

By Senator Gruters

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1 A bill to be entitled
 2 An act relating to automatic renewal and continuous
 3 service offers; creating s. 501.166, F.S.; defining
 4 terms; specifying unlawful practices relating to
 5 automatic renewal and continuous service offers;
 6 providing requirements for automatic renewal offers,
 7 continuous service offers, and unconditional consumer
 8 gifts; providing applicability, penalties, and
 9 exemptions; providing an effective date.

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 11 Be It Enacted by the Legislature of the State of Florida:

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 13 Section 1. Section 501.166, Florida Statutes, is created to
 14 read:

15 501.166 Prohibited service offer practices.-

16 (1) DEFINITIONS.-As used in this section, the term:

17 (a) "Automatic renewal" means a plan or an arrangement in
 18 which a paid subscription or purchasing agreement is
 19 automatically renewed at the end of a definite period of time
 20 for a subsequent period of time.

21 (b) "Automatic renewal offer terms" means the following
 22 clear and conspicuous disclosures:

23 1. The subscription or purchasing agreement will continue
 24 until the consumer cancels.

25 2. The description of the cancellation policy that applies
 26 to the offer.

27 3. The recurring charges that will be charged to the
 28 consumer's credit card, debit card, or payment account with a
 29 third party as part of the automatic renewal plan or

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30 arrangement, and that amount of the charge that may change, if
31 applicable, and the amount the charge will change, if known.

32 4. The length of the automatic renewal period or that the
33 service is continuous, unless the length of the term is chosen
34 by the consumer.

35 5. The minimum purchase obligation, if applicable.

36 (c) "Clear and conspicuous" means in larger type than the
37 surrounding text, or in contrasting type, font, or color to the
38 surrounding text of the same size, or set off from the
39 surrounding text of the same size by symbols or other marks, in
40 a manner that clearly calls attention to the language. In the
41 case of an audio disclosure, the term means in a volume and
42 cadence sufficient to be readily audible and understandable.

43 (d) "Consumer" means any individual who seeks or acquires,
44 by purchase or lease, any goods, services, money, or credit for
45 personal, family, or household purposes.

46 (e) "Continuous service" means a plan or an arrangement in
47 which a subscription or purchasing agreement continues until the
48 consumer cancels the service.

49 (2) UNLAWFUL PRACTICES.—It shall be unlawful for any
50 business making an automatic renewal or continuous service offer
51 to a consumer in the state to:

52 (a) Fail to present the automatic renewal offer terms or
53 continuous service offer terms in a clear and conspicuous manner
54 before the subscription or purchasing agreement is fulfilled and
55 in visual proximity or, in the case of an offer conveyed by
56 voice, in temporal proximity, to the request for consent to the
57 offer. If the offer also includes a free gift or trial, the
58 offer shall include a clear and conspicuous explanation of the

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59 price that will be charged after the trial ends or the manner in
60 which the subscription or purchasing agreement pricing will
61 change upon conclusion of the trial.

62 (b) Charge the consumer's credit card, debit card, or
63 payment account with a third party for an automatic renewal or
64 continuous service without first obtaining the consumer's
65 affirmative consent to the agreement containing the automatic
66 renewal offer terms or continuous service offer terms, including
67 the terms of an automatic renewal offer or a continuous service
68 offer that is made at a promotional or discounted price for a
69 limited period of time.

70 (c) Fail to provide an acknowledgment that includes the
71 automatic renewal or continuous service offer terms,
72 cancellation policy, and information regarding how to cancel in
73 a manner that is capable of being retained by the consumer. If
74 the offer includes a free gift or trial, the business shall also
75 disclose in the acknowledgment how to cancel and allow the
76 consumer to cancel before the consumer pays for the goods or
77 services.

78 (3) AUTOMATIC RENEWAL.—

79 (a) A business that makes an automatic renewal offer or a
80 continuous service offer shall provide a toll-free telephone
81 number; an electronic mail address; a postal address, only when
82 the seller directly bills the consumer; or another cost-
83 effective, timely, and easy to use mechanism for cancellation
84 that must be included in the notice pursuant to paragraph (c).

85 (b) In addition to the requirements of subsection (2), a
86 consumer who accepts an automatic renewal or continuous service
87 offer online shall be allowed to terminate such renewal or

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88 service online, which may include a termination e-mail formatted
89 and provided by the business that a consumer can send to the
90 business without additional information.

91 (c) In the case of a material change in the terms of the
92 automatic renewal or continuous service offer that has been
93 accepted by a consumer in the state, the business shall provide
94 the consumer with a clear and conspicuous notice of the material
95 change and provide information regarding how to cancel in a
96 manner that is capable of being retained by the consumer.

97 (4) APPLICABILITY.—The requirements of this section only
98 apply before the completion of the initial order for the
99 automatic renewal or continuous service, except as follows:

100 (a) The requirement in paragraph (2)(c) may be fulfilled
101 after completion of the initial order.

102 (b) The requirement in subsection (5) shall be fulfilled
103 before implementation of the material change.

104 (5) UNCONDITIONAL GIFT TO CONSUMER.—If a business sends any
105 goods, wares, merchandise, or products to a consumer, under a
106 continuous service agreement or an automatic renewal of a
107 purchase, without first obtaining the consumer's affirmative
108 consent, the goods, wares, merchandise, or products shall be
109 deemed an unconditional gift to the consumer, who may use or
110 dispose of the gift in any manner without any obligation to the
111 business for the cost of, or the responsibility for, shipping
112 any goods, wares, merchandise, or products to the business.

113 (6) PENALTIES.—For any violation of this section, an
114 application may be made by the Attorney General to a court
115 having jurisdiction to issue an injunction, and upon notice to
116 the defendant of not less than 5 days, to enjoin and restrain

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117 the continuance of such violations. If the court finds that the
118 defendant has violated this section, an injunction may be issued
119 by the court to enjoin and restrain any further violation
120 without requiring proof that any person has, in fact, been
121 injured or damaged thereby. In any such proceeding, the court
122 may make allowances to the Attorney General and direct
123 restitution. In connection with any such proposed application,
124 the Attorney General may take proof and make a determination of
125 the relevant facts and issue subpoenas. If the court determines
126 that a violation of this section has occurred, the court may
127 impose a civil penalty of not more than \$100 for a single
128 violation and not more than \$500 for multiple violations
129 resulting from a single act or incident. A knowing penalty of
130 not more than \$500 for a single violation and not more than
131 \$1000 for multiple violations resulting from a single act or
132 incident. A business may not be deemed to have violated this
133 section if such business shows, by a preponderance of the
134 evidence, that the violation was not intentional and resulted
135 from a bona fide error made notwithstanding the maintenance of
136 procedures reasonably adopted to avoid such error.

137 (7) EXEMPTIONS.—The following are exempted from this
138 section:

139 (a) Any service provided by a business or its affiliate
140 where the business or its affiliate is doing business pursuant
141 to a franchise issued by a political subdivision of the state.

142 (b) Any entity regulated by the Department of Financial
143 Services.

144 (c) Security system alarm operators.

145 (d) Banks, bank holding companies, or the subsidiary or

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146 affiliate of either, or credit unions or other financial
147 institutions, licensed under state or federal law.

148 (e) Sellers and administrators of a service contract, as
149 defined in s. 501.165(1).

150 Section 2. This act shall take effect July 1, 2021.