

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 132

Introduced by Cavanaugh, J., 9.

Read first time January 06, 2023

Committee: Banking, Commerce and Insurance

1 A BILL FOR AN ACT relating to commerce; to adopt the Automatic Renewal

2 Limitation Act.

3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 7 of this act shall be known and may be
2 cited as the Automatic Renewal Limitation Act.

3 Sec. 2. The purpose of the Automatic Renewal Limitation Act is to
4 end the ongoing charging of consumer credit or debit cards or third-party
5 payment accounts without the consumer's explicit consent for ongoing
6 shipments of a product or ongoing deliveries of a service.

7 Sec. 3. For purposes of the Automatic Renewal Limitation Act:

8 (1) Automatic renewal means a plan or arrangement in which a paid
9 subscription or purchasing agreement is automatically renewed at the end
10 of a definite term for a subsequent term;

11 (2) Automatic renewal offer terms means the following clear and
12 conspicuous disclosures:

13 (a) That the subscription or purchasing agreement will continue
14 until the consumer cancels;

15 (b) The description of the cancellation policy that applies to the
16 offer;

17 (c) The recurring charges that will be charged to the consumer's
18 credit or debit card or payment account with a third party as part of the
19 automatic renewal plan or arrangement, that the amount of the charge may
20 change, if that is the case, and the amount to which the charge will
21 change, if known;

22 (d) The length of the automatic renewal term or that the service is
23 continuous, unless the length of the term is chosen by the consumer; and

24 (e) The minimum purchase obligation, if any;

25 (3) Clear and conspicuous or clearly and conspicuously means in
26 larger type than the surrounding text, in contrasting type, font, or
27 color to the surrounding text of the same size, or set off from the
28 surrounding text of the same size by symbols or other marks, in a manner
29 that clearly calls attention to the language. In the case of an audio
30 disclosure, clear and conspicuous and clearly and conspicuously mean in a
31 volume and cadence sufficient to be readily audible and understandable;

1 (4) Consumer means any individual who seeks or acquires, by purchase
2 or lease, any goods, services, money, or credit for personal, family, or
3 household purposes; and

4 (5) Continuous service means a plan or arrangement in which a
5 subscription or purchasing agreement continues until the consumer cancels
6 the service.

7 Sec. 4. (1) It is unlawful for any business that makes an automatic
8 renewal offer or continuous service offer to a consumer in this state to
9 do any of the following:

10 (a) Fail to present the automatic renewal offer terms or continuous
11 service offer terms in a clear and conspicuous manner before the
12 subscription or purchasing agreement is fulfilled and in visual
13 proximity, or, in the case of an offer conveyed by voice, in temporal
14 proximity, to the request for consent to the offer. If the offer also
15 includes a free gift or trial, the offer shall include a clear and
16 conspicuous explanation of the price that will be charged after the trial
17 ends or the manner in which the subscription or purchasing agreement
18 pricing will change upon conclusion of the trial;

19 (b) Charge the consumer's credit or debit card, or the consumer's
20 account with a third party, for an automatic renewal or continuous
21 service without first obtaining the consumer's affirmative consent to the
22 agreement containing the automatic renewal offer terms or continuous
23 service offer terms, including the terms of an automatic renewal offer or
24 continuous service offer that is made at a promotional or discounted
25 price for a limited period of time;

26 (c) Fail to provide an acknowledgment that includes the automatic
27 renewal offer terms or continuous service offer terms, cancellation
28 policy, and information regarding how to cancel in a manner that is
29 capable of being retained by the consumer. If the automatic renewal offer
30 or continuous service offer includes a free gift or trial, the business
31 shall also disclose in the acknowledgment how to cancel, and allow the

1 consumer to cancel, the automatic renewal or continuous service before
2 the consumer pays for the goods or services; or

3 (d) Fail to provide a consumer with a notice, as may be required by
4 subsection (2) of this section, that clearly and conspicuously states all
5 of the following:

6 (i) That the automatic renewal or continuous service will
7 automatically renew unless the consumer cancels;

8 (ii) The length and any additional terms of the renewal period;

9 (iii) One or more methods by which a consumer can cancel the
10 automatic renewal or continuous service;

11 (iv) If the notice is sent electronically, a link that directs the
12 consumer to the cancellation process or another reasonably accessible
13 electronic method that directs the consumer to the cancellation process
14 if no link exists; and

15 (v) Contact information for the business.

16 (2) A business shall provide a consumer with a notice as specified
17 in subdivision (1)(d) of this section if either of the following is true,
18 provided that if both of the following are true, only the notice
19 specified in subdivision (2)(b) of this section shall be required:

20 (a) The consumer accepted a free gift or trial, lasting for more
21 than thirty-one days, that was included in an automatic renewal offer or
22 continuous service offer or the consumer accepted an automatic renewal
23 offer or continuous service offer at a promotional or discounted price
24 and the applicability of that price was more than thirty-one days. The
25 notice shall be provided at least three days before and at most twenty-
26 one days before the expiration of the predetermined period of time for
27 which the free gift or trial, or promotional or discounted price,
28 applies. An offer shall be exempt from the requirements of this
29 subdivision if the consumer does not enter into the contract
30 electronically and the business has not collected or maintained the
31 consumer's valid email address, phone number, or another means of

1 notifying the consumer electronically. For purposes of this subdivision,
2 free gift does not include a free promotional item or gift given by the
3 business that differs from the subscribed product; or

4 (b) The consumer accepted an automatic renewal offer or continuous
5 service offer, with an initial term of one year or longer, that
6 automatically renews unless the consumer cancels the automatic renewal or
7 continuous service. The notice shall be provided at least fifteen days
8 and not more than forty-five days before the automatic renewal offer or
9 continuous service offer renews.

10 (3) A business that makes an automatic renewal offer or continuous
11 service offer shall provide a toll-free telephone number, email address,
12 postal address if the seller directly bills the consumer, or another
13 cost-effective, timely, and easy-to-use mechanism for cancellation that
14 shall be described in the acknowledgment specified in subdivision (1)(c)
15 of this section.

16 (4)(a) In addition to the requirements of subsection (2) of this
17 section, a business that allows a consumer to accept an automatic renewal
18 or continuous service offer online shall allow a consumer to terminate
19 the automatic renewal or continuous service online, at will, and without
20 engaging any further steps that obstruct or delay the consumer's ability
21 to terminate the automatic renewal or continuous service immediately. The
22 online method of termination shall be in one of the following two forms:

23 (i) A prominently located direct link or button which may be located
24 within either a customer account or profile or within either device or
25 user settings; or

26 (ii) By an immediately accessible termination email formatted and
27 provided by the business that a consumer can send to the business without
28 additional information.

29 (b) The termination requirements of this subsection apply to the
30 automatic renewal terms and continuous service terms of the contract, and
31 the remaining provisions of the contract continue to be governed by all

1 applicable laws and regulations.

2 (c) Notwithstanding subdivision (4)(a) of this section, a business
3 may require a consumer to enter account information or otherwise
4 authenticate online before termination of the automatic renewal or
5 continuous service online if the consumer has an account with the
6 business. A consumer who is unwilling or unable to enter account
7 information or otherwise authenticate online before termination of the
8 automatic renewal or continuous service online shall not be precluded
9 from authenticating or terminating the automatic renewal or continuous
10 service offline using another method pursuant to subsection (3) of this
11 section.

12 (5) In the case of a material change in the terms of the automatic
13 renewal or continuous service that has been accepted by a consumer in
14 this state, the business shall provide the consumer with a clear and
15 conspicuous notice of the material change and provide information
16 regarding how to cancel in a manner that is capable of being retained by
17 the consumer.

18 (6) The requirements of this section shall apply only prior to the
19 completion of the initial order for the automatic renewal or continuous
20 service, except as follows:

21 (a) The requirements in subdivisions (1)(c) and (d) and subsection
22 (2) of this section may be fulfilled after completion of the initial
23 order; and

24 (b) The requirement in subsection (5) of this section shall be
25 fulfilled prior to implementation of the material change.

26 Sec. 5. If a business sends any goods, wares, merchandise, or
27 products to a consumer, under a continuous service agreement or automatic
28 renewal of a purchase, without first obtaining the consumer's affirmative
29 consent as described in section 4 of this act, the goods, wares,
30 merchandise, or products shall for all purposes be deemed an
31 unconditional gift to the consumer, who may use or dispose of the goods,

1 wares, merchandise, or products in any manner he or she sees fit without
2 any obligation on the consumer's part to the business, including, but not
3 limited to, bearing the cost of, or responsibility for, shipping any
4 goods, wares, merchandise, or products to the business.

5 Sec. 6. (1) Except as provided in subsection (3) of this section,
6 any business that violates the Automatic Renewal Limitation Act shall be
7 liable for a civil penalty not to exceed two thousand five hundred
8 dollars for each violation, which shall be assessed and recovered in a
9 civil action brought by the Attorney General in any court of competent
10 jurisdiction.

11 (2) In assessing the amount of the civil penalty, the court shall
12 consider the nature and seriousness of the misconduct, the number of
13 violations, the persistence of the misconduct, the length of time over
14 which the misconduct occurred, the willfulness of the misconduct, and the
15 assets, liabilities, and net worth of the business committing the
16 misconduct.

17 (3) If a business makes a good faith attempt to comply with the
18 Automatic Renewal Limitation Act, it shall not be subject to the civil
19 penalties provided in this section.

20 Sec. 7. The following are exempt from the requirements of the
21 Automatic Renewal Limitation Act:

22 (1) Any service provided by a business or its affiliate where either
23 the business or its affiliate is regulated by the Federal Communications
24 Commission or the Federal Energy Regulatory Commission;

25 (2) Any entity regulated by the Department of Insurance; and

26 (3) A bank, a bank holding company, a subsidiary or affiliate of
27 either a bank or bank holding company, or a credit union or other
28 financial institution licensed under state or federal law.