

AMENDED IN ASSEMBLY APRIL 12, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2633

Introduced by Assembly Member Davis

February 19, 2010

An act to amend Section 17602 of the Business and Professions Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

AB 2633, as amended, Davis. Business: automatic renewals or continuous service offers.

Existing law, on and after December 1, 2010, makes it unlawful for any business making an automatic renewal or continuous service offer to a consumer in this state to, among other things, fail to present the automatic renewal or continuous service offer terms in a clear and conspicuous manner.

Existing law imposes specified duties on the Director of Consumer Affairs with regard to consumer interests.

This bill, *on and after December 1, 2011, and until December 1, 2015*, would ~~declare the intent of the Legislature to enact legislation related to automatic renewals or continuous service offers~~ *require the Department of Consumer Affairs to annually report to the Legislature any consumer complaints made to the department related to automatic renewal or continuous service offer terms and any recommendations for corrective legislation.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17602 of the Business and Professions
2 Code is amended to read:

3 17602. (a) It shall be unlawful for any business making an
4 automatic renewal or continuous service offer to a consumer in
5 this state to do any of the following:

6 (1) Fail to present the automatic renewal offer terms or
7 continuous service offer terms in a clear and conspicuous manner
8 before the subscription or purchasing agreement is fulfilled and
9 in visual proximity, or in the case of an offer conveyed by voice,
10 in temporal proximity, to the request for consent to the offer.

11 (2) Charge the consumer’s credit or debit card or the consumer’s
12 account with a third party for an automatic renewal or continuous
13 service without first obtaining the consumer’s affirmative consent
14 to the agreement containing the automatic renewal offer terms or
15 continuous service offer terms.

16 (3) Fail to provide an acknowledgment that includes the
17 automatic renewal or continuous service offer terms, cancellation
18 policy, and information regarding how to cancel in a manner that
19 is capable of being retained by the consumer. If the offer includes
20 a free trial, the business shall also disclose in the acknowledgment
21 how to cancel and allow the consumer to cancel before the
22 consumer pays for the goods or services.

23 (b) A business making automatic renewal or continuous service
24 offers shall provide a toll-free telephone number, electronic mail
25 address, a postal address only when the seller directly bills the
26 consumer, or another cost-effective, timely, and easy-to-use
27 mechanism for cancellation that shall be described in the
28 acknowledgment specified in paragraph (3) of subdivision (a).

29 (c) In the case of a material change in the terms of the automatic
30 renewal or continuous service offer that has been accepted by a
31 consumer in this state, the business shall provide the consumer
32 with a clear and conspicuous notice of the material change and
33 provide information regarding how to cancel in a manner that is
34 capable of being retained by the consumer.

35 (d) The requirements of this article shall apply only prior to the
36 completion of the initial order for the automatic renewal or
37 continuous service, except as follows:

1 (1) The requirement in paragraph (3) of subdivision (a) may be
2 fulfilled after completion of the initial order.

3 (2) The requirement in subdivision (c) shall be fulfilled prior
4 to implementation of the material change.

5 *(e) Commencing December 1, 2011, and annually thereafter*
6 *on December 1, the Department of Consumer Affairs shall report*
7 *to the Legislature the number of consumer complaints received by*
8 *the department related to automatic renewal or continuous service*
9 *offer terms, the nature of those complaints, and any*
10 *recommendations for corrective legislation if the department*
11 *considers legislation to be necessary.*

12 *(f) (1) The requirements for submitting a report imposed under*
13 *subdivision (e) shall become inoperative on December 1, 2015,*
14 *pursuant to Section 10231.5 of the Government Code.*

15 *(2) A report to be submitted pursuant to subdivision (e) shall*
16 *be submitted in compliance with Section 9795 of the Government*
17 *Code.*

18 ~~SECTION 1. It is the intent of the Legislature to enact~~
19 ~~legislation related to automatic renewals or continuous service~~
20 ~~offers.~~