



## 2023 ASSEMBLY BILL 417

September 19, 2023 - Introduced by Representatives J. ANDERSON, ALLEN, BALDEH, CABRERA, CONLEY, GOEBEN, JOERS, MOORE OMOKUNDE, ORTIZ-VELEZ, PALMERI, RATCLIFF, SINICKI, SNODGRASS, STUBBS, SUBECK and JACOBSON, cosponsored by Senators SPREITZER, CARPENTER, HESSELBEIN and LARSON. Referred to Committee on Consumer Protection.

**AN ACT** *to create* 134.495 of the statutes; **relating to:** automatic renewals of consumer contracts and providing a penalty.

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### *Analysis by the Legislative Reference Bureau*

This bill requires a person making a renewal offer, which is defined in the bill to mean a plan or arrangement for consumer goods or services offered to a consumer in which a subscription or purchasing agreement either continues until the consumer cancels or is automatically renewed at the end of a definite term for a subsequent term, to do all of the following:

1. Present the terms of the renewal offer clearly and conspicuously, in a manner capable of being retained by the consumer.
2. If the renewal offer includes a free gift or trial, present in the renewal offer a clear and conspicuous explanation of the price that will be charged after the trial ends or the manner in which the subscription or purchasing agreement pricing will change upon conclusion of the trial.
3. Refrain from charging a consumer for a renewal offer without the consumer's affirmative consent to the renewal offer terms.
4. Provide to the consumer certain acknowledgements, including the renewal offer terms, the cancellation policy, the available methods for cancellation, and information regarding how to cancel in a manner that is capable of being retained by the consumer.
5. Provide easy-to-use mechanisms for the consumer to cancel a renewal offer,

**ASSEMBLY BILL 417****SECTION 1**

including giving consumers who accept a renewal offer online the opportunity to terminate the renewal offer provisions online.

6. Provide to consumers notice of any material change in the terms of a previously accepted renewal offer.

7. Under certain circumstances, provide certain notices to a consumer before the renewal offer automatically renews or continues for a subsequent term.

The bill also requires that any goods, wares, merchandise, or products sent to a consumer under a renewal offer without having first obtained the consumer's affirmative consent shall be considered an unconditional gift to the consumer.

The bill gives the Department of Agriculture, Trade and Consumer Protection the ability to investigate violations and commence an action to restrain by injunction violations and permits the department and any district attorney to commence actions to recover forfeitures for a violation of the bill's provisions. Individuals aggrieved by a violation of the bill may also bring a private civil action against the violating person.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

**SECTION 1.** 134.495 of the statutes is created to read:

**134.495 Automatic renewal offers in consumer contracts. (1)**

DEFINITIONS. In this section:

(a) "Clear and conspicuous" or "clearly and conspicuously" means any of the following:

1. In larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks, in a manner that clearly calls attention to the language.

2. In the case of an audio disclosure, in a volume and cadence sufficient to be readily understandable.

(b) "Consumer" has the meaning given in s. 100.195 (1) (b).

**ASSEMBLY BILL 417****SECTION 1**

(c) “Consumer goods or services” means goods or services that are used or intended for use for personal, family, or household purposes. “Consumer goods or services” does not include any of the following:

1. The treatment of disease, as defined in s. 448.01 (2), by a health care provider, as defined in s. 155.01 (7), or the provision of emergency medical care.

2. Goods or services whose delivery is required by law even though the consumer has not agreed to purchase or lease those goods or services.

3. The sale or lease of a motor vehicle by a licensed motor vehicle dealer, as defined in s. 218.0101 (23) (a).

4. Services provided pursuant to an attorney-client relationship.

(d) “Renewal offer” means a plan or arrangement for consumer goods or services offered to a consumer in which a subscription or purchasing agreement either continues until the consumer cancels or is automatically renewed at the end of a definite term for a subsequent term.

(e) “Renewal offer terms” means the following clear and conspicuous disclosures:

1. That the subscription or purchasing agreement will automatically renew or continue until the consumer cancels.

2. The complete cancellation policy that applies to the renewal offer.

3. The recurring charges that will be charged to the consumer’s credit card, debit card, or payment account with a 3rd party as part of the renewal offer, and if applicable and known, that the amount of the charge may change and how much the amount of the charge will change.

**ASSEMBLY BILL 417****SECTION 1**

4. The length of the renewal offer's automatic renewal term and whether the length of the automatic renewal term has been chosen by the consumer, or that the renewal offer will continue until the consumer cancels.

5. The minimum purchase obligation, if any.

(2) RENEWAL OFFER REQUIREMENTS. A person that makes a renewal offer to a consumer shall do all of the following:

(a) Present the renewal offer terms in a clear and conspicuous manner before the subscription or purchasing agreement is fulfilled and in visual proximity, or in the case of a renewal offer conveyed by voice in temporal proximity, to the request for consent to the renewal offer. If the renewal offer includes a free trial, the renewal offer shall include a clear and conspicuous explanation of the price that will be charged after the trial ends or the manner in which the subscription or purchasing agreement pricing will change upon conclusion of the trial.

(b) Before charging the consumer's credit card, debit card, or payment account with a 3rd party, obtain the consumer's affirmative consent to the renewal offer and the renewal offer terms, including any term of a renewal offer that is made at a promotional or discounted price for a limited period.

(c) Provide to the consumer an acknowledgement that includes the renewal offer terms, cancellation policy, the available mechanisms for cancellation described under sub. (4), and information regarding how to cancel in a manner that is capable of being retained by the consumer. If the renewal offer includes a free gift or trial, the person shall also disclose in the acknowledgement under this paragraph how

**ASSEMBLY BILL 417****SECTION 1**

the consumer may cancel, and allow the consumer to cancel, the renewal offer before the customer is charged or pays.

(3) REQUIRED NOTICES. (a) 1. For the purpose of this paragraph, “free gift” does not include a free promotional item or gift that differs from the consumer good or service that is the subject of the renewal offer.

2. Except as provided under subd. 4., if the consumer accepted under the renewal offer a free gift or trial lasting for more than 31 days or a promotional or a discounted price and the applicability of that price was for more than 31 days, the person that made the renewal offer shall provide the consumer with a notice that clearly and conspicuously states all of the following:

a. That the renewal offer will automatically renew or continue unless the consumer cancels.

b. The length and any additional terms of the renewal period.

c. One or more methods by which a consumer can cancel the renewal offer.

d. If the notice is sent electronically, either a web page 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 web page link exists.

e. Contact information for the person that made the renewal offer.

3. The person that made the renewal offer shall provide the notice required under subd. 2. to the consumer at least 3 days, and not more than 21 days, before the expiration of the predetermined period for which the free gift or trial or promotional or discounted price applies.

**ASSEMBLY BILL 417****SECTION 1**

4. A person that made a renewal offer is exempt from the requirement under subd. 2. if the person did not collect or maintain the consumer's valid email address, phone number, or another means of notifying the consumer electronically, and the consumer did not enter into the renewal offer electronically.

(b) If the consumer accepted a renewal offer with an initial term of one year or longer, the person that made the renewal offer shall provide the consumer with a notice that clearly and conspicuously states the information under par. (a) 2. a. to d. The person shall provide the notice required under this paragraph to the consumer at least 15 days, and not more than 45 days, before the renewal offer automatically renews or continues for a subsequent term.

(4) REQUIRED CANCELLATION INFORMATION. (a) In addition to the requirements under par. (b), a person that makes a renewal offer shall provide a toll-free telephone number, email address, a postal address if the person directly bills the consumer, or another cost-effective, timely, and easy-to-use mechanism for cancellation of the renewal offer.

(b) 1. For a renewal offer that can be accepted online, a person that made a renewal offer to a consumer shall allow the consumer to terminate an automatic renewal or continuing service provision of a renewal offer exclusively online, at will, and without engaging in any further steps that impact or restrict the consumer's ability to immediately terminate automatic renewal, continuing service, or recurring service provisions of the renewal offer. The person shall provide to the consumer a method of termination that is either on the person's website in the form of a direct link to termination, by button to immediately terminate, or by a

**ASSEMBLY BILL 417****SECTION 1**

termination email formatted and provided by the person that a consumer can send to the person that made the renewal offer without the consumer having to include additional information.

2. Notwithstanding subd. 1., a person that made a renewal offer online may require a consumer that has an account with the person to enter account information or otherwise authenticate the consumer's account online before the consumer can terminate an automatic renewal or continuing service provision online. A consumer unable or unwilling to enter account information or otherwise authenticate the consumer's account online may not be precluded from authenticating or terminating an automatic renewal or continuing service provision of the renewal offer offline using another mechanism pursuant to par. (a).

(5) CHANGES TO TERMS. In the case of a material change in the terms of a renewal offer that has been accepted by a consumer, prior to implementation of the material change, the person that made the renewal offer shall provide the consumer with a clear and conspicuous notice of the material change and provide the consumer with information regarding how to cancel the renewal offer in a manner that is capable of being retained by the consumer.

(6) FULFILLMENT OF REQUIREMENTS. (a) A person making a renewal offer shall fulfill the requirements of subs. (2) and (4) (a) prior to the consumer's acceptance of the renewal offer.

(b) A person that made a renewal offer shall fulfill the requirements under sub. (4) (b) shortly after the consumer's acceptance of the renewal offer.

**ASSEMBLY BILL 417****SECTION 1**

(c) A person that made a renewal offer shall fulfill the requirement under sub. (5) prior to the implementation of the material change.

(7) UNCONDITIONAL GIFTS. In any case in which a person sends any goods, wares, merchandise, or products to a consumer under a renewal offer without first obtaining the consumer's affirmative consent to receive such items under a renewal offer and the renewal offer's terms, such items shall for all purposes be considered an unconditional gift to the consumer. The consumer may use or dispose of the goods, wares, merchandise, or products in any manner he or she sees fit without any obligation to the consumer, including bearing the cost of or responsibility for shipping any goods, wares, merchandise, or products back to the person.

(8) PENALTIES AND REMEDIES. (a) The department of agriculture, trade and consumer protection may exercise its authority under ss. 93.14 and 93.15 to investigate violations of this section.

(b) Any consumer suffering pecuniary loss because of a violation of this section may commence an action to recover the pecuniary loss. If the consumer prevails, the consumer shall recover twice the amount of the pecuniary loss, or \$200 for each violation, whichever is greater, together with costs, including, notwithstanding s. 814.04 (1), reasonable attorney fees.

(c) The department of agriculture, trade and consumer protection may commence an action in the name of the state to restrain by temporary or permanent injunction a violation of this section. Before entry of final judgment, the court may make any necessary orders to restore to a consumer any pecuniary loss suffered by the consumer because of the violation.

**ASSEMBLY BILL 417****SECTION 1**

(d) The department of agriculture, trade and consumer protection or a district attorney may commence an action in the name of the state to recover a forfeiture to the state of not less than \$500 for a single violation and not more than \$1,000 for multiple violations resulting from a single act or incident.

**SECTION 2. Effective date.**

(1) This act takes effect on the first day of the 3rd month beginning after publication.

**(END)**