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The Summer of Subscriptions: Vermont's Stringent Auto-Renewal Law Takes Effect July 1, Other States and FTC Target Free-Trial Offers

Key Takeaways:

If you offer subscriptions that automatically renew or you provide a “free trial” as an introductory offer to a subscription, new state laws could require you to obtain additional consents and to change how you disclose automatic renewals to consumers.

- Effective July 1, Vermont law requires that consumers must affirmatively opt in to automatic renewals **in addition to** accepting the underlying contract (two separate consents). Automatic renewal terms must also be written in plain language and appear in **bold-face type**.
- As of March, Washington, D.C. law requires companies that offer free trials of one month or longer to obtain the consumer's affirmative consent to the automatic renewal before charging the consumer, in addition to the initial consent to the free trial. And like other states, the D.C. regulation imposes specific requirements for the “clear and conspicuous” display of renewal terms and requires consumers to be notified of upcoming automatic renewals.
- Other states and FTC are watching – and setting high standards for auto-renew contracts.

State Laws

Vermont. Effective July 1, 2019, Vermont will have one of the strictest [automatic renewal laws](#) in the country. For a subscription or contract with an initial term of one year or more that renews for a subsequent term that is longer than one month, the company offering the automatic renewal must clearly and conspicuously state the terms of the automatic renewal provision in plain, unambiguous language **in bold-face type**. Even more important, the Vermont law requires companies to obtain two consents from the consumer – the consumer must affirmatively opt in to the automatic renewal subscription or contract, and separately, to the specific automatic renewal provision. Companies must also offer consumers an easy way to cancel their subscriptions or contracts, and send consumers a reminder 30 to 60 days prior to the automatic renewal.

District of Columbia. On March 13, 2019, D.C.'s [Automatic Renewal Protections Act of 2018](#) took effect. Under the new law, for free trial offers of one month or more that automatically renew to paid services, a company must obtain the consumer's affirmative consent to the automatic renewal **before charging** the consumer for the automatically renewing subscription or contract – this is in addition to obtaining the consumer's agreement to the free-trial offer. Additionally, the company must notify the

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consumer of the automatic renewal between one and seven days before the expiration of the free-trial period.

Similar to laws in other states, the D.C. law requires that a company selling goods or services through auto-renewing contracts must clearly and conspicuously disclose that fact and outline the appropriate cancellation procedures. For automatically renewing contracts with an initial term of a year or more, companies are required to send the consumer a notice between 30 to 60 days before the cancellation deadline for each renewal. The notice should clearly and conspicuously state that the subscription or contract will automatically renew unless the consumer cancels, the cost of the goods or services for the term of the renewal, and the deadline and instructions for canceling.

North Dakota. Beginning July 31, 2019, a new [North Dakota statute](#) companies must (1) present the terms of automatic renewal offers clearly and conspicuously; (2) provide an acknowledgment of the automatic renewal terms and information about how to cancel (in a form, such as an email, that is capable of being retained by the consumer); and (3) provide a cost-effective, timely and simple way to cancel the subscription (which must be described in the acknowledgment referred to above). For subscriptions that renew for more than six months after the initial term, the company must give the consumer clear and conspicuous written notice between 30 and 60 days prior to the end of the current subscription term. For material changes to the terms of the automatically renewing subscription, the seller must provide clear and conspicuous notice to the consumer of the material change and cancellation options. Failing to comply with the new law may render these contracts unenforceable. The law also provides for a private right of action and allows the attorney general to bring an action against noncompliant companies.

FTC Enforcement

UrthBox. In an enforcement action that became final in May, the Federal Trade Commission alleged in its [Complaint](#) that UrthBox, a San Francisco-based monthly snack box company, offered a “free” trial of its snack boxes through its website. During that time, however, UrthBox’s desktop and mobile websites did not adequately disclose key terms of the free-trial offer. Notably, the FTC alleged that UrthBox failed to mention that when the free-trial plan expired, the consumer would be automatically enrolled into a six-month subscription and would be charged for six months’ worth of shipments (typically \$77 to \$269 per month), unless the consumer canceled.

The [Consent Order](#) required UrthBox to obtain express informed consent – via checkbox, signature or similar mechanism – dedicated solely to the auto-renew provision, and not to any other part of the contract.

After a consumer’s automatic renewal order, UrthBox must also send an immediate email confirmation for online orders – and for phone or mail orders, a mail or email confirmation within two days. Confirmations must include all of the required disclosures listed below.

Key terms of free-trial offers should be disclosed clearly and conspicuously **and immediately adjacent to** any mention of the free trial, including:

- Whether the consumer must take any affirmative actions to avoid being charged for the automatic renewal or to avoid being charged an increased price.
- The total amount and frequency of charges.
- The deadline by which the consumer must affirmatively act to stop recurring charges.

When companies collect a consumer’s billing information, they should also disclose to the consumer:

- Whether the consumer must take any affirmative actions in order to avoid being charged for the automatic renewal or to avoid being charged an increased price after the free-trial period.
- The total cost the consumer would be charged, and the frequency of those charges.
- The deadline (by date or frequency) by which the consumer must affirmatively act to stop recurring charges.
- The name of the seller or provider of the goods/ services (and if that name will not appear on the consumer’s bill, the billing descriptor that will appear on such statements).
- A description of the goods/services.
- Any charge or cost the consumer would be responsible for if they cancel or return.
- A simple cancellation mechanism to allow the consumer to end the automatic renewal.

UrthBox must maintain simple mechanisms to cancel subscriptions, with specific requirements for cancellation online, by phone or by mail.

While not all of these requirements are found in a statute, they signal higher expectations regarding free-trial offers. Going forward, companies should take extra care to ensure that automatic renewal and free-trial provisions are adequately disclosed.

Related Professionals

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