill 390](#), which adds new renewal reminder notice requirements and cancellation requirements to California's already-demanding Automatic Renewal Law (ARL). **These new requirements will take effect on July 1, 2022:**

- Most businesses selling automatic renewal plans to California consumers with an initial term of one year or longer will have to deliver notices to their California subscribers 15 to 45 days before the renewal date reminding them that their plans will automatically renew unless canceled.
- Businesses selling automatic renewal plans to California consumers with a free trial, gift or initial discount period lasting longer than 31 days will have to provide similar notices to their California subscribers three to 21 days before the expiration of the applicable period.

Online sellers of automatic renewal plans will have to offer subscribers the ability to cancel automatic renewal features online "immediately" (after account authentication) by clicking on a button or link, or by sending a pre-formatted termination email message.

Current ARL requirements will continue to apply

The new amendment supplements but does not replace the ARL's current requirements, which have been a source of numerous lawsuits and public enforcement actions. The ARL governs the offering of paid subscriptions (and similar purchasing agreements) to California consumers that automatically renew at the end of a definite term for a subsequent term or that continue until the consumer cancels the service.

The ARL prohibits sellers from charging consumers' credit or debit cards for an automatic renewal plan without first obtaining the consumer's affirmative consent. It also requires sellers to "clearly and conspicuously"¹ present certain "automatic renewal offer terms" at the point of sale in "close visual proximity" to the request for consent to the offer. These terms include:

1. A statement that the subscription or purchasing agreement will continue until the consumer cancels.
2. The description of the cancellation policy that applies to the offer.
3. The recurring charges that will be charged to the consumer's credit or debit card or other third-party payment account, 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.
4. The length of the automatic renewal term or that the service is continuous, unless the length of the term is chosen by the consumer.
5. The minimum purchase obligation, if any.

For subscriptions offered with a free gift or trial feature, the point-of-sale disclosures must also clearly and conspicuously disclose the price that will be charged after the trial ends.

The ARL additionally requires sellers to deliver a separate post-purchase acknowledgment to the consumer in a retainable form (such as email) that clearly and conspicuously presents the same automatic renewal offer terms disclosed at the point of sale and further explains how the consumer can cancel the automatic renewal service by using one or more "cost-effective, timely, and easy-to-use" cancellation mechanisms. For subscriptions sold online, the cancellation instructions must enable the consumer to terminate the automatic renewal or continuous service "exclusively" online. Acknowledgments for plans that include a free gift or trial must also explain how the consumer can cancel (and allow the consumer to cancel) before paying for any goods or services.

In addition, if a seller materially changes the terms of an automatic renewal or continuous service offer after it has been accepted by a California consumer, the seller must provide the consumer with a clear and conspicuous notice of the changes along with information about how to cancel before the changes take effect.

New ARL requirements effective July 1, 2022

Assembly Bill 390 will carry forward all the current ARL requirements summarized above. In addition, as of July 1, 2022, sellers of automatic renewal and continuous service plans to Californians must comply with new requirements as outlined below.

Renewal reminder notices

For subscriptions sold with an initial term of one year or more, businesses will have to provide a written or electronic reminder notice in a retainable form to California consumers 15 to 45 days before the renewal date. For subscriptions with a free trial, gift or initial discount period that is longer than 31 days, businesses must provide a written or electronic notice three to 21 days before the expiration of the applicable period. In either case, the notice must clearly and conspicuously:

- State that the subscription will automatically renew unless the consumer cancels.
- Disclose the length and any additional terms of the renewal period.
- Describe one or more methods by which the consumer can cancel before renewal.
- Include contact information for the business.

If delivered in electronic form, the notice must include either a link that directs the consumer to the cancellation process or, if no links exists, another reasonably accessible electronic method that directs the consumer to the cancellation process.

Also, if a business otherwise would be subject to *both* notification requirements because it offers a plan with a free trial feature longer than 31 days and an initial term of one year or longer, it must comply with only the first notice requirement – delivering a reminder notice 15 to 45 days before the renewal date. Importantly, businesses will be exempt from these reminder notice requirements if the consumer entered into the automatic renewal or continuous service contract offline, and the business does not collect or maintain the consumer's email address, phone number or other means of notifying the consumer electronically.

'Immediate' online cancellation

As noted above, if a consumer accepts an automatic renewal offer online, current law requires the business to allow the consumer to cancel the automatic renewal or continuous service exclusively online. The new amendment creates more prescriptive requirements for online cancellation features by requiring sellers to allow California residents to cancel "without any further steps that obstruct or delay the consumer's ability to terminate the automatic renewal or continuous service immediately." This immediacy requirement calls for careful evaluation of multistep cancellation flows that require subscribers to review retention offers, complete online questionnaires or feedback surveys, or otherwise complete a series of actions before cancellation.

The online cancellation mechanism must be either:

- A "prominently located direct link or button" that may be located within a user's account or profile, or within device or user settings.
- An "immediately accessible termination email formatted and provided by the business that a consumer can send to the business without additional information."

Businesses may require a consumer to enter account credentials or otherwise authenticate their account access before canceling a subscription online. However, if consumers are unwilling or unable to authenticate online, they must be given an alternative *offline* means of authentication and cancellation that is timely, cost-effective and easy to use – for example, contacting the business via email or a toll-free phone number.

California's ARL has been a lightning rod for consumer class action litigation and public enforcement actions by California county attorneys for years, and numerous challenges have resulted in multimillion-dollar settlements. Businesses selling auto-renewing subscription plans to consumers should carefully review their policies and practices to ensure they are prepared for the latest changes to the ARL – and that they comply with the large body of overlapping federal and state laws that govern such offers.

Notes

1. Wherever the ARL requires “clear and conspicuous” disclosures, the required information must be presented 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.”

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