

NEW REQUIREMENTS UNDER AUTOMATIC RENEWAL LAWS: HERE'S HOW TO STAY COMPLIANT

By Sami Kazi

In October 2021, California Governor Gavin Newsom signed into law Assembly Bills (“AB”) 390 & 1221, both of which enhance California’s already-demanding automatic renewal protections. AB 390 will carry forward all the current Automatic Renewal Law (“ARL”) requirements, while also implementing new renewal notice and online cancellation requirements effective July 1, 2022 (Cal. Civ. Code § 17602). AB 1221 amends provisions in the Song-Beverly Consumer Warranty Act (“SB Act”) covering service contracts relating to all consumer retail goods sold in California that are under an implied or express warranty (Cal. Civ. Code §§ 1791 and 1794.4). AB 1221 is effective as of January 1, 2022. The new amendments to the ARL and expansion of automatic renewal regulation through the SB Act are important signals of California’s intent to remain a leader in consumer advocacy. Businesses providing subscription-based products and services in California should be aware of these new obligations.

California’s ARL – AB 390

In 2010, California enacted the ARL, which requires companies to clearly disclose the material terms before a consumer subscribes to an automatic renewal program, and to obtain affirmative consent to the terms before charging a consumer. The ARL requires businesses to:

1. Clearly and conspicuously disclose certain automatic renewal terms, including the recurring nature of the transaction;
2. Obtain consumer’s affirmative consent to opt into the automatic renewal terms;

4. Provide an acknowledgement after purchase that includes the automatic renewal terms and cancellation policy;
5. Provide consumers with a readily accessible mechanism for cancelling an automatic renewal contract (e.g., if enrollment is possible online, cancellation must be possible in an “exclusively online” manner); and
5. Notify consumers about any material changes to the automatic renewal terms.

The purpose of the ARL is to end the practice of ongoing “charg[ing] [of] consumer’s credit or debit card, or the consumer’s account with a third party, for an automatic renewal or continuous service without first obtaining the consumer’s affirmative consent to the agreement” (Cal. Civ. Code § 17602(a)(2)). This law applies broadly to any business that makes an automatic renewal or continuous service offer to a consumer in California, with exemptions for certain regulated entities. “Consumer” means any individual who seeks or acquires, by purchase or lease, any goods, services, money, or credit for personal, family, or household purposes (Cal. Civ. Code § 17601(d)). Any paid subscription that renews automatically following a definite period falls under the ARL’s gamut.

California added two key enhancements to the ARL through AB 390, signed into law on October 4, 2021. These new measures go into effect on July 1, 2022. AB 390 requires businesses to comply with the following additional requirements:

1) Renewal Notice Requirement

First, the ARL implemented enhanced notice requirements for both subscriptions sold with an initial term of one year or more and subscriptions with a free, discounted, or promotional trial period that lasts for more than 31 days before the first renewal. For subscriptions 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 3 to 21 days before the expiration of the applicable period. In either of the above cases, the notice must clearly and conspicuously disclose:

- That the subscription will automatically renew unless the consumer cancels;
- The length and any additional terms of the renewal period;
- One or more methods by which the consumer can cancel before renewal; and
- The business' contact information.

Further, if the notice is sent electronically, the notice shall include "either a link that directs the consumer to the cancellation process, or another reasonably accessible electronic method that directs the consumer to the cancellation process if no link exists" (Cal. Civ. Code § 17602(a)(4)(D)).

2) Cancellation Requirement

The updated law is now stricter regarding cancellation. If a consumer accepts an automatic renewal offer online, current law requires the business to disclose not only how to cancel, but to make this process "easy-to-use." The new amendment creates more rigid requirements for online cancellation, by requiring sellers to allow California residents to cancel "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" (Cal. Civ. Code § 17602(d)(1)).

Additionally, the online method of cancellation must be in either of the following forms:

- A prominently located direct link or button which may be located within either a customer account or profile, or within either device or user settings; or
- By an immediately accessible termination email formatted and provided by the business that a consumer can send to the business without additional information. (Cal. Civ. Code § 17602(d)(1)(A)-(B)).

Businesses providing auto-renewing subscription plans to consumers must carefully review their policies and practices to ensure compliance with the latest changes to the ARL.

SB Act - AB 1221

AB 1221 comes off the heels of Governor Newsom signing AB 390 in October 2021. Under existing law, the SB Act "provides consumer warranty protection to buyers of consumer goods, including motor vehicles, home appliances, and home electronic products. The act requires a service contract, as defined, to include certain elements, including a clear description and identification of the covered product" (AB 1221).

Under its amendments, AB 1221 requires companies offering continuing service contracts to, among other things:

- Disclose in a clear and conspicuous manner that the service contract continues until cancelled, and require the buyer's affirmative consent to this provision;
- Disclose all alternatives to the service contract automatically renewing; and
- Provide at minimum, a toll-free number, email address, postal address, and (if one exists) a website the buyer can use to cancel the service contract.

(Cal. Civ. Code § 1794.4(c)(3)(A)(i)-(iii)).

The listed requirements apply to service contracts entered on or after January 1, 2022. AB 1221's expansion of disclosure and cancellation requirements in service contracts provides additional regulation in covering the many varieties of business-to-consumer agreements subject to automatic renewal, again placing California in the forefront of consumer protection.

In Sum

Businesses offering automatic renewals of subscriptions, memberships, or service contracts in California should review their existing agreements with consumers to ensure compliance with these new requirements, and to mitigate the risks of consumer class action litigation and other enforcement actions. In addition, companies considering possible M&A transactions or joint ventures with business-to-consumer companies providing subscription-based products or services to California consumers should be aware of these requirements.

If you have any questions regarding these new requirements, please do not hesitate to reach out to the attorneys in Donahue Fitzgerald's Business and Corporate Practice Group.

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