

Automatic Renewal State Laws

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A Practice Note on state automatic renewal laws focusing on consumer subscription services and negative option offers. This Note discusses overall differences between federal and state regulation and distinctions in how states regulate automatic renewals (extensively, generally, or narrowly). It also provides certain compliance best practices and discusses litigation and settlements involving automatic renewal laws, with a focus on California because it is the state in which automatic renewal laws have been most heavily litigated.

Automatically renewing contracts have benefits for both sellers and consumers:

- Sellers can stock inventory more efficiently and predict future revenue because they can ship products and deliver services on a predetermined schedule.
- Consumers can receive uninterrupted service and may bypass re-submitting purchase information.

(See Negative Options: A Report by the Staff of the FTC's Division of Enforcement, 2009 WL 356592, at *7.)

Despite these benefits, regulators have noticed the potential harm automatically renewing contracts may pose to consumers. Several states historically regulated automatic renewals, but those laws typically focused on a particular product or service, such as home alarm products, health club memberships, or home repair services. Now many states have broadened the reach of their automatic renewal laws beyond specific contract types to consumer contracts more generally.

Before the recent rise in broader automatic renewal laws, state and federal regulation in this area was focused on protecting consumers from unknowingly entering into subscription agreements that automatically renew via a "negative option." The term "negative option" broadly refers to a category of offers in which sellers interpret a customer's silence or failure to take an affirmative action (such as rejecting an offer or canceling a subscription agreement) as assent to be charged for goods or services.

The Federal Trade Commission (FTC) has been regulating sellers who capitalize on consumers' silence for decades. For example:

- In 1974, the FTC promulgated the "Negative Option Rule," which applies only to a pre-notification negative option plan, defined as a contractual plan or arrangement where a seller periodically sends to subscribers an announcement which identifies merchandise it proposes to send to subscribers and the subscribers are thereafter billed for the merchandise, unless the subscribers tell the seller that they do not want to receive the merchandise (16 C.F.R. § 425.1(c)(1)). It requires sellers to clearly and conspicuously disclose the terms of an offer before consumers could subscribe to purchasing goods (16 C.F.R. § 425.1).
- The Telemarketing Sales Rule, enacted by the FTC in 1995, applies to all forms of negative option marketing that occurs over the telephone (16 C.F.R. §§ 310.1 to 310.9).

The more recent state regulation in this area, however, focuses on the disclosures made to a consumer when he or she chooses to sign up for an ongoing service or subscription – in contrast to a traditional "negative option," which is triggered by the consumer doing nothing. The states generally refer to their laws in this area as "automatic renewal laws," using automatic renewals in the broadest sense. This contrasts with the FTC's continued use of the older term "negative option"



(see [FTC Blog: Acc-cen-tuate the negative?](#), but also see below regarding potential updates to the FTC's definition).

This Note focuses on the newer and more broadly applicable automatic renewal states. Certain types of very narrowly-focused state automatic renewal laws, such as those dealing with leases of personal or business property, are briefly referenced but are generally beyond the scope of this Note.

All of the state automatic renewal laws discussed in this Note set out:

- What must be disclosed to the consumer.
- At what point in the transaction the information must be disclosed.

The more comprehensive state regulations also frequently require:

- Specific formatting requirements for disclosures.
- Express consumer consent to the automatic renewal terms.
- A written acknowledgment of the terms to be later transmitted to the consumer.

Sellers need to stay apprised of and understand these changing laws because the penalties for failing to comply can be severe, including:

- Rendering the subscription contract null and void.
- Deeming any product provided under such a contract a gift.
- Establishing a violation of a state's more general consumer protection laws.

This Note:

- Gives a brief overview of federal and state regulation of automatic renewals.
- Outlines the various types of state laws regulating automatic renewals in the US, which can be:
 - extensive;
 - general; or
 - narrow.
- Discusses best practices for companies wanting to implement automatic renewal provisions in consumer contracts.
- Highlights litigation and settlements involving automatic renewal laws, including a discussion of the "good faith exception" that is part of the law in a number of states.

For a companion Chart listing all state automatic renewal laws, including the District of Columbia, see [Practice Note, Automatic Renewal State Laws Charts: Overview](#).

Regulatory and Legal Framework

Both the federal government and individual states, as well as the District of Columbia (DC), have passed legislation governing how sellers must structure automatic renewals and similar negative option offers.

These types of offers can be made in several different ways:

- **Pre-notification negative option plans.** Under these plans, such as the book or music clubs that became popular in the 1980s, sellers send periodic notices offering goods. If consumers take no action, sellers send the goods and charge consumers.
- **Continuity plans.** For these plans, consumers agree in advance to receive periodic shipments of goods or provision of services, for which they are charged at regular intervals and which they continue to receive until they cancel the contract.
- **Automatic renewals.** With these plans, a company may automatically renew a consumer's subscription when it expires and charge for it unless the consumer affirmatively cancels the subscription.
- **Free-to-pay or nominal-fee-to-pay trial offer conversions.** In these plans, consumers receive goods or services for free (or at a nominal fee) for a trial period. After the trial period, sellers automatically begin charging a fee (or higher fee) unless consumers affirmatively cancel.

Federal Regulations

On the federal level, companies should think about both:

- The Negative Option Rule promulgated by the FTC (16 C.F.R. § 425.1).
- The Restore Online Shoppers' Confidence Act (ROSCA) (15 U.S.C. §§ 8401 to 8405).

Guidelines published in January 2009 by FTC staff members offer recommendations for the industry in complying with Section 5 of the Federal Trade Commission Act (FTC Act) when making online negative option offers (see *Negative Options: A Report by the Staff of the FTC'S Division of Enforcement*, 2009 WL 356592, at *24-26). The guidelines include the following five key principles to maximize a seller's likelihood of compliance:

- **Disclose the offer's material terms in a manner that is understandable to the consumer.** This must include the existence of the offer, the offer's total cost, whether the consumer's billing information will be transferred to a third party, and how to cancel the offer. Sellers should avoid making disclosures that are vague, unnecessarily long, or contain contradictory language.
- **Clearly and conspicuously display the disclosures.** The disclosures must be in locations where they are likely to be seen, and the disclosures, and any links to them, must be labeled with language indicating the importance and relevance of the information. The text should be easy to read whether in print or online.
- **Disclose the offer's material terms before consumers pay or incur a financial obligation.** Any disclosures should occur **before** a consumer agrees to an offer online by clicking a "submit" or "purchase" button.
- **Obtain consumers' affirmative consent to the offer.** Consent requires that consumers take an affirmative step to demonstrate consent to an online automatic renewal offer. A pre-checked box should not be relied on as evidence of consent.
- **Do not impede the effective operation of promised cancellation procedures.** Sellers should not engage in practices that make cancellation burdensome for consumers, such as requiring consumers to wait on hold for an unreasonably long period of time.

In late 2019, the FTC took public comment on potentially amending the Negative Option Rule (see [Rule Concerning the Use of Prenotification Negative Option Plans](#)). The FTC is considering using its rulemaking authority under the FTC Act to expand the scope and coverage of the existing Negative Option Rule. Despite the passage of a year and a half since the comment period closed, the FTC has yet to take any further action on the proposed rule.

In December 2010, Congress passed ROSCA, which imposes specific requirements on online negative option plans and automatic renewals. ROSCA expressly prohibits a seller from charging or attempting to charge a consumer for goods or services over the internet through a negative option or other recurring contract unless the seller:

- Clearly and conspicuously discloses the material terms of the transaction before obtaining the consumer's billing information.
- Obtains the consumer's "express informed consent" before charging the consumer.
- Provides "simple mechanisms for a consumer to stop recurring charges" from occurring.

(15 U.S.C. §§ 8401 to 8405.)

A violation of ROSCA is considered an unfair or deceptive act or practice under section 18 of the FTC Act, which subjects sellers to penalties. State attorneys general may bring an action against a seller alleging a ROSCA violation. (15 U.S.C. §§ 8401 to 8405.)

The FTC has issued its own challenges against sellers for alleged violations. For example:

- In 2014, the FTC issued its first challenge against a seller in *FTC v. Health Formulas, LLC*, and the defendants ultimately agreed to stop certain business practices related to "free trials," and return more than \$9.8 million to consumers (see 2017 WL 11231042 (D. Nev. Feb. 22, 2017); see also [FTC Press Release](#)).
- In 2017, the FTC settled an enforcement action for violations of the FTC Act and ROSCA brought against online retailer AdoreMe, which agreed to pay \$1.38 million and revise its automatic renewal practices (see [FTC: AdoreMe, Inc.](#)).
- In February 2019, the FTC filed a complaint against a Puerto Rico-based defendant and the eight companies he owns and operates for multiple violations of ROSCA, including the defendant's failure to disclose that consumers would be automatically charged for products unless they canceled (see [FTC Press Release](#)).
- In April 2019, the FTC reached a settlement with Urthbox, a company that offered a "free" trial of its snack boxes on its website for a nominal shipping and handling fee. The company, however, did not adequately disclose key terms of the offer, including that they would charge consumers the total amount owed for six months of shipments if they did not cancel in time. (See [FTC Settlement Press Release](#); see also [FTC Refund Check Press Release](#).)
- In May 2019, the FTC settled with a group of companies who were alleged to have operated a worldwide negative option "scam" in which various products were marketed and sold online via a "RISK FREE" trial. Customers who purchased the products ended up being charged a significantly higher amount than they had been told, and they were also enrolled in additional negative option plans. The companies had to turn over more than \$9 million in assets and were required to comply with all applicable disclosure laws, including ROSCA. (See [FTC Settlement Press Release](#).)

In 2020, the FTC was particularly active regarding automatic renewals. For example:

- In July 2020, the FTC filed suit in federal court against online seller of background check reports MyLife.com for numerous violations of federal law, including ROSCA and the Telemarketing Sales Rule. The

complaint alleged that MyLife.com failed to disclose initial charges as well as the automatic renewal, made it difficult for consumers to cancel their subscription, and misrepresented its refund and cancellation policies. (See [FTC Lawsuit Press Release](#)). The FTC subsequently defeated a motion to dismiss filed by MyLife.com, with a federal court holding that the FTC had sufficiently alleged violations of both ROSCA and the Telemarketing Sales Rule (*United States v. MyLife.com, Inc.*, 2020 WL 6572661 (C.D. Cal. Nov. 6, 2020)).

- In September 2020, the FTC announced a \$10 million settlement with online learning company Age of Learning, Inc., which operates the program ABCmouse. The FTC targeted Age of Learning because it made misrepresentations about cancellations and did not disclose key information to consumers in conjunction with an automatically-renewing subscription, in violation of the FTC Act and ROSCA. (See [FTC Settlement Press Release](#).)
- Also in September 2020, the FTC announced a \$1 million settlement with supplement marketing company NutraClick, for violations of ROSCA and the Telemarketing Sales Rule, and for failure to comply with a prior 2016 consent order. (See [FTC Lawsuit Press Release](#).)

One final point regarding future FTC enforcement actions: the Supreme Court in April of 2021 limited the FTC's ability to seek monetary relief, in addition to injunctive relief, under Section 13(b) of the FTC Act (*AMG Capital Management, LLC v. Federal Trade Commission*, 141 S. Ct. 1341 (2021)). The effects of this recent development remain to be seen, but it is worth noting that the FTC does still have certain avenues to seek monetary relief from potential violators, via administrative proceedings, by involving different federal agencies, or both.

For more information on these federal regulations, see [Practice Note, Positive Practices for Negative Option Features: Negative Option Rule and Restore Online Shoppers' Confidence Act](#).

State Regulation

States have passed automatic renewal laws that cover all types of negative option programs, some of which go beyond the types of plans the FTC regulates. As used at the state level, the term "automatic renewal" is often used in the broadest sense of the term and not in the narrow sense as used by the FTC to describe a specific form of negative option plans. Where federal and state regulation overlap, the federal standards set the minimum bar for compliance but states can impose stricter laws. For example:

- California has adopted some of the broadest and strictest requirements under its automatic renewal law, and a number of other jurisdictions have followed suit, some enacting laws almost identical to California's – most recently, New York.
- Other states have also decided to regulate automatic renewal contracts, but with different or less extensive compliance regimes.

Although ROSCA gives state attorneys general a cause of action under the FTC Act, states may also bring actions under their own consumer protection laws. In fact, several states similarly consider violations of their automatic renewal laws to be per se violations of their unfair and deceptive acts or practices laws, including Hawaii, Illinois, Nevada, New Hampshire, New Mexico, North Dakota, Vermont, and Virginia (see [Automatic Renewal State Laws Charts: Overview](#)).

The laws across states differ significantly in how they regulate automatically renewing contracts. Broadly speaking, states typically either:

- Extensively or generally regulate virtually **all** consumer contracts containing automatic renewal provisions (see States with Extensive Automatic Renewal Laws and States with General Automatic Renewal Laws).
- Only regulate certain **narrow** categories of automatic renewal contracts, for example, dance studio, home alarm, or health club contracts (see States with Narrow Automatic Renewal Laws). This narrow category also includes state automatic renewal laws that are outside the scope of the FTC negative option plans and this Note (for example, any state law dealing with automatic renewals of property leases, examples of which include Ark. Code Ann. § 4-86-109 and R.I. Gen. Laws § 6-13-14).

For more information about individual state laws, see [Practice Note, Automatic Renewal State Laws Charts: Overview](#).

While many states and the District of Columbia have passed legislation concerning automatic renewals relating to consumer subscription services and negative option offers, a number of states have not (as of June 2021), including: Alabama, Alaska, Arizona, Delaware, Idaho, Indiana, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, New Jersey, Ohio, Oklahoma, Rhode Island, Texas, Washington, West Virginia, and Wyoming.

However, laws relating to auto-renewal programs – some in states with no current automatic renewal laws, some in states currently with only narrow laws, and some in

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states with comprehensive laws – are regularly introduced in state legislatures across the country. Before putting an auto-renewal program into place, companies should confirm the status of any such legislation in jurisdictions where their program will operate.

In addition, some states have increased their enforcement efforts (for example, California has been particularly active in this area; see [Litigation and Settlements and Practice Note, Positive Practices for Negative Option Features: State Enforcement](#)).

In addition, certain state attorneys general have joined together to prosecute sellers for violations (see [Litigation and Settlements](#)).

A few states have passed laws that impact automatic renewal provisions in business-to-business contracts (see, for example, Wis. Stat. § 134.49, regarding the enforceability of these provisions).

Therefore, states' automatic renewal laws generally fall into three categories:

- **Disclosure with extensive requirements.** These automatic renewal laws generally apply to all consumer contracts and have extensive compliance requirements regarding clear and conspicuous disclosure, consent, and confirmation (see [States with Extensive Automatic Renewal Laws](#)).
- **Disclosure with some additional, general requirements.** These automatic renewal laws generally apply to all consumer contracts and require clear and conspicuous disclosure of automatic renewal terms. However:
 - some states just require clear and conspicuous disclosure (for example, [Louisiana](#), although the law does not define “clear and conspicuous”); and
 - other states (for example, [Connecticut](#), [Illinois](#), and [Maine](#)) require both clear and conspicuous disclosure and notification to the customer of the automatic renewal within a certain period of time before the first automatic renewal occurs. Connecticut, Illinois, and Maine do not define “clear and conspicuous.” Sellers in these states and other states that require but do not define “clear and conspicuous” disclosures should look to the guidance the FTC guidance on clear and conspicuous disclosures (see [Practice Note, Advertising: Overview: Clear and Conspicuous Disclosures](#)). Sellers may also look to the laws of those states that do define “clear and conspicuous” (for example, California and Hawaii) for suggestive (but not binding) guidance.

(See [States with General Automatic Renewal Laws](#).)

- **Disclosure with additional requirements, but applicable only to certain contracts (specific industries or services).** These automatic renewal laws impose similar requirements to those in the extensively regulating states, but only apply to specific types of contracts such as dance studios, gym memberships and alarm systems (see [States with Narrow Automatic Renewal Laws](#)). Of these states, Missouri, New Hampshire, New Mexico, South Carolina, and Utah's laws provide guidance regarding “clear and conspicuous.”

Finally, a few states bar automatic renewal clauses entirely in certain types of consumer contracts: Iowa (physical exercise facilities); Missouri (buyer's clubs); and Nevada (health club memberships or dance studio contracts).

For more information on all state automatic renewal laws, see [Practice Note, Automatic Renewal State Laws Charts: Overview](#).

States with Extensive Automatic Renewal Laws

There are eight jurisdictions that impose extensive requirements on sellers who offer automatically renewing contracts to consumers, including two of the largest states in the US, California (see [California](#)) and New York (see [New York](#)) (see [Legal Update, New York Law Requires Clear and Conspicuous Consumer Notice Prior to Auto-Renewal of Contracts](#)). In addition to California and New York, the following states also impose extensive requirements:

- District of Columbia (DC) (see [District of Columbia](#)).
- Hawaii (see [Hawaii](#)).
- North Dakota (see [North Dakota](#)).
- Oregon (see [Oregon](#)).
- Vermont (see [Vermont](#)).
- Virginia (see [Virginia](#)).

California's law was the first to come into effect, in December 2010, and sets out detailed requirements on:

- Presenting the offer to the consumer.
- Obtaining the consumer's affirmative consent to the offer.
- Sending a subsequent acknowledgment of the automatic renewal terms to the consumer that clearly states the cancellation terms.

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- Providing, through its most recent update, that a consumer who signs up online must be able to cancel online, as well as additional requirements for free trials.

The District of Columbia, Hawaii, New York, North Dakota, Oregon, Vermont, and Virginia have laws that were modeled after the California law, but have slight nuances or differences. While it is important to understand each of these laws, following the best practices under California law generally reflects the best practice overall for companies operating nationwide because it typically incorporates the toughest standards for automatic renewal. One item California does not address, however, which certain other states do, is the length of the automatic renewal term. For example:

- North Dakota's law limits any renewal period in an agreement for the sale of merchandise to 12 months or less (see North Dakota).
- DC's law only applies to contracts that renew for a period of one month or more (see District of Columbia).

California

California's automatic renewal law broadly covers "any plans or arrangements in which a paid subscription or purchasing contract is automatically renewed at the end of a definite term for a subsequent term" (Cal. Bus. & Prof. Code § 17601(a)). The intent of the law was to end the practice of ongoing charges to consumer credit or debit cards or other payment accounts for ongoing product shipments or services without the explicit consent of the consumer (Cal. Bus. & Prof. Code § 17600).

Some specific types of contracts are exempt from the law, such as alarm company operators and franchise arrangements (Cal. Bus. & Prof. Code § 17605). The statute applies to automatic renewals related to products and services, and it includes free trials as well.

A business making an offer to a consumer in California containing an automatic renewal must meet specific requirements relating to:

- The content of the terms (see Content of Terms).
- The presentation of the terms (see Display of Terms).
- The consent of the consumer to the offer (see Affirmative Consent to Offer).
- The acknowledgments provided to the consumer (see Consumer Acknowledgment).
- The cancellation of the subscription or trial (see Cancellation Method).

- The notice necessary to convey a material change to the automatic renewal terms (see Notice of Material Change).
- The disclosure that any free gift or trial will convert to a paid subscription, if applicable (see Offer with Free Gift or Trial Period and Conversion to Paid Subscription).

For more information on California's automatic renewal laws, see [Practice Note, Automatic Renewal State Laws Charts: Overview: California](#).

Content of Terms

California's statute requires the following to be disclosed clearly and conspicuously before the consumer's acceptance of the offer:

- That the subscription or purchasing agreement will continue until the consumer cancels.
- 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, 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.

(Cal. Bus. & Prof. Code § 17601(b)(1)-(5); see *Hall v. Time, Inc.*, 2020 WL 2303088, at *4 (C.D. Cal. Mar. 13, 2020) (finding defendant's disclosures provided the required terms).)

Display of Terms

The California statute requires any automatic renewal contract, plan, or subscription to clearly and conspicuously present the above terms before the purchase is made.

Specifically, the automatic renewal offer terms must be presented to the consumer both:

- **Before** the purchasing contract 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 (Cal. Bus. & Prof. Code § 17602(a)(1)). The Ninth Circuit recently observed that it is permissible for an unrelated image or text to appear between the terms and the consent, stating that the law requires "'visual proximity,' not immediate adjacency" (*Hall v. Time, Inc.*, 2021 WL 2071991, at *1 (9th Cir. May 24, 2021)).

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- **Clearly and conspicuously**, defined by the statute as one or more of the following:
 - in larger type than the surrounding text;
 - in contrasting type, font, or color to the surrounding text of the same size;
 - 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; or
 - if it is an audio disclosure, clear and conspicuous means at a volume and cadence sufficient to be readily audible and understandable.

(Cal. Bus. & Prof. Code § 17602(a)(1); see *Hall*, 2020 WL 2303088, at *3 (finding defendant’s disclosures clear and conspicuous); *Price v. Synapse Group, Inc.*, 2017 WL 3131700, at *6-7 (S.D. Cal. July 24, 2017) (describing the inadequacies of defendant’s disclosures in finding plaintiff’s allegations of violations of §§ 17601 and 17602 sufficient to state a claim).)

Best practices include the following separately or in combination with one another:

- Using bold, highlighted, all-capitalized, or different-colored text for the automatic renewal terms.
- Putting a heavy-line box around the terms.
- The terms should notify the consumer that unless the consumer cancels before the next billing period, the contract will automatically renew:
 - for the specified time period; and
 - at the specified price.
- On a webpage, the automatic renewal terms should appear next to or immediately above the button that the consumer clicks to complete the purchase (for example, the “submit order” button). The terms **should not** appear below the purchase button or via a link.

Offer with Free Gift or Trial Period and Conversion to Paid Subscription

The California statute requires any automatic renewal plan with a free gift or trial period to clearly and conspicuously disclose the price that will be charged after the trial ends or the way in which the subscription will change after the trial. (Cal. Bus. & Prof. Code § 17602(a)(1).)

For free gifts or trials, sellers should also follow the best practices described in Display of Terms.

Affirmative Consent to Offer

Under the California statute, a business must ensure that it obtains the consumer’s affirmative consent to the

agreement containing the automatic renewal offer terms before the business charges the consumer (Cal. Bus. & Prof. Code § 17602(a)(1)).

A recent unpublished Ninth Circuit decision held that this language means that a business only has to obtain the consumer’s consent to an agreement containing the automatic renewal terms, not separate consent to the automatic renewal terms themselves. Under *Hall v. Time, Inc.*, which is an unpublished case and therefore only persuasive, not binding, authority for future courts that may address the issue, California’s affirmative consent requirement is satisfied if the consumer clicks “Submit Order” or a similar button indicating agreement to the automatic renewal offer at the end of a sign-up process that contains all of the required disclosures. (*Hall v. Time, Inc.*, 2021 WL 2071991, at *2 (9th Cir. May 24, 2021))

Because at least one state (see Vermont) requires a consent to the automatic renewal terms that is separate from the acceptance of the offer, a best practice to establish affirmative consent for businesses operating nationally would be a checkbox indicating assent to Terms and Conditions that are either presented or hyperlinked on the checkout page, and which contain the automatic renewal terms.

Consumer Acknowledgment

The California statute requires a business to send an acknowledgment to the consumer covering specific items. A business must provide the consumer a retainable acknowledgment of:

- The automatic renewal offer’s terms.
- The cancellation policy.
- The information about how to cancel.

(Cal. Bus. & Prof. Code § 17602(a)(3).)

The Ninth Circuit recently confirmed that the law requires no specific timing requirement for the post-offer acknowledgment. The court held that a later notice of an upcoming automatic renewal that met the disclosure requirements of section 17602(a)(3) satisfied the law. (*Hall*, 2021 WL 2071991, at *2.)

If the offer includes a free trial, the acknowledgment must disclose how the consumer can cancel the automatic renewal before the consumer is charged for the good or service (Cal. Bus. & Prof. Code § 17602(a)(3)).

Best practices include:

- Sending an email with the required information after the initial order is completed.

- In addition to or in lieu of a confirmation email, including a hard-copy notice with the same information in the first shipment, if the contract is for a product.
- For an automatic renewal following a free trial period, sending the consumer an email that arrives at least 7-10 days before the commencement of the automatic renewal contract and the first charge to the consumer's payment account.

Cancellation Method

The business must provide and disclose an easy cancellation method that is cost-effective, timely, and easy-to-use, such as one of the following:

- A toll-free telephone number.
- An email address.
- A postal address if the business directly bills the consumer.

(Cal. Bus. & Prof. Code § 17602(b).)

It is important to note that California's law was updated in 2018 to **require** businesses to allow consumers to terminate the offer exclusively online if the offer was accepted online. The statute specifically states that this may "include a termination email formatted and provided by the business that the consumer can send to the business without additional information" (Cal. Bus. & Prof. Code § 17602(c)).

A best practice for compliance with this provision would be to include a sentence in the automatic renewal terms that states, "You may cancel at any time by contacting [SELLER] at [PHONE NUMBER], [MAILING ADDRESS], or [EMAIL OR SPECIFIC WEBSITE ADDRESS FOR CANCELLATION]." The latter option must be included if the automatic renewal program was entered into online.

Notice of Material Change

Under the California statute, before implementing any material change to the automatic renewal terms that were accepted by the consumer, the business must provide the consumer with both:

- Clear and conspicuous notice of the change.
- Information regarding how to cancel, in a form that is retainable by the consumer.

(Cal. Bus. & Prof. Code § 17602(d).)

A best practice would include sending all consumers participating in automatic renewal programs a notice via email in which the change in the automatic renewal terms is featured prominently and set apart in some manner

from the rest of the notice (for example, bold text, colored text, boxed, or all caps).

Penalties

The penalties for violating California's statute are particularly consumer friendly. For example, consumers may:

- Demand restitution of all funds paid for the product or service, including shipping (because a violation results in the good or service being deemed "an unconditional gift").
- Pursue "all available civil remedies" under state law that may apply, including injunctive relief and relief via California's consumer protection laws.

(Cal. Bus. & Prof. Code § 17604; see *Litigation and Settlements*.)

It is important to note that it is generally considered established law in the 9th Circuit that California's automatic renewal law **does not** provide a private right of action. This means that a private plaintiff can only sue for violation of the law via another consumer-protection statute, such as California's:

- Unfair Competition Law (see [Practice Note: California's Unfair Competition Law: Overview](#)).
- False Advertising Law (see [Practice Note, California's False Advertising Law: Overview](#)).
- Consumers Legal Remedies Act (see [State Q&A, Consumer Financial Regulation: California: Consumers Legal Remedies Act: Cal. Civ. Code §§ 1750 to 1784](#)).

(See *Johnson v. Pluralsight, LLC*, 728 F. App'x 674, 676 (9th Cir. 2018); *Arnold v. Hearst Magazine Media, Inc.*, 2021 WL 488343, at *6 (S.D. Cal. Feb. 10, 2021) ("There is no private right of action under the ARL") (citing *Johnson*) (see *Litigation and Settlements*).)

The statute also contains an exception allowing the business to avoid liability if it can demonstrate that it complied with the law in good faith, although the nuances of this defense have yet to be meaningfully litigated (see *Good Faith Exception*).

New York

In November 2020, New York became the latest state to pass a comprehensive automatic renewal law regime, which went into effect February 9, 2021 (N.Y. Gen. Bus. Law §§ 527 and 527-a). New York's law is nearly identical to California's law, with the only difference being that New York:

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- Expressly gives the state's Attorney General the power to seek an injunction for violations of the law.
- Permits courts to levy a penalty of up to \$100 for a single violation, up to \$500 for multiple violations, and up to \$500 for a single "knowing" violation and up to \$1,000 for multiple "knowing" violations.

(N.Y. Gen. Bus. Law § 527-a(7).)

Under New York's law, automatic renewal means any "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" (N.Y. Gen. Bus. Law § 527(1)). This language covers contracts for both goods and services. Some specific types of contracts are exempt from the law, such as:

- Those involving businesses operating under a franchise issued by a political subdivision of the state.
- Any entity regulated by the department of financial services.
- Banks and credit unions.
- Security system alarm operators.
- Certain service contracts as defined by N.Y. Ins. Law § 7902 that are covered by New York's original automatic renewal law (N.Y. Gen. Oblig. Law § 5-903).

(N.Y. Gen. Bus. Law § 527-a(8).)

Notably, New York's original automatic renewal law is still in effect and should be kept in mind. It only applies to contracts "for service, maintenance, or repair to or for any real or personal property" that renew for a period longer than one month. It requires the business to remind the consumer of the renewal between 15 and 30 days before the end of the term, with certain required disclosures and methods of notice. (N.Y. Gen. Oblig. Law § 5-903.)

Under the new automatic renewal law, a business making an offer to a consumer in New York containing an automatic renewal must meet specific requirements relating to:

- The content of the terms (see Content of Terms).
- The presentation of the terms (see Display of Terms).
- The disclosure that any free gift or trial will convert to a paid subscription, if applicable (see Offer with Free Gift or Trial Period and Conversion to Paid Subscription).
- The consent of the consumer to the offer (see Affirmative Consent to Offer).
- The acknowledgments provided to the consumer (see Consumer Acknowledgment).

- The cancellation of the subscription or trial (see Cancellation Method).
- The notice necessary to convey a material change to the automatic renewal terms (see Notice of Material Change).

For more information on New York's automatic renewal laws, see [Practice Note, Automatic Renewal State Laws Charts: Overview: New York](#).

Content of Terms

New York's statute requires the following to be disclosed clearly and conspicuously before the consumer's acceptance of the offer:

- That the subscription or purchasing agreement will continue until the consumer cancels.
- 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, 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.

(N.Y. Gen. Bus. Law § 527(2)(a)-(e).)

Display of Terms

Like California, the New York statute requires any automatic renewal contract, plan, or subscription to clearly and conspicuously present the content terms before the purchase is made. Specifically, the automatic renewal offer terms must be presented to the consumer both:

- **Before** the purchasing contract 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 (N.Y. Gen. Bus. Law § 527-a(1)(a)).
- **Clearly and conspicuously**, defined by the statute as one or more of the following:
 - in larger type than the surrounding text;
 - in contrasting type, font, or color to the surrounding text of the same size;
 - 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; or

- if it is an audio disclosure, clear and conspicuous means at a volume and cadence sufficient to be readily audible and understandable.

(N.Y. Gen. Bus. Law § 527(3).)

The best practices recommended for California equally apply here (see Display of Terms under California).

Offer with Free Gift or Trial Period and Conversion to Paid Subscription

The New York statute requires any automatic renewal plan with a free gift or trial period to clearly and conspicuously disclose either:

- The price that will be charged after the trial ends.
- The way in which the subscription will change after the trial.

(N.Y. Gen. Bus. Law § 527-a(1)(a).)

For free gifts or trials, sellers should also follow the best practices described in Display of Terms for California.

Affirmative Consent to Offer

Under the New York statute, a business must ensure that it obtains the consumer's affirmative consent to the contract containing the automatic renewal offer terms (N.Y. Gen. Bus. Law § 527-a(1)(b)).

For a best practice on affirmative consent, see Affirmative Consent to Offer under California.

Consumer Acknowledgment

The New York statute requires a business to send an acknowledgment to the consumer covering specific items. A business must provide the consumer a retainable acknowledgment of:

- The automatic renewal offer's terms.
- The cancellation policy.
- The information about how to cancel.

(N.Y. Gen. Bus. Law § 527-a(1)(c).)

If the offer includes a free trial, the acknowledgment must disclose how the consumer can cancel the automatic renewal before the consumer is charged for the good or service. (N.Y. Gen. Bus. Law § 527-a(1)(c)).

For best practices, see Consumer Acknowledgment under California.

Cancellation Method

The business must provide and disclose an easy cancellation method that is cost-effective, timely, and easy-to-use, such as one of the following:

- A toll-free telephone number.
- An email address.
- A postal address, only if the business directly bills the consumer.

(N.Y. Gen. Bus. Law § 527-a(2).)

The law requires businesses to allow consumers to terminate the offer exclusively online if the offer was accepted online. The statute specifically states that this may "include a termination email formatted and provided by the business that the consumer can send to the business without additional information." (N.Y. Gen. Bus. Law § 527-a(3).)

Again, as with California, the best practice for compliance with this provision would be to include a sentence in the automatic renewal terms that states, "You may cancel at any time by contacting [SELLER] at [PHONE NUMBER], [MAILING ADDRESS], or [EMAIL OR SPECIFIC WEBSITE ADDRESS FOR CANCELLATION]." The latter option must be included if the automatic renewal program was entered into online.

Notice of Material Change

Under the New York statute, before implementing any material change to the automatic renewal terms that were accepted by the consumer, the business must provide the consumer with both:

- Clear and conspicuous notice of the change.
- Information regarding how to cancel, in a form that is retainable by the consumer.

(N.Y. Gen. Bus. Law § 527-a(4).)

Again, as with California, the best practice would include sending all consumers participating in automatic renewal programs a notice via email in which the change in the automatic renewal terms is featured prominently and set apart in some manner from the rest of the notice (for example, bold text, colored text, boxed, or all caps).

Penalties

Like California's law, New York's law deems any good or service provided following a violation of the law to be

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an unconditional gift, allowing any injured consumer to seek restitution of all amounts paid. (N.Y. Gen. Bus. Law § 527-a(6)).

New York's law also allows the state's Attorney General to seek an injunction for violations of the law, even without demonstrating an injury or damage to a consumer (N.Y. Gen. Bus. Law § 527-a(7)). The law also sets out the following penalties that may be imposed by a court:

- Not more than \$100 for a single violation or \$500 for multiple violations resulting from a single act or incident.
- Not more than \$500 for a single knowing violation or \$1,000 for multiple knowing violations resulting from a single act or incident.

(N.Y. Gen. Bus. Law § 527-a(7).)

The statute also contains a "good faith" type exception allowing the business to avoid liability if it can demonstrate that the violation resulted from a bona fide error made notwithstanding the maintenance of procedures reasonably adopted to avoid such error (N.Y. Gen. Bus. Law § 527-a(7)).

New York's law **does not** expressly provide for a private right of action.

District of Columbia

In 2019, DC enacted the Automatic Renewal Protections Act (ARPA) (D.C. Code §§ 28A-201 to 28A-221). The ARPA is similar to state laws requiring a business to notify its consumers of the automatic renewal within a certain period of time before the first automatic renewal occurs, but it also shares some similarities with the California law and the other state laws resembling California's (see, for example, New York). The ARPA applies only to contracts of a certain length (12 months) that automatically renew for a term of one month or more (D.C. Code § 28A-203(a), (b)). A business making an offer to a consumer for these automatically renewing contracts must:

- Notify the consumer of the first automatic renewal (and annually thereafter) by:
 - first class mail;
 - email; or
 - another easily accessible form of communication, such as text message or a mobile phone application (if the consumer specifically authorizes the person to provide notice in that form).
- Send the notice to the consumer between 30 and 60 days before the cancellation deadline, and it must clearly and conspicuously disclose:

- that the contract will automatically renew unless the consumer cancels;
- the cost of the goods or services for the term of the renewal;
- the deadline by which the consumer must cancel the contract to prevent the contract from automatically renewing;
- the methods by which the consumer may obtain details of the automatic renewal provision and cancellation procedures (including by contacting the business at a specified telephone number, email address or by another easily accessible form of communication); and
- if the automatic renewal offer includes a free gift or trial, the price that will be charged after the trial ends or the manner in which the price will change following the trial.

(D.C. Code § 28A-203.)

If a business offers a free trial of a good or service lasting a month or more, merely notifying the consumer of the consumer's ability to cancel before being charged is not enough. ARPA differs from other state laws, including California, because a business must both:

- Notify the consumer of the automatic renewal at least 15 and no more than 30 days before the expiration of the free trial period.
- Obtain the consumer's affirmative consent to the automatic renewal before charging the consumer.

(D.C. Code § 28A-203(c)(1), (2).)

Any business offering nationwide or multi-state free trials lasting a month or more must take into account this special concern for any DC consumers (for example, consider having the free trial in DC last less than a month to avoid the ARPA requirements).

Like the California statute, the ARPA also provides a definition for clear and conspicuous (D.C. Code § 28A-202(1)). For more information on the ARPA, see [Practice Note, Automatic Renewal State Laws Charts: Overview: District of Columbia](#).

Hawaii

Hawaii's statute, HRS § 481-9.5, has disclosures and affirmative consent requirements, and therefore best practices on those topics, similar to California's (see California), but like DC's law, it applies to a somewhat narrower subset of contracts based on the length of the renewal period. It also imposes different requirements

based on the length of the initial contract or the nature of the contract. The law does not apply to contracts with:

- Financial institutions.
- Insurers.
- Telecommunication providers.
- Cable operators.

(HRS § 481-9.5(j).)

Content and Display of Terms

Hawaii's law regulates:

- **"Short" Automatic Renewal Contracts.** Any person or business offering a consumer contract for products or services that has a specified term of more than one month and automatically renews for a term of more than one month unless the consumer cancels the contract, must clearly and conspicuously disclose in the contract:
 - the automatic renewal clause; and
 - the procedure by which the consumer can cancel the automatic renewal.

(HRS § 481-9.5(a).)

- **"Continuous Service" Contracts.** Hawaii defines a "continuous service" contract as a plan or arrangement in which a paid subscription or purchasing agreement continues until the consumer cancels the service. Any person or business offering such a contract must clearly and conspicuously disclose in the contract:
 - the continuous service clause; and
 - the procedure by which the consumer can cancel the continuous service.

(HRS § 481-9.5(d).)

- **"Long" Automatic Renewal Contracts.** Any person or business offering a consumer contract for products or services that has a specified term of twelve months or more and automatically renews for a term of more than one month unless the consumer cancels the contract, must no less than 30 days and no more than 60 days before the consumer's deadline to cancel the automatic renewal, clearly and conspicuously notify the consumer:
 - that the contract will automatically renew unless the consumer cancels the contract;
 - how to cancel the contract; and
 - the deadline by which the consumer must respond to cancel the automatic renewal.

(HRS § 481-9.5(b).)

This notice may be provided electronically if the transaction was conducted electronically at the consumer's election and meets certain banking law requirements, or if the consumer chooses to receive electronic communications and provides a valid email address for the purpose of receiving the notice (HRS § 481-9.5(c)(1)-(2)).

Clear and Conspicuous

Hawaii's law defines "clearly and conspicuously" in the same manner as California (see California) (HRS § 481-9.5(k)). The best practices recommended for California equally apply here (see Display of Terms under California).

Affirmative Consent to Offer

Under the Hawaii statute, a business must ensure that it obtains the consumer's affirmative consent to the agreement containing the automatic renewal offer terms or the continuous service offer terms before charging the consumer (HRS § 481-9.5(e)). For a best practice on affirmative consent, see Affirmative Consent to Offer under California.

Consumer Acknowledgment

The Hawaii statute requires a business to send an acknowledgment to the consumer giving notice of certain information. A business must provide the consumer a retainable acknowledgment of:

- The automatic renewal or continuous service offer's terms.
- The cancellation policy.
- The procedure by which the consumer can cancel.

(HRS § 481-9.5(f).)

If the offer includes a free trial, the acknowledgment must clearly and conspicuously disclose:

- The consumer's right to cancel before payment is made for the goods or services.
- The cancellation procedure.

(HRS § 481-9.5(f).)

For best practices, see Consumer Acknowledgment under California.

Cancellation Method

With the automatic renewal or continuous service offer, the business must include one of the following to communicate the cancellation:

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- A toll-free telephone number.
- An email address.
- A postal address if the seller directly bills the consumer.
- A clearly and conspicuously described cost-effective, timely, and easy-to-use alternative.

(HRS § 481-9.5(g).)

Again, as with California, the best practice for compliance with this provision would be to include a sentence in the automatic renewal terms that states, "You may cancel at any time by contacting [SELLER] at [PHONE NUMBER], [MAILING ADDRESS], or [EMAIL OR SPECIFIC WEBSITE ADDRESS FOR CANCELLATION]."

Notice of Material Change

Hawaii's notice of material change requirement and best practices track California's (see California) (HRS § 481-9.5(h)).

Penalties

Any business violating Hawaii's law or that knowingly fails to cancel an automatic renewal or continuous service contract upon a consumer's request is deemed to have violated HRS § 480-2, Hawaii's unfair competition and unfair business practices law (HRS § 481-9.5(i)).

For more information on Hawaii's automatic renewal law, see [Practice Note, Automatic Renewal State Laws Charts: Overview: Hawaii](#).

North Dakota

In 2019, North Dakota enacted a law regulating contracts for the sale of merchandise in which there is an automatic renewal for a period of more than one month at the end of a definite period for a subsequent period (N.D.C.C. §§ 51-37-01, 51-37-02). Some specific types of contracts (insurance, public utilities, and banks) are exempt from the law (N.D.C.C. § 51-37-03). No renewal period may exceed 12 months (N.D.C.C. § 51-37-02(5)). The North Dakota law is similar to ROSCA, California law's, and DC's law, as it requires sellers to:

- Present the terms of the automatic renewal offer in a clear and conspicuous manner before a subscription or purchasing agreement is fulfilled and in proximity to the offer.
- Provide an acknowledgment that includes the terms of the automatic renewal offer and information regarding how to cancel in a manner which is capable of being retained by the buyer.

- Provide a cost-effective, timely, and simple procedure for cancellation which must be described in the required acknowledgment.
- When the renewal period is longer than six months, provide a clear and conspicuous written notice to the buyer (first-class mail, email, or other easily accessible form of communication) that includes the procedure for canceling the contract before the contract renews or terminates.

(N.D.C.C. § 51-37-02(1).)

The North Dakota law also defines clear and conspicuous in a manner similar to California (N.D.C.C. § 51-37-01). It uniquely, however, requires agreements that contain a provision for automatic renewal for a period of **more than six months** at the end of the time period specified in the agreement to provide a clear and conspicuous written notice to the buyer stating the buyer may cancel the contract and avoid automatic renewal. The written notice:

- Must be provided by:
 - first-class mail;
 - electronic mail; or
 - any easily accessible form of communication, including text message or a mobile application, if the consumer specifically authorizes the person to provide notice in that form.
- Must include the procedure for canceling and must be given at least 30 days and not more than 60 days before the date on which the agreement will be renewed or the expiration of the period for cancellation.

(N.D.C.C. § 51-37-02(2).)

If there is a material change in the terms of an agreement that contains a provision for automatic renewal, the seller must provide the buyer with both:

- Clear and conspicuous notice of the material change.
- Information regarding how to cancel in a manner which is capable of being retained by the buyer.

(N.D.C.C. § 51-37-02(3).)

A seller may not make or submit any charge to a buyer's credit card, debit card, bank account, account with a third party, or other financial account, unless the person has both:

- Complied with the automatic renewal law requirements.
- Obtained the buyer's affirmative consent to the agreement containing the terms of the automatic renewal.

(N.D.C.C. § 51-37-02(4).)

Like in California, any violations of the automatic renewal law subjects a seller to not just action from the state attorney general, but also private individuals, who can seek not only restitution, but also recover costs, expenses, and reasonable attorneys' fees (N.D.C.C. §§ 51-37-05 and 51-37-06). Many of the best practices recommended for compliance under California law apply in North Dakota (see California).

For more information on North Dakota's automatic renewal law, see [Practice Note, Automatic Renewal State Laws Charts: Overview: North Dakota](#).

Oregon

Oregon's statute is similar to California's (and New York's) in its application and is almost identical in its requirements and corresponding best practices for compliance (see California). The statute applies to any automatic renewal or continuous services offer to a consumer, and the requirements mirror the requirements of California (and New York), except that there is no requirement to either:

- Clearly and conspicuously disclose a free trial in the terms of the offer.
- Provide for exclusive online termination for contracts entered into online.

(Or. Rev. Stat. § 646A.295.)

For more information on Oregon's automatic renewal law, see [Practice Note, Automatic Renewal State Laws Charts: Overview: Oregon](#).

Vermont

The Vermont statute, effective July 1, 2019, is similar to the DC statute in its application, but with a slight nuance. It applies to contracts between a consumer and seller with an initial term of one year or longer that automatically renews for a subsequent term that is longer than one month (9 V.S.A. § 2454a). Therefore, if the contract automatically renews for only one month or less after the initial term, the Vermont statute does not apply. The statute also does not apply to contracts between consumers and financial institutions or contracts for insurance (9 V.S.A. § 2454a(d)(1)-(2)).

The business making the offer to a consumer for these automatically renewing contracts must:

- **Clearly and conspicuously disclose the automatic renewal terms.** The automatic renewal terms must be in plain, unambiguous language in bold-faced type.

Vermont is the only state to specifically require the use of bold-faced type.

- **Require opt-in and acceptance of the contract terms.** The consumer must affirmatively opt-in to the automatic renewal provision in addition to accepting the parties' contract or agreement. Vermont is the only state to require this second, separate opt-in for the automatic renewal terms. In Vermont, the seller must ensure that there is a separate consent for the automatic renewal terms distinct from the acceptance of the parties' contract. One potential best practice for this requirement would be to have a separate checkbox for the automatic renewal terms.
- **Provide written notice.** The seller must provide the consumer with written or electronic notice between 30 and 60 days before the earliest of the automatic renewal date, the termination date, or the date by which the consumer must provide notice to cancel the contract. The written or electronic notice must include:
 - the date that the contract will terminate, and a clear statement that the contract will renew automatically unless the consumer cancels the contract on or before the termination date; and
 - the length and any additional terms of the renewal period.

(9 V.S.A. § 2454a(a).)

As of July 1, 2020, two provisions were added to Vermont's law that make it even more similar to California's. Now, a seller or lessor providing an automatic renewal offer subject to Vermont's law must also:

- Provide to the consumer a toll-free telephone number, email address, a postal address if the seller or lessor directly bills the consumer, or another cost-effective, timely, and easy-to-use mechanism for canceling the contract.
- If the consumer accepted the contract online, permit the consumer to terminate the contract exclusively online, which may include a termination email formatted and provided by the seller or lessor that the consumer can send without additional information.

(9 V.S.A. § 2454a(b).)

A violation of the Vermont statute is considered an unfair and deceptive act in commerce in violation of Section 2453 of Vermont's Consumer Protection Act (9 V.S.A. § 2453).

For more information on Vermont's automatic renewal law, see [Practice Note, Automatic Renewal State Laws Charts: Overview: Vermont](#).

Virginia

The Virginia law is similar to the California and New York statutes in its application and almost identical to the California statute in its requirements and corresponding best practices for compliance (Va. Code Ann. §§ 59.1-207.45 to 59.1-207.49; see California). The statute:

- Applies to any contracts for goods or services, or both with an automatic renewal or continuous service offer to a consumer.
- Mirrors the requirements of California, except that there is no requirement to provide for exclusive online termination for contracts entered into online.
- **Does not** apply to:
 - certain franchises issued by the State or other entities affiliated with a public service company or public utility;
 - suppliers or affiliates regulated by the State Corporation Commission, the Federal Communications Commission, or the Federal Energy Regulatory Commission;
 - alarm company operators;
 - banks or similar financial institutions;
 - home protection companies;
 - home service contract providers regulated by the Department of Agriculture and Consumer Services; or
 - health clubs.

(Va. Code Ann. § 59.1-207.48.)

Virginia, however, takes the penalties for violation of its statute a step further than both California and New York. Businesses in violation may be subject to both:

- Civil penalties (up to \$5,000 per violation).
- Damages under a private right of action from consumers.

(Va. Code Ann. § 59.1-207.49.)

Virginia also provides that a business is not subject to civil penalties or damages if the business makes a good faith effort to comply with the statute's requirements (see Good Faith Exception).

For more information on Virginia's automatic renewal law, including penalties, see [Practice Note, Automatic Renewal State Laws Charts: Overview: Virginia](#).

States with General Automatic Renewal Laws

States with general automatic renewal laws fall into two categories:

- States that require disclosure of the automatic renewal terms with some additional requirements (see Disclosure with Some Additional Requirements; see also [Automatic Renewal State Laws Charts: Overview: Connecticut, Illinois, Maine, and North Carolina](#)).
- States that require disclosure of the automatic renewal terms and/or cancellation information with no additional requirements (see Disclosure with No Additional Requirements; see also [Practice Note, Automatic Renewal State Laws Charts: Overview: Louisiana](#)).

For each category, the states broadly regulate consumer contracts for goods or services, or both, for contracts that automatically renew for a period **of more than one month**. The seller must provide the consumer with clear and conspicuous written notice that the consumer may cancel the automatically renewing contract, and there are typically penalties for failing to comply.

Disclosure with Some Additional Requirements

These automatic renewal laws:

- Apply generally to all consumer contracts.
- Require not only clear and conspicuous disclosure of automatic renewal terms, but typically also require the customer to be notified of the automatic renewal within a certain period of time before the first automatic renewal occurs.

An example of a state that requires disclosure with some additional requirements is Connecticut. It has different requirements for contracts that are over 180 days in length versus contracts that are under 180 days (Conn. Gen. Stat. Ann. § 42-126b(a)). For contracts that are over 180 days, the clear and conspicuous written notice must both:

- Include the procedure for cancellation.
- Be given to the consumer at least 14 days (but not more than 60 days) before the earlier of:
 - the date that the contract will be renewed; or
 - the expiration of the time period that the consumer is allowed to cancel.

(Conn. Gen. Stat. Ann. § 42-126b.)

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For more information on Connecticut's automatic renewal law, see [Practice Note, Automatic Renewal State Laws Charts: Overview: Connecticut](#).

Another state requiring disclosure with additional requirements is Illinois. Illinois requires that:

- The seller disclose the automatic renewal terms clearly and conspicuously in the contract, including the cancellation procedure (815 ILCS 601/10(a)).
- If the contract term is a specified term of 12 months or more and the contract automatically renews for a period of more than one month, the business must, no less than 30 days and no more than 60 days before the consumer's deadline to cancel the automatic renewal, send the consumer a written notice clearly and conspicuously stating:
 - that unless the consumer cancels the contract, it will automatically renew; and
 - the details about how the consumer may cancel the contract.

(815 ILCS 601/10(b); see *Pulcini v. Bally Total Fitness Corp.*, 353 Ill. App. 3d 712 (2004) (reversing lower court's dismissal of complaint for failure to state an automatic renewal violation); *Bagg v. HighBeam Research, Inc.*, 2013 WL 3466846, at *5-6 (N.D. Ill. July 10, 2013) (finding plaintiffs stated a claim for an automatic renewal violation and that defendants could not demonstrate compliance with the statute's safe harbor provision at the motion to dismiss stage).)

For more information on Illinois's automatic renewal law, see [Practice Note, Automatic Renewal State Laws Charts: Overview: Illinois](#).

A third example of an automatic renewal law with disclosure and additional requirements is Maine, which in 2019 enacted 10 M.R.S.A. §§ 1210-C and 1210-D. It requires any company offering an automatically-renewing online subscription service (for products like online magazines, apps, social networking services, software, and games) to disclose with the offer the methods the consumer may use to cancel the subscription. The consumer also must be able to effect the cancellation online. For any subscription that has a term of 12 months or more that automatically renews for a period of more than one month, the business must notify the consumer of the automatic renewal between 30 and 60 days before the cancellation deadline for the automatic renewal. This notice must disclose clearly and conspicuously both:

- That unless the consumer cancels the subscription, it will automatically renew.

- Where the consumer can obtain details regarding the renewal and the cancellation procedure.

(10 M.R.S.A. § 1210-C.)

For more information, see [Practice Note, Automatic Renewal State Laws Charts: Overview: Maine](#).

If a seller violates the automatic renewal laws in these states, the violation is deemed to be a per se violation of the state's consumer protection statute (815 ILCS 601/15; Conn. Gen. Stat. Ann. § 42-126b(e); 10 M.R.S.A. § 1210-D).

For an additional examples of a state that requires disclosure with some additional requirements, see [Practice Note, Automatic Renewal State Laws Charts: Overview: North Carolina](#).

Disclosure with No Additional Requirements

These automatic renewal laws similarly apply generally to most or all consumer contracts, but the seller must only clearly and conspicuously disclose the automatic renewal terms or at a minimum how to cancel. An example of a state that requires disclosure with no additional requirements is Louisiana (see [Automatic Renewal State Laws Charts: Overview: Louisiana](#)).

Louisiana's law requires only that a business seeking to engage a consumer in an automatically-renewing contract or program must clearly and conspicuously disclose both:

- The automatic renewal clause.
- How to cancel the contract.

(La. R.S. 9:2716(A), (B).)

For more information, see [Practice Note, Automatic Renewal State Laws Charts: Overview: Louisiana](#).

States with Narrow Automatic Renewal Laws

States with narrow automatic renewal laws typically regulate a subset of contracts for goods or services, but a few regulate leases of personal or business property, which are generally outside the scope of this Note and broader than negative option plans. The following are examples of what states with narrow automatic renewal laws regulate:

- Home alarm products, which are regulated by Tennessee's law.

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- Health club or spa memberships, which are regulated by laws in California, Colorado, Iowa, Maryland, New Hampshire, South Carolina, Pennsylvania, and Utah (in states like California which also separately regulate health club memberships, businesses must comply with those laws as well as the state's general automatic renewal law).
- Dance studio contracts, which are regulated by Nevada's law.
- Service and maintenance contracts, which are regulated by laws in Florida, Georgia, New Mexico, New York, and Utah.
- Leases of property, either:
 - personal, which are regulated by laws in Arkansas, Missouri, and Rhode Island; or
 - business, which are regulated by Wisconsin's law.
- Other specific products or services, for example:
 - small customer service contracts relating to the sale of natural gas in Montana;
 - buyer's clubs, which are regulated by laws in Oklahoma; and
 - telecommunication contracts, which are regulated by laws in South Dakota.

The foregoing laws may have specific requirements, but they are only applicable to automatically renewing contracts in the industry described above. For example:

- Some state's laws require that sellers in certain industries provide a right of rescission (right to cancel) within a certain number of days after the consumer enters the contract, like Colorado, Maryland, Nevada, and New Hampshire. In these states, if the consumer wishes to exercise his or her right to rescind, the consumer must notify the seller in writing. New Hampshire additionally requires the seller to notify the consumer of the right to rescind in a boldface statement (of at least ten-point font).
- The narrowly-applicable automatic renewal laws in South Carolina and Georgia are drafted similarly to those in states with general automatic renewal laws (see States with General Automatic Renewal Laws). Each requires the seller to disclose the automatic renewal terms in a certain manner, with some acknowledgment from the consumer.
- Some states, including New Mexico, Georgia, and Utah, impose certain requirements on businesses in particular industries to provide notice to the consumer

that the contract will automatically renew. A business must generally send notice to the consumer at least 30, but no more than 60 or 90 days, before the last day on which the consumer may give notice of intent to terminate.

For more information on individual states with narrow automatic renewal laws, see [Practice Note, Automatic Renewal State Laws Charts: Overview](#).

Compliance Best Practices

Companies offering automatic renewal contracts must tailor them to both:

- Minimum federal standards (see Regulatory and Legal Framework).
- The laws of the individual states in which they do business.

An overarching requirement imposed by both federal regulations and states with applicable automatic renewal laws is the need for clear and conspicuous language. For more information and best practices on:

- Making clear and conspicuous disclosures, see [Practice Note, Advertising: Overview: Clear and Conspicuous Disclosures](#).
- And any specific "clear and conspicuous" requirements in each applicable state, see States with Extensive Automatic Renewal Laws, States with General Automatic Renewal Laws, and States with Narrow Automatic Renewal Laws.

Companies doing business across states must consider the strictest requirements in each, particularly if they are doing business in California (see California), DC (see District of Columbia), Hawaii (see Hawaii), New York (see New York), North Dakota (see North Dakota), Oregon (see Oregon), Vermont (see Vermont), or Virginia (see Virginia). For some suggestions for best practices in these states, particularly California which tends to have the strictest requirements and the law most other states in this category have modeled their laws after, and Vermont, which has a distinct opt-in requirement, see States with Extensive Automatic Renewal Laws.

The laws of the individual states may spell out:

- What must be disclosed to the consumer.
- How consumer disclosures must be formatted.
- At what point in the transaction the disclosures must be made.

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- Whether additional disclosures must be made after the consumer has accepted the contract or completed the purchase.
- In the case of a free trial period, whether the consumer must get an additional notification before the automatic renewal contract commencing.

Some states, like California, New York, and Oregon, further specify required cancellation procedures and disclosures (see California, New York, and Vermont). Other states may apply or exempt certain requirements based on the length of the automatically-renewing contract (see, for example, [Practice Note, Automatic Renewal State Laws Charts: Overview: Hawaii, Illinois, Maine, and North Dakota](#)). It is important for companies to stay apprised of and understand these ever-changing regulations because the penalties may be imposed for violations.

On the issue of affirmative consent, businesses should continue to monitor developments in the laws and courts in the states that require it. While California now has a Ninth Circuit decision indicating that a “Submit Order” or “Accept Offer” button can show consent (if all of the law’s disclosure requirements are met), that decision, *Hall v. Time, Inc.*, is unpublished (see [Affirmative Consent to Offer](#)). Therefore, it is possible that other California courts (and courts in the states that have adopted a similar consent requirement) could come to a different conclusion. In addition, Vermont requires an opt-in to the automatic renewal terms that is separate from the acceptance of the contract. Therefore, possible best practices on the issue of consent include either:

- A checkbox indicating agreement to hyperlinked Terms and Conditions containing the automatic renewal terms.
- A separate checkbox solely for the automatic renewal terms.

Companies should also consider including in their terms and conditions dispute resolution provisions to the extent permitted by law in the jurisdictions in which they operate, such as mandatory binding arbitration and class/representative action waivers (see [Standard Clause, Class Arbitration Waiver \(US\)](#); see also [Class Arbitration Waivers in the US: Case Tracker](#)). For more on arbitration in the US, see [Practice Note, Understanding US Arbitration Law](#). Some companies have had success in having automatic renewal lawsuits sent to arbitration under these clauses (see [Litigation and Settlements](#)).

Additional general information on best practices for negative option contracts can be found in the [Practice Note, Positive Practices for Negative Option Features](#) relating to:

- Terms and Conditions (see [Practice Note, Positive Practices for Negative Option Features: Terms and Conditions](#)).
- Consent (see [Practice Note, Positive Practices for Negative Option Features: Consent](#)).
- Confirmation (see [Practice Note, Positive Practices for Negative Option Features: Confirmation](#)).
- Cancellation (see [Practice Note, Positive Practices for Negative Option Features: Cancellation](#)).

Good Faith Exception

Several states’ automatic renewal laws contain a “good faith” exception, which provides an affirmative defense to alleged violations if the company can show it complied with the statute in good faith (see, for example, [Practice Note, Automatic State Renewal Laws Charts: Overview: California, New York, District of Columbia, Florida, Illinois, Louisiana, North Carolina, Virginia, and Wisconsin](#)).

To date, in California, attempts to raise the defense at the motion to dismiss stage have been denied as premature or improper (see, for example, *Jenkins v. j2 Glob., Inc.*, 2014 WL 12687417, at *5 (C.D. Cal. May 23, 2014); *Lopez v. Stages of Beauty, LLC*, 307 F. Supp. 3d 1058, 1073 (S.D. Cal. 2018); *Price*, 2017 WL 3131700, at *7). The same result occurred in Illinois in *Bagg*, 2013 WL 3466846, at *5-6.

A California defendant did successfully use the defense at the motion for summary judgment stage to create a genuine issue of material fact regarding its good faith compliance, which the court relied on (in part) to deny plaintiff’s motion for summary judgment (*Roz v. Nestle Waters N. Am., Inc.*, 2017 WL 6942661 (C.D. Cal. Dec. 6, 2017) (the defendant provided “evidence that it, in good faith communicated repeatedly with its customers. . . regarding the nature of their relationship, how to cancel, charges to their credit cards, and price changes”)).

Beyond these few cases, however, the good faith exception generally has not been litigated. Therefore, it is unclear what a court would consider exculpatory “good faith compliance.” In addition, the exception may create privilege issues, including potential waiver, to the extent a defendant may attempt to rely on the advice of counsel to demonstrate good faith compliance.

At this point in time, not enough case law exists on the good faith exception in the automatic renewal law context to provide sellers with a clear road map to successful use of the exception.

Litigation and Settlements

The newer and more stringent automatic renewal laws have most frequently been litigated in California. These suits have involved both governmental and consumer actions. The following are some of the more notable litigations and results:

- Many companies have litigated and eventually settled automatic renewal lawsuits brought by consumers in California, often as class actions, including Bumble, Apple, Guthy-Renker, LifeLock, Yahoo!, and McAfee. The settlements in these actions have typically run into the millions of dollars, often in the form of payments or vouchers sent to class members. The New York Times and Washington Post recently settled significant class actions in the Southern District of New York and the Northern District of California, respectively, brought under California's automatic renewal law.
- Frequently led by the California Auto Renewal Task Force (CART), which includes the Santa Monica City Attorney's office and the District Attorneys' offices of Santa Cruz, Los Angeles, San Diego, and Santa Clara counties, prosecutors have obtained settlements and consent judgments in automatic renewal enforcement actions against companies such as Care.com, PeopleConnect (Classmates.com), Home Chef, CheckPeople, Box.com, Beachbody, eHarmony, Dropbox, J2 Global, and Guthy-Renker, with the companies agreeing to pay anywhere from hundreds of thousands to millions of dollars in penalties and restitution and committing to updating their website and sales practices.
- In one California state court case, a superior court judge explicitly held at the summary judgment stage that the defendant had fully complied with the automatic renewal law, a rare judgment on the merits in the automatic renewal law context (see *Colucci v. Pristine Bay LLC*, 2017 WL 8940281, at *1 (Cal. Super. Aug. 30, 2017)).
- More frequent are determinations by trial courts that plaintiffs have sufficiently pled an automatic renewal violation to survive the pleading stage (see, for example, *Arnold*, 2021 WL 488343, at *7; *King v. Bumble Trading, Inc.*, 393 F. Supp. 3d 856, 870 (N.D. Cal. 2019); *McKee v. Audible, Inc.*, 2018 WL 11263238, at *17-19 (C.D. Cal. Mar. 12, 2018); *Stages of Beauty*, 307 F. Supp. 3d 1058, 1970-73)). Courts' determinations that plaintiffs have failed to state an automatic renewal claim are nearly always issued with leave to amend (see, for example, *Turnier v. Bed Bath & Beyond Inc.*, 2021 WL 409720, at *5 (S.D. Cal. Feb. 5, 2021); *Arnold*, 2020 WL 3469367, at *10).

In addition, California courts, both federal and state, have held as follows regarding the state's automatic renewal law:

- It **does not** provide a private right of action. See, for example:
 - federal courts: *Johnson v. Pluralsight, LLC*, 728 F. App'x 674, 676 (9th Cir. 2018)); *Arnold*, 2021 WL 488343, at *6; *Tan v. Quick Box, LLC*, 2020 WL 7226440, at *27 (S.D. Cal. Dec. 8, 2020); but see *Kissel v. Code 42 Software, Inc.*, 2016 WL 7647691, at *7 (C.D. Cal. Apr. 14, 2016) (finding a legislative intent to provide a private right of action)). Subsequent decisions have expressly disagreed with *Kissel* (see, for example, *Stages of Beauty*, 307 F. Supp. 3d at 1074); and
 - state courts: *Mayron v. Google LLC*, 54 Cal. App. 5th 566, 573-74 (2020).
 - It limits relief to California consumers only (see, for example, *Wahl v. Yahoo! Inc.*, 2017 WL 4098884, at *1 (N.D. Cal. Sept. 15, 2017) and *Noll v. eBay Inc.*, 2013 WL 2384250, at *6 (N.D. Cal. May 30, 2013)). Other states' courts may hold similarly if their statute's language resembles California's.
 - That consumers have standing to allege a violation of the automatic renewal law if:
 - they use one of California's consumer protection statutes (see Penalties); and
 - they truthfully allege they would not have purchased the item or subscription, or would have cancelled the item or subscription sooner, had the disclosures been compliant (see, for example, *Mayron*, 54 Cal. App. 5th at 574-75 (citing *Kwikset Corp. v. Superior Court*, 51 Cal.4th 310, 317 (2011)); *McKee v. Audible, Inc.*, 2018 WL 11263238, at *18 (C.D. Cal. Mar. 12, 2018)).
 - It applies to loyalty programs, where consumers pay a membership fee to receive price and shipping discounts (see, for example, *Turnier v. Bed Bath & Beyond Inc.*, 2021 WL 409720, at *4 (S.D. Cal. Feb. 5, 2021) ("Although the Legislature relied on investigations into magazine subscriptions when drafting the statute, there is nothing to suggest it intended to limit the protections under ARL to magazine or periodical subscriptions")).
- Authority, however, is mixed on the question of whether the California statute's unconditional gift provision alone can provide standing. Any automatically-renewing service or merchandise provided without the required disclosures is deemed a gift by Cal. Bus. & Prof. Code § 17603. Plaintiffs therefore have claimed that individuals who paid for such an item have been injured in the amount they paid (because the item is now deemed a gift).

Automatic Renewal State Laws

The California Court of Appeal, in *Mayron*, rejected this theory. They found that it “misses the crucial requirement of causation” because “a consequence imposed on a defendant for violating a statute is not the same thing as a loss caused by the defendant’s conduct.” (54 Cal. App. 5th at 575-76.) In so holding, the *Mayron* court:

- Declined to follow three cases coming to the opposite conclusion: *Johnson v. Pluralsight*, 728 Fed. App’x 674 (9th Cir. 2018); *Roz v. Nestle Waters North America, Inc.*, 2017 WL 132853 (C.D. Cal. Jan. 11, 2017); and *Stages of Beauty*, 307 F. Supp. 3d at 1070).
- Stated that:
 - the two district court cases failed to address the issue of causation; and
 - the unpublished Ninth Circuit opinion did not take into account the fact that the standing requirement for an Unfair Competition Law claim (Cal. Bus. & Prof. Code §§ 17200 to 17210) is narrower than the requirement for Article III standing (*Mayron*, 54 Cal. App. 5th at 576). Because several other states have largely copied California’s automatic renewal law and include this same provision, the issue is likely to recur elsewhere.

While California courts have seen the vast majority of automatic renewal law litigation, other states’ courts

have adjudicated cases relating to automatically renewing contracts (for a list of cases, see 32 A.L.R.7th Art. 5). One prominent example is the 2014 Florida class-action lawsuit against Seaworld, where plaintiffs alleged that the automatically renewing contracts for annual park passes violated the Electronic Funds Transfer Act (15 U.S.C. §§ 1693 to 1693r) (see *Herman v. SeaWorld Parks & Entm’t, Inc.*, 2015 WL 12859433, at *1 (M.D. Fla. Oct. 6, 2015)). The case was settled in June 2018 when class members received a pro rata share of an \$11.5 million settlement fund (after attorneys’ fees and service awards are paid) (see *Herman v. SeaWorld Parks*, 2018 WL 8619586 (M.D. Fla.)).

Some companies have had success in having courts apply arbitration agreements to automatic renewal disputes (see, for example, *Bleak v. Spotify USA, Inc.*, Case No. 3:13-cv-05653 (N.D. Cal. Apr. 25, 2014) (entire case compelled to arbitration); *Habelito v. Guthy-Renker LLC*, Case No. BC499558 (Cal. Super. 2016) (class limited to shorter time period based on institution of arbitration provision)). However, these efforts are not always successful (see, for example, *Ingalls v. Spotify USA, Inc.*, 2016 WL 6679561 (N.D. Cal. Nov. 14, 2016) (denying motion to compel arbitration in automatic renewal context)).

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