

PROHIBITED SERVICE OFFER PRACTICES

Section 1 Definitions.

For the purposes of this article, the following definitions shall apply:

(1) "Automatic renewal" means a plan or arrangement in which a paid subscription or purchasing agreement for any consumer product or service with a term of twelve months or more is automatically renewed at the end of the term for a subsequent term.

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

- (a) that the subscription or purchasing agreement will continue until the consumer cancels;
- (b) the recurring charges that will be charged to the consumer's credit or debit card or payment account with a third party as part of the automatic renewal plan or arrangement, and that the amount of the charge may change, if that is the case, and the amount to which the charge will change, if known;
- (c) the length of the automatic renewal term or that the service is continuous, unless the length of the term is chosen by the consumer; and
- (d) the minimum purchase obligation, if any.

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

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

Section 2 Unlawful practices.

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

- (a) fail to present the automatic renewal offer terms or continuous service 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 an offer conveyed by voice, in temporal proximity, to the request for consent to the offer;
- (b) charge the consumer's credit or debit card or the consumer's account with a third party for an automatic renewal or continuous service without first obtaining the consumer's consent to the agreement containing the automatic renewal offer terms or continuous service offer terms; or
- (c) fail to provide an acknowledgment that includes the automatic renewal or continuous service offer terms, cancellation policy, and information regarding

how to cancel in a manner that is capable of being retained by the consumer. If the offer includes a free trial, the business shall also disclose in the acknowledgment how to cancel and allow the consumer to cancel before the consumer pays for the goods or services.

(2) A business making automatic renewal or continuous service offers to consumers shall provide a toll-free telephone number, electronic mail address, a postal address only when the seller directly bills the consumer, or another cost-effective, timely, and easy-to-use mechanism for cancellation that shall be described in the acknowledgment specified in (1)(c) of this section.

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

(4) The requirements of this article shall apply only prior to the completion of the initial order for the automatic renewal or continuous service to a consumer, except as follows:

- (a) The requirement in (1)(c) of this section may be fulfilled after completion of the initial order.
- (b) The requirement in (3) of this section shall be fulfilled prior to implementation of the material change.

(5) Whenever there shall be a violation of this section, an application may be made solely by the attorney general in the name of the people of Vermont to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that there is proof the defendant has in fact, violated this section and any person has been injured or damaged thereby, an injunction may be issued by such court or justice, enjoining and restraining any further violation. No business shall be deemed to have violated the provisions of this section if such business shows, by a preponderance of the evidence, that the violation was not intentional.

(6) The following are exempt from the requirements of this article:

- (a) any service provided by a business or its affiliate where either the business or its affiliate is doing business pursuant to a franchise issued by a political subdivision of the state;
- (b) banks, bank holding companies, or the subsidiary or affiliate of either, or credit unions or other financial institutions, licensed under state or federal law;
- (c) service contract sellers and service contract administrators; and

(d) any business or service that allows the automatic renewal to be easily turned on or off through the Internet or a mobile device or application.

Section 3 Effective date.

This act shall take effect on the ninetieth day after it shall have become a law.