

State of Arkansas

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95th General Assembly

A Bill

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HOUSE BILL 1820

By: Representative M. Brown

By: Senator M. McKee

For An Act To Be Entitled

AN ACT TO REGULATE AUTOMATIC RENEWAL AND CONTINUOUS
SERVICE OFFERS; AND FOR OTHER PURPOSES.

Subtitle

TO REGULATE AUTOMATIC RENEWAL AND
CONTINUOUS SERVICE OFFERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 4, Chapter 86, Subchapter 1, is amended
to add an additional section to read as follows:

4-86-112. Automatic renewal and continuous service offers.

(a) As used in this section:

(1) "Automatic renewal" means a plan, an arrangement, or a
provision of a contract that contains a free-to-pay conversion or in which a
paid subscription or purchasing agreement is automatically renewed at the end
of a definite term for a subsequent term;

(2)(A) "Clear and conspicuous" means language that is 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.

(B) In the case of an audio disclosure, "clear and
conspicuous" means language at a volume and in a cadence sufficient to be
readily audible and understandable;

(3) "Consumer" means an individual located in this state who
seeks or acquires, by purchase or lease, goods, services, money, or credit



1 for personal, family, or household purposes;

2 (4) "Continuous service" means a plan, an arrangement, or a
3 provision of a contract that contains a free-to-pay conversion or in which a
4 paid subscription or purchasing agreement continues until the consumer
5 cancels the service;

6 (5) "Free-to-pay conversion" means, in an offer or agreement to
7 sell or provide goods or services, a provision under which a customer
8 receives goods or a service for free for an initial period and will incur an
9 obligation to pay for the goods or service if the customer does not take
10 affirmative action to cancel the goods or service before the end of the
11 specified period;

12 (6)(A) "Municipal utility" means a utility owned or operated by
13 a municipality that provides:

14 (i) Electricity;

15 (ii) Water;

16 (iii) Wastewater;

17 (iv) Cable television; or

18 (v) Broadband service.

19 (B) "Municipal utility" includes without limitation a:

20 (i) Consolidated waterworks system under the
21 Consolidated Waterworks Authorization Act, § 25-20-301 et seq.;

22 (ii) Utility managed or operated by a nonprofit
23 corporation under § 14-199-701 et seq.; and

24 (iii) Utility owned or operated by a municipality or
25 by a consolidated utility district under the General Consolidated Public
26 Utility System Improvement District Law, § 14-217-101 et seq.;

27 (7) "Local government" means:

28 (A) A county;

29 (B) A city of the first class, a city of the second class,
30 or an incorporated town; or

31 (C) Any other state entity or political subdivision of the
32 state or an agency, board, or commission of the state entity or political
33 subdivision of the state; and

34 (8) "Offer terms" means the following clear and conspicuous
35 disclosures:

36 (A) That the subscription or purchasing agreement will

1 continue until the consumer cancels the subscription or purchasing agreement;

2 (B) The description of the cancellation policy that
3 applies to the offer;

4 (C) The recurring charges that will be charged to the
5 consumer's credit or debit card or payment account with a third party as part
6 of the automatic renewal plan or arrangement, and that the amount of the
7 charge may change, and if that is the case, include the amount to which the
8 charge will change, if known;

9 (D) The length of the term of the automatic renewal or
10 continuous service, unless the length of the term is chosen by the consumer;
11 and

12 (E) The minimum purchase obligation, if any.

13 (b) A business shall not provide offer terms to a consumer that:

14 (1)(A) Fail to present the offer terms in a clear and
15 conspicuous manner before the subscription or purchasing agreement is
16 fulfilled and in visual proximity, or, in the case of an offer conveyed
17 verbally, in temporal proximity, to the request for consent to the offer.

18 (B) If the offer includes a free gift or trial, the offer
19 shall include a clear and conspicuous explanation of the price that will be
20 charged after the trial ends or the manner in which the subscription or
21 purchasing agreement pricing will change upon conclusion of the trial;

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

27 (3)(A) Fail to provide an acknowledgment that includes the offer
28 terms, cancellation policy, and information regarding how to cancel the
29 policy in a manner that is capable of being retained by the consumer.

30 (B) If the offer terms include a free gift or trial, the
31 business shall disclose in the acknowledgment how to cancel the free gift or
32 trial and allow the consumer to cancel the automatic renewal or continuous
33 service before the consumer pays for the goods or services;

34 (4) Fail to obtain the consumer's express consent to the offer
35 terms;

36 (5) Include any information in the contract that interferes

1 with, detracts from, contradicts, or otherwise undermines the ability of a
2 consumer to provide the consumer's consent to the automatic renewal or
3 continuous service;

4 (6) Fail to maintain verification of the consumer's consent for
5 at least three (3) years, or one (1) year after the contract is terminated,
6 whichever period is longer;

7 (7) Misrepresent, expressly or by implication, any material fact
8 related to the transaction, including without limitation:

9 (A) The inclusion of an automatic renewal or continuous
10 service; or

11 (B) Any material fact related to the underlying goods or
12 service; and

13 (8) Fail to provide a consumer with a notice, before confirming
14 the consumer's billing information and as may be required by subsection (c)
15 of this section, that clearly and conspicuously states:

16 (A) That the automatic renewal or continuous service will
17 automatically renew unless the consumer cancels the automatic renewal or
18 continuous service;

19 (B) The length and any additional terms of the renewal
20 period;

21 (C) The amount or range of costs the consumer will be
22 charged and, if applicable, the frequency of those charges a consumer will
23 incur unless the consumer takes timely steps to prevent or stop those
24 charges;

25 (D) One (1) or more methods by which a consumer can cancel
26 the automatic renewal or continuous service;

27 (E) If the notice required by this subdivision (b)(8) is
28 sent electronically, the notice shall include:

29 (i) A link that directs the consumer to the
30 cancellation process; or

31 (ii) Another reasonably accessible electronic method
32 that directs the consumer to the cancellation process if a link is not
33 available; and

34 (F) Contact information for the business.

35 (c)(1) Except as required under subdivision (c)(2) of this section, a
36 business shall provide a consumer with the notice required under subdivision

1 (b)(8) of this section if either of the following occurred:

2 (A)(i) The consumer accepted a free gift or trial, lasting
3 for more than thirty-one (31) days, that was included in an automatic renewal
4 offer or continuous service offer or the consumer accepted an automatic
5 renewal offer or continuous service offer at a promotional or discounted
6 price, and the applicability of that price was more than thirty-one (31)
7 days.

8 (ii)(a) The notice required under subdivision (b)(8)
9 of this section shall be provided at least three (3) days before and at most
10 twenty-one (21) days before the expiration of the predetermined period of
11 time for which the free gift or trial or promotional or discounted price,
12 applies.

13 (b) As used in subdivision (c)(1)(A)(ii)
14 of this section, "free gift" does not include a free promotional item or gift
15 given by the business that differs from the subscription.

16 (iii) This subdivision (c)(1)(A)(ii) does not apply
17 to an offer if the consumer does not enter into the contract electronically
18 and the business has not collected or maintained the consumer's valid email
19 address, telephone number, or other means of notifying the consumer
20 electronically; or

21 (B)(i) The consumer accepted offer terms with an initial
22 term of one (1) year or longer, that automatically renews unless the consumer
23 cancels the automatic renewal or continuous service.

24 (ii) The notice required under subdivision (b)(8) of
25 this section shall be provided at least fifteen (15) days and not more than
26 forty-five (45) days before the automatic renewal offer or continuous service
27 offer renews.

28 (2) If offer terms requires a notice be provided under both
29 subdivision (c)(1)(A) or subdivision (c)(1)(B) of this section, then only the
30 notice required to be provided under subdivision (c)(1)(B) of this section
31 shall be required.

32 (d)(1) A business that makes an automatic renewal offer or continuous
33 service offer shall provide a toll-free telephone number, an email address, a
34 postal address, if the seller directly bills the consumer, or it shall
35 provide another cost-effective, timely, and easy-to-use mechanism for
36 cancellation that shall be described in the acknowledgment specified under

1 subdivision (b)(3) of this section.

2 (2)(A) Except as provided under subdivision (d)(2)(B) of this
3 section, if a business provides a mechanism for cancellation by toll-free
4 telephone number, the business:

5 (i) Shall answer calls promptly during normal
6 business hours; and

7 (ii) Shall not obstruct or delay the consumer's
8 ability to cancel the automatic renewal or continuous service.

9 (B) If a consumer leaves a voicemail with a business
10 requesting cancellation, the business shall, within one (1) business day,
11 process the requested cancellation or call the consumer back regarding the
12 cancellation request.

13 (e)(1) In addition to the requirements of subsection (c) of this
14 section, a business that allows a consumer to accept an automatic renewal
15 offer or continuous service offer online shall allow a consumer to terminate
16 the automatic renewal or continuous service exclusively online, at will, and
17 without engaging any further steps that obstruct or delay the consumer's
18 ability to terminate immediately the automatic renewal or continuous service.

19 (2) The business shall provide a method of termination that is
20 online in the form of:

21 (A) A prominently located direct link or button that may
22 be located within either a customer account or profile, or within either
23 device or user settings; or

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

27 (3) The termination requirements of this subsection shall apply
28 to the offer terms of the contract and the remaining provisions of the
29 contract that continue to be governed by all applicable laws and rules.

30 (4)(A) Notwithstanding subdivision (d)(1) of this section, a
31 business may require a consumer to enter account information or otherwise
32 authenticate his or her identity online before termination of the automatic
33 renewal or continuous service online if the consumer has an account with the
34 business.

35 (B) A consumer who is unwilling or unable to enter account
36 information or otherwise authenticate his or her identity online before

1 termination of the automatic renewal or continuous service online under
2 subdivision (e)(4)(A) of this section shall not be precluded from
3 authenticating or terminating the automatic renewal or continuous service
4 offline using another method under subsection (d) of this section.

5 (f) Under subsections (d) and (e) of this section, a business that
6 provides a discount offer or other consumer benefit or informs a consumer of
7 the effect of the cancellation shall not be considered to be an obstruction
8 or delay, if the consumer remains able to cancel the automatic renewal or
9 continuous service, as follows:

10 (1)(A) If the consumer requests to cancel by telephone, the
11 business may present the consumer with a discounted offer, retention benefit,
12 or information regarding the effect of cancellation, if the business first
13 clearly and conspicuously informs the consumer that the consumer may complete
14 the cancellation process at any time by stating that the consumer wants to
15 "cancel" or words to that effect.

16 (B) If the consumer states the consumer's intention to
17 "cancel" or words to that effect, the business shall promptly process the
18 cancellation and shall not otherwise obstruct or delay the consumer's ability
19 to cancel the automatic renewal or continuous service; and

20 (2)(A) If a consumer conveys a request to cancel using an online
21 system, the business may display a discounted offer, retention benefit, or
22 information regarding the effects of cancellation, provided that the business
23 simultaneously displays a prominently located and continuously and
24 proximately displayed direct link or button entitled "click to cancel", or
25 words to that effect, with the presentation of the discounted offer, other
26 consumer benefit, or information.

27 (B) If the consumer utilizes the direct link or button
28 under subdivision (f)(2)(A) of this section, the business shall promptly
29 process the cancellation and shall not otherwise obstruct or delay the
30 consumer's ability to proceed to cancellation.

31 (g)(1) The ability to cancel the automatic renewal or continuous
32 service under subsection (d) or subsection (e) of this section shall be
33 available to a consumer in the same medium that the consumer used in the
34 transaction that resulted in the activation of the automatic renewal or
35 continuous service, or the same medium in which the consumer is accustomed to
36 interacting with the business, including without limitation in person, by

1 telephone, by mail, or by email.

2 (2)(A) If the activation of the automatic renewal or continuous
3 service was by telephone, a telephone number that is capable of being
4 retained by the consumer shall be available to the consumer to cancel the
5 automatic renewal or continuous service.

6 (B) The telephone number under subdivision (g)(2)(A) of
7 this section shall be clearly and conspicuously displayed on the business's
8 website, if applicable.

9 (h)(1) If there is a material change in the terms of the automatic
10 renewal or continuous service that has been accepted by a consumer in this
11 state, the business shall provide:

12 (A) The consumer with a clear and conspicuous notice of
13 the material change; and

14 (B) Information regarding how to cancel in a manner that
15 is capable of being retained by the consumer.

16 (2) If there is a change in the fee charged under existing offer
17 terms that has been accepted by a consumer in this state, including changes
18 the consumer affirmatively consented to in an existing plan or arrangement,
19 the business shall provide, no less than seven (7) days and no more than
20 thirty (30) days before the fee change takes effect, the consumer with:

21 (A) A clear and conspicuous notice of the fee change; and

22 (B) Information regarding how to cancel in a manner that
23 is capable of being retained by the consumer.

24 (i)(1)(A) A business shall send an annual reminder to a consumer under
25 an annual automatic renewal agreement or continuous service agreement with
26 the business in the same medium that resulted in the activation of the
27 automatic renewal or continuous service, or the same medium in which the
28 customer is accustomed to interacting with the business, including without
29 limitation, by telephone, mail, or email.

30 (B) For original in-person or voice-based transactions,
31 the business shall send the reminder required under subdivision (i)(1)(A) of
32 this section by telephone, mail, or any internet-based communication.

33 (2) The reminder sent under subdivision (i)(1)(A) of this
34 section shall disclose:

35 (A) The product or service to which the automatic renewal
36 or continuous service applies;

1 (B) The frequency and amount of charges associated with
2 the automatic renewal or continuous service; and

3 (C) The means to cancel the automatic renewal or
4 continuous service.

5 (j)(1) Except as provided under subdivision (j)(2) of this section,
6 the requirements of this section shall apply only before the completion of
7 the initial order for the automatic renewal or continuous service.

8 (2) The requirements in:

9 (A) Subdivisions (b)(3) and (b)(8) of this section may be
10 fulfilled after completion of the initial order;

11 (B) Subsection (c) of this section may be fulfilled after
12 completion of the initial order;

13 (C) Subsection (h) of this section shall be fulfilled
14 prior to implementation of the material change or fee change; and

15 (D) Subsection (i) of this section shall be fulfilled
16 annually.

17 (k) This section does not apply to:

18 (1) A person subject to the jurisdiction of the:

19 (A) Bank Commissioner under the Arkansas Banking Code of
20 1997, chapters 45-50 of Title 23;

21 (B) Securities Commissioner under the Arkansas Securities
22 Act, § 23-42-101 et seq.;

23 (C) Insurance Commissioner under the:

24 (i) Arkansas Insurance Code; or

25 (ii) Service Contracts Act, § 4-114-101 et seq.;

26 (D) The Arkansas Public Service Commission under § 23-3-
27 101 et seq.; or

28 (E) The Federal Communications Commission excluding those
29 persons providing satellite digital radio services;

30 (2) A municipal utility;

31 (3) A service provider or its affiliate or subsidiary if the
32 service provider or its affiliate or subsidiary is doing business under a
33 franchise issued by the state or a local government; or

34 (4) An entity regulated by the Division of Arkansas State Police
35 under the Private Security Agency, Private Investigator, and School Security
36 Licensing and Credentialing Act, § 17-40-101 et seq.

1 (1)(1) A violation of this section shall constitute an unfair or
2 deceptive act or practice as defined by the Deceptive Trade Practices Act, §
3 4-88-101 et seq.

4 (2) All remedies, penalties, and authority granted to the
5 Attorney General under the Deceptive Trade Practices Act, § 4-88-101 et seq.,
6 shall be available to the Attorney General for the enforcement of this
7 section.

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9 /s/M. Brown
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