

Client Alert

June 2022

REMINDER: New California Automatic Renewal Law Set To Go Into Effect July 1, 2022

On July 1, 2022, California Assembly Bill 390 will take effect, adding new notice and cancellation requirements to California's existing Automatic Renewal Law ("ARL"). As demonstrated by this new law, subscription-based business models and automatic renewal techniques continue to attract attention from legislators, regulators, and plaintiffs' attorneys, resulting in a patchwork of different state laws.

Key requirements of the new California law are outlined below:

Streamlined Online Cancellation Requirement

California led the nation in mandating online cancellation for automatic renewal contracts that the consumer agreed to online. California has now expanded its requirements regarding what exactly the online cancellation process must look like. Businesses that allow a consumer to sign up to an automatic renewal online must allow a consumer to terminate or cancel the automatic renewal "exclusively online, at will, and without engaging any further steps that obstruct or delay the consumer's ability to terminate the automatic renewal or continuous service immediately." The form of such online cancellation can be either a prominent link or button, or an immediately accessible pre-formatted email. Businesses are permitted to require a consumer to enter account information or authenticate online before online termination.

Notice Requirements

All notices required by the new law (outlined below) must clearly and conspicuously state the following: (a) that the automatic renewal or continuous service will automatically renew unless the consumer cancels; (b) the length of any additional terms of the renewal period; (c) one or more methods by which a consumer can cancel; (d) if sent electronically, a link that directs to the cancellation process or another reasonably accessible electronic method that directs to the cancellation process; and (e) contact information for the business.

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Notice Timing

The new law includes different timing requirements for delivery of such notice.

- *3–21 day notice requirement:* If a consumer accepts a free gift or trial lasting for more than 31 days that was included in an automatic renewal or continuous service offer, then such notice must be provided at least 3 days before and at most 21 days before the expiration of the free gift, trial, promotional, or discounted period.
- *15–45 day notice requirement:* If the automatic renewal or continuous service offer has an initial term of one year or longer, the business must provide notice of the renewal at least 15 day days and not more than 45 days before the offer renews.

Marketers offering subscription arrangement programs to California consumers should ensure that their enrollment path meets these requirements. Failure to do so may result in enforcement actions, specifically from the California Automatic Renewal Taskforce (CART), a coalition of district and city attorneys that enforce California's ARL, or class action lawsuits advanced by California's active plaintiffs' attorneys.

Please contact the Olshan attorney with whom you regularly work or one of the attorneys listed below if you would like to discuss further or have questions.

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