

Automatic Renewal State Laws

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A Practice Note on state laws regulating businesses' online contracts with consumers that automatically renew. This Note discusses overall differences between federal and state regulation, covers typical features of state automatic renewal laws through an examination of California's law, and highlights key distinctions in certain state laws. It also provides compliance best practices and discusses litigation, enforcement, and settlements, with a focus on California because it is the state in which automatic renewal laws have been most heavily litigated.

Automatically renewing contracts have benefits for both sellers and consumers:

- Sellers can stock inventory more efficiently and predict future revenue because they can ship products and deliver services on a predetermined schedule.
- Consumers can receive uninterrupted service and may bypass re-submitting purchase information.

However, regulators have called attention to potential difficulties automatically renewing contracts may pose to consumers. Several states historically regulated automatic renewals, but those laws typically focused on a particular product or service, such as home alarm products, health club memberships, or repair contracts. Now many states have broadened the reach of their automatic renewal laws beyond specific contract types to consumer contracts more generally, and have implemented particular requirements regarding:

- Disclosures, consent, and cancellation.
- Transaction acknowledgments and renewal notices.

Before the recent rise in state automatic renewal laws, broader regulation in this area was primarily federal, and was focused on protecting consumers from unknowingly entering into contracts that automatically renew via a "negative option." The term "negative option" refers to a category of offers in which sellers interpret a customer's silence or failure to take act as assent to be charged for goods or services.

The Federal Trade Commission (FTC) has been regulating sellers who act based on consumers' silence for decades using its authority under Section 5 of the Federal Trade Commission Act (FTC Act) and other federal rules and regulations such as the Negative Option Rule and the Telemarketing Sales Rule (see Regulatory and Legal Framework).

The more recent state regulation in this area focuses on the business's interactions with consumers when they choose to sign up for a repeating service, subscription, or shipment of goods. Although automatic renewal plans are just one type of negative option program identified by the FTC, the states generally refer to their laws in this area as "automatic renewal laws." These laws cover contractual arrangements whereby a business continues to repeatedly charge a consumer based on the terms of an initial transaction. FTC and state terminology may differ, but these state laws and FTC enforcement cover the same general practices.

This Note focuses on more broadly applicable automatic renewal state laws. Certain types of very narrowly-focused state automatic renewal laws, such as those dealing with leases of personal or business property, are briefly referenced but are generally beyond the scope of this Note.

Common provisions in the state automatic renewal laws discussed in this Note include:

- Required disclosures to the consumer before they accept the automatic renewal offer.



Automatic Renewal State Laws

- Specific formatting requirements for those disclosures.
- Consumer consent to the automatic renewal terms.
- A written acknowledgment of the terms to be sent to the consumer following the transaction.
- Particulars regarding the consumer's ability to cancel.
- Notice to the consumer before the automatic renewal.
- Notice of material changes to the terms.

Sellers need to stay informed of and understand these changing laws because the consequences for failing to comply can be serious, including:

- Rendering the subscription contract null and void.
- Deeming any product provided under the contract a gift, which typically means that the seller would need to refund all monies paid by the consumer.
- Financial penalties for each violation.
- Automatically establishing a violation of a state's more general consumer protection laws.

This Note:

- Briefly describes the different types of automatic renewal contracts.
- Outlines federal regulation of automatic renewal contracts.
- Gives an overview of state regulation of automatic renewal contracts.
- Provides a comprehensive review of the specific requirements and provisions of state automatic renewal laws, using California's as a model.
- Suggests automatic renewal compliance best practices and highlights key differences with other states' laws.
- Discusses litigation, enforcement, and settlements involving automatic renewal laws.
- Touches on recently-updated automatic renewal requirements issued by major credit card companies.

For a companion chart listing the details of all state automatic renewal laws and the District of Columbia's (DC), see [Practice Note, Automatic Renewal State Laws Charts: Overview](#).

Regulatory and Legal Framework

Both the federal government and individual states, as well as DC, have passed legislation governing how sellers must structure automatic renewals and similar negative option offers.

These types of offers can be made in several different ways, including:

- **Pre-notification negative option plans.** Under these plans, such as the book or music clubs that became popular in the 1980s, sellers send periodic notices offering goods. If consumers take no action, sellers send the goods and charge consumers. These are rarely used today.
- **Continuity plans.** For these plans, consumers agree in advance to receive periodic shipments of goods or provision of services, for which they are charged at regular intervals and which they continue to receive until they cancel the contract.
- **Automatic renewals.** With these plans, a company may automatically renew a consumer's contract for goods or services when it expires and continue to charge for it unless the consumer affirmatively cancels the contract.
- **Free-to-pay or nominal-fee-to-pay trial offer conversions.** This is an introductory feature that can be used with either continuity plans or automatic renewals. These trial period options allow consumers to receive goods or services for free (or at a discounted rate) for an initial period. After the free trial or discount period ends, sellers automatically begin charging a fee (or higher fee) unless consumers affirmatively cancel.

Federal Regulations

On the federal level, companies should consider:

- The Negative Option Rule (16 C.F.R. § 425.1).
- The Telemarketing Sales Rule (TSR) (16 C.F.R. §§ 310.1 to 310.9).
- The Restore Online Shoppers' Confidence Act (ROSCA) (15 U.S.C. §§ 8401 to 8405).
- The guidelines set out by the FTC in its [Enforcement Policy Statement Regarding Negative Option Marketing](#) released in October 2021.
- The actions of the Consumer Financial Protection Bureau (CFPB).

The Negative Option Rule was first passed in 1973. It only applies to the first of the four types of offers described above, pre-notification negative option plans. Because this type of plan is no longer in widespread use, the FTC is considering using its rulemaking authority to expand the scope and coverage of this rule. In late 2019, the FTC took public comment on potentially amending it (see [Rule Concerning the Use of Prenotification Negative Option Plans](#)). However, the FTC has not closed its review of

the Negative Option Rule and has yet to act further on the proposed amendment. For more information on this rule, see [Practice Note, Negative Option Offers: Positive Practices to Keep Them Compliant: Negative Option Rule](#).

The TSR, enacted by the FTC in 1995, regulates telemarketing practices, including the telemarketing of negative option plans. Although limited to telephone offers, the TSR provides the definition of negative option features used in ROSCA. For more information about the TSR, see [Practice Note, Negative Option Offers: Positive Practices to Keep Them Compliant: The TSR and Negative Option Features Defined](#).

In December 2010, Congress passed ROSCA, which imposes specific requirements on all types of online negative option plans, including automatic renewals. ROSCA expressly prohibits a seller from charging or attempting to charge a consumer for goods or services over the internet through a negative option or other recurring contract unless the seller:

- Clearly and conspicuously discloses the material terms of the transaction before obtaining the consumer's billing information.
- Obtains the consumer's "express informed consent" before charging the consumer.
- Provides "simple mechanisms for a consumer to stop recurring charges" from occurring.

(15 U.S.C. §§ 8401 to 8405.)

A violation of ROSCA is considered an unfair or deceptive act or practice under section 18 of the FTC Act, which subjects sellers to penalties. State attorneys general may bring an action against a seller alleging a ROSCA violation. For more information on ROSCA, see [Practice Note, Negative Option Offers: Positive Practices to Keep Them Compliant: ROSCA](#).

In October 2021, the FTC published a new enforcement policy statement regarding negative option marketing, which offers guidance to businesses using negative option or similar programs (86 Fed. Reg. 60822-01). While the policy statement is only guidance rather than law, it offers suggestions for best practices and insight into areas where the FTC may focus its enforcement efforts related to automatic renewal programs. The statement addresses practices regarding disclosures, consent, and cancellation in the negative option and automatic renewal context. For more information, see [Practice Note, Negative Option Offers: Positive Practices to Keep Them Compliant: Enforcement Policy](#).

The FTC has steadily increased its enforcement activities against sellers for deceptive negative option and automatic renewal marketing and programs. For example:

- In 2017, the FTC settled an enforcement action for violations of the FTC Act and ROSCA brought against online retailer AdoreMe, which agreed to pay \$1.38 million and revise its automatic renewal practices (see [FTC: AdoreMe, Inc.](#)).
- In May 2019, the FTC settled with a group of companies who were alleged to have operated a worldwide negative option "scam" in which various products were marketed and sold online via a "risk free" trial. Customers who purchased the products ended up being charged a significantly higher amount than they had been told, and they were also enrolled in additional negative option plans. The companies had to turn over more than nine million dollars in assets and were required to comply with all applicable disclosure laws, including ROSCA. (See [FTC Settlement Press Release](#).)
- In September 2020, the FTC announced a ten million dollar settlement with online learning company Age of Learning, Inc., which operates the program ABCmouse. The FTC targeted Age of Learning because it made misrepresentations about cancellations and did not disclose key information to consumers in conjunction with an automatically-renewing subscription, in violation of the FTC Act and ROSCA. (See [FTC Settlement Press Release](#).)
- In 2021, the FTC and Department of Justice settled an action against online seller of background check reports MyLife.com for numerous violations of federal law, including ROSCA and the TSR, for a penalty of \$21 million. The agencies had alleged that the company failed to disclose initial charges as well as the automatic renewal, made it difficult for consumers to cancel their subscription, and misrepresented its refund and cancellation policies (see [FTC Settlement Press Release](#)).

For more information on FTC enforcement activities, see [Practice Note, Negative Option Offers: Positive Practices to Keep Them Compliant: FTC Enforcement](#).

Other Federal Developments

The Supreme Court in April of 2021 limited the FTC's ability to seek monetary relief, in addition to injunctive relief, under Section 13(b) of the FTC Act (see [Legal Update, Kelley Drye: Supreme Court Finds Section 13\(b\) Does Not Allow for Monetary Remedies](#)). The effects of this development remain to be seen, but it is worth noting that the FTC does still have certain avenues to seek

monetary relief from potential violators, via administrative proceedings, by involving different federal agencies, or both. For more information, see [Practice Note, FTC Consumer Protection Investigations and Enforcement: Federal Lawsuits by the FTC](#).

The Consumer Financial Protection Bureau (CFPB) has recently gotten involved in enforcement of businesses' automatic renewal obligations. In April 2022, the CFPB filed suit in Illinois federal court against credit bureau TransUnion and one of its executives, alleging that TransUnion violated a 2017 Consent Order barring it from engaging in certain deceptive marketing practices regarding its automatically renewing credit-monitoring products (*Consumer Financial Protection Bureau v. TransUnion et al.*, Case No. 1:22-cv-01880 (N.D. Ill.)). Those practices included misleading consumers about the nature and terms of the product, failing to adequately obtain consumer consent to the automatic renewal contract, making cancellation difficult, and using "dark patterns" to manipulate consumer choice (see [Article, Dark Patterns: Trends and Developments](#)).

State Regulation

For decades, any broad regulation of consumer automatic renewal programs, primarily focused on "negative option" plans, was left to the FTC. However, beginning in 2010 when California's comprehensive automatic renewal law went into effect, states began to regulate more aggressively in this area. Where federal and state regulation overlap, the federal standards set the minimum bar for compliance, but states can impose stricter laws.

Current state regulation of consumer automatic renewal programs is something of a patchwork. More than half of US states now have statutes on the books, and while many elements of those laws are similar, no two states' laws are identical. The state laws can differ both in:

- Scope, in terms of the type of automatic renewal programs they cover.
- Substance, in terms of what they require businesses to do.

Therefore, businesses must examine the specific laws in all states in which they operate to ensure compliance. As of July 1, 2022, only the following states have not enacted legislation concerning automatic renewals relating in some way to consumer contracts for goods and services:

Alabama, Alaska, Arizona, Indiana, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, New Jersey, Ohio, Oklahoma, Rhode Island, Texas, Washington, West Virginia, and Wyoming.

However, state leaders regularly introduce or enhance laws relating to automatic-renewal programs (see, for example, [Legal Updates, California Adopts Stricter Automatic Renewal Notice and Cancellation Requirements](#) and [Squire Patton: Updates to Automatic Renewal Laws with New Consent, Notice, and Cancellation Requirements in the United States and Germany](#)). Some new laws extend elements of existing automatic renewal laws to other types of contracts (see, for example, [Legal Update, California Expands Automatic Renewal Protections to Services Contracts Under the Song-Beverly Consumer Warranty Act](#)). Therefore, before putting an automatic renewal program into place, businesses should verify the status of any pending automatic renewal law legislation in jurisdictions where they operate. For more information about individual state laws, see [Practice Note, Automatic Renewal State Laws Charts](#).

The discussion about state regulation in this Note primarily focuses on California's automatic renewal law because:

- California's law is generally considered to be the most comprehensive and to have the strictest standards.
- Several states have largely copied or adopted elements of California's law, including Colorado, DC, Hawaii, Idaho (as of January 1, 2023), New York, North Dakota, Oregon, Tennessee (as of January 1, 2023), Vermont, and Virginia.

As a result, an understanding of California's law offers general compliance best practices for anyone operating a multi-state automatic renewal program.

This Note also highlights:

- Key distinctions with other states' law.
- Significant court decisions interpreting state laws, as well as settlements (see [Litigation and Settlements](#)).

For a related checklist setting out legal issues for a business to consider when establishing an automatic renewal or other negative option program, see [Automatic Renewal and Other Negative Option Programs Checklist](#).

Scope of Automatic Renewal Laws

No two state automatic renewal laws cover precisely the same types of automatically renewing contracts. In addition to having different compliance requirements, states' laws may also differ regarding:

- The types of transactions covered, including specific contracts, types of businesses, or industries that are exempted.

- The length of the contract or automatic renewal term that triggers certain aspects of the law.

Because of these variations, businesses should carefully review the particular requirements of the automatic renewal laws in the jurisdictions in which they offer automatically renewing contracts to consumers. For a complete listing of state law requirements, including a separate section for each regarding which contracts are covered, see [Practice Note, Automatic Renewal State Laws Charts](#).

Covered Persons or Entities

State automatic renewal laws generally only regulate business-to-consumer contracts. For example, California's law regulates automatically renewing plans or arrangements offered to a "consumer" in California, defined as "any individual who seeks or acquires, by purchase or lease, any goods, services, money, or credit for personal, family, or household purposes" (Cal. Bus. & Prof. Code § 17601(d)). California's law is typical of other broad state automatic renewal laws that have a stated focus on consumer protection.

Only a few states regulate business-to-business automatic renewal contracts. For example, New York has an older law regulating contracts with persons for service, maintenance, or repair to or for any real or personal property with automatic renewal periods greater than one month, and the term "person" expressly includes both individuals and firms, companies, partnerships, or corporations (N.Y. Gen. Oblig. Law § 5-903). (New York's broad automatic renewal law, which tracks California's, is consumer-focused.) Similarly, Wisconsin has a narrow law relating to automatic renewal of business equipment leases and services. Outside those rare instances, states have stayed away from business-to-business automatic renewal regulation. For more information on both and other states, see [Practice Note, Automatic Renewal State Laws Charts: Overview](#).

Covered Transactions

A state's automatic renewal law typically describes the types of transactions covered and various exemptions. For example:

- California and the states that have followed its law tend to have extremely broad automatic renewal laws. California's covers "any plans or arrangements in which a paid subscription or purchasing contract is automatically renewed at the end of a definite term for a subsequent term" that is offered to a consumer in California (Cal. Bus. & Prof. Code § 17601(a)). Other states with broad coverage of consumer automatic

renewal transactions include Colorado, DC, Hawaii, Idaho (as of January 1, 2023), New York, Oregon, Tennessee (as of January 1, 2023), Vermont, and Virginia (see [Practice Note, Automatic Renewal State Laws Charts: Overview](#)).

- The state laws that are broader in scope generally list industries exempt from the law. For example, California's law does not cover automatically renewing contracts with insurance companies, banks, alarm company operators, and franchise arrangements, among others (Cal. Bus. & Prof. Code § 17605). The insurer, bank, and franchise exemptions are common for states that regulate automatic renewals broadly.
- Some states only regulate certain narrow categories of automatic renewal contracts, such as:
 - dance studio, home alarm, or health club contracts (see, for example, Connecticut, Maryland, and Pennsylvania);
 - leases of personal property (Arkansas, Missouri, and Rhode Island) or business property (Wisconsin); and
 - telecommunication contracts (South Dakota).

Some states also regulate automatic renewal provisions in public utility services, an area beyond the scope of this Note.

- A few states bar narrow categories of automatic renewal clauses entirely: Iowa (physical exercise facilities); Missouri (buyer's clubs); and Nevada (health club memberships or dance studio contracts). For more information on these states' laws, see [Practice Note, Automatic Renewal State Laws Charts: Overview](#).
- A small number of jurisdictions have older laws specific to automatically renewing service or repair contracts, which typically contain fewer requirements than the new types of automatic renewal laws (see, for example, Georgia, New Mexico, New York, and Utah in [Practice Note, Automatic Renewal State Laws Charts: Overview](#)). California, however, recently expanded the requirements for service and repair contracts with automatic renewal provisions, making the requirements closer to its broader consumer law (see [Legal Update, California Expands Automatic Renewal Protections to Services Contracts Under the Song-Beverly Consumer Warranty Act](#)).

Length of the Contract and Automatic Renewal Term

In some states other than California, whether the automatic renewal law applies, and what a business is required to do, may depend on either the length of the

original contract, the length of the automatic renewal term, or both. For example:

- DC's law covers contracts that automatically renew at the end of a definite term, but has additional requirements for contracts with an initial term of 12 months or more that will automatically renew for a term of one month or more (D.C. Code § 28A-203(a), (b)).
- Connecticut's law has different disclosure requirements depending on whether the contract is for a term of more than 180 days or for 180 days or less (Conn. Gen. Stat. Ann. § 42-126b).
- Hawaii's law has different disclosure requirements depending on whether the automatic renewal term is greater than one month but less than 12 months, or 12 months or more (HRS § 481-9.5(b)).
- Idaho's law requires renewal notices to be sent only if the length of the automatic renewal term is 12 months or more (Idaho Code § 48-603G).
- North Dakota's law requires renewal notices to be sent only if the length of the automatic renewal term is more than six months. It also limits any renewal period in an agreement for the sale of merchandise to 12 months or less. (N.D.C.C. § 51-37-02.)
- For more information on how the length of the original contract or the automatic renewal term affects coverage and compliance under the laws, see [Practice Note, Automatic Renewal State Laws Charts](#).

Typical Requirements of State Automatic Renewal Laws

The specifics of each state's automatic renewal law vary, but California's provides a good example because it contains virtually every type of provision found in other states' laws. In addition, a number of other states have used California's law as a template for their own.

A business making an offer to a consumer in California containing an automatic renewal program must meet specific requirements relating to:

- The content of the terms, including specific information related to any free gift or trial period component of the offer (see [Content and Timing of Disclosures](#)).
- The presentation of the terms (see [Format of Disclosures](#)).
- The consent of the consumer to the offer (see [Affirmative Consent to Offer](#)).
- The acknowledgment provided to the consumer (see [Acknowledgment Sent to Consumer](#)).

- Cancellation of the automatic renewal program (and trial, if applicable) (see [Cancellation Method](#)).
- Notice before the automatic renewal (see [Renewal Notice](#)).
- The notice necessary to convey a material change to the automatic renewal terms (see [Notice of Material Change](#)).

Content and Timing of Disclosures

Virtually all state automatic renewal laws set out specific information that the seller must disclose to the consumer about the automatic renewal or continuous subscription program.

California's law requires the seller to disclose the following before the consumer's acceptance of the offer:

- That the subscription or purchasing agreement will continue until the consumer cancels.
- A description of the cancellation policy that applies to the offer.
- 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, 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.
- The length of the automatic renewal term or that the service is continuous, unless the length of the term is chosen by the consumer.
- The minimum purchase obligation, if any.
- If the offer includes a free gift or trial period, either:
 - an explanation of the price that will be charged after the trial period ends; or
 - the manner in which the subscription or purchasing agreement pricing will otherwise change upon conclusion of the trial.

(Cal. Bus. & Prof. Code §§ 17601(b)(1)-(5), 17602(a)(1); see *Hall v. Time, Inc.*, 857 Fed. App'x 385, 386 (9th Cir. May 24, 2021) (finding seller's disclosures provided the required terms).)

California's law has set the standard as far as what information needs to be disclosed. The majority of states with automatic renewal laws require much if not all of this same information to be provided, with the key elements being the fact of the automatic renewal, the charge amount, the cancellation policy, and any specifics related to a free gift or trial period.

Format of Disclosures

California, the states that follow its law, and certain others also have particular requirements regarding how a seller must present the mandatory automatic renewal disclosures.

California's law is a good example of those requirements. Any automatic renewal contract, plan, or subscription must present the automatic renewal terms described above in both:

- A clear and conspicuous manner before the purchasing agreement is fulfilled.
- In visual proximity (or in the case of an offer conveyed by voice, in temporal proximity) to the request for consent to the offer.

(Cal. Bus. & Prof. Code § 17602(a)(1).)

The Ninth Circuit recently observed that it is permissible for an unrelated image or text to appear between the terms and the request for consent, stating that the law requires "'visual proximity,' not immediate adjacency" (*Hall*, 857 Fed. App'x at 386; see [Legal Update, Ninth Circuit Court Rejects Plaintiff's Auto-Renewal Claims Made Under California Law](#)).

California defines "clear and conspicuous" to mean one or more of the following:

- In larger type than the surrounding text.
- In contrasting type, font, or color to the surrounding text of the same size.
- 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; or
- If it is an audio disclosure, at a volume and cadence sufficient to be readily audible and understandable.

(Cal. Bus. & Prof. Code § 17602(a)(1).)

For examples of cases discussing clear and conspicuous, see:

- *Hall*, 857 Fed. App'x at 386 (upholding lower court's conclusion that defendant's disclosures were clear and conspicuous).
- *Morrell v. WW International, Inc.*, 551 F.Supp.3d 173, 187 (S.D.N.Y. 2021) (finding defendant's initial disclosures satisfied California's law).
- *Gershfeld v. Teamviewer US, Inc.*, 2021 WL 3046775, at *4 (C.D. Cal. June 24, 2021) (holding defendant's disclosures were clear and conspicuous).

- *Rutter v. Apple*, 2022 WL 1443336, at *6 (N.D. Cal. May 6, 2022) (finding that the defendant's cancellation policy was clearly and conspicuously disclosed in the terms and conditions).
- *Price v. Synapse Group, Inc.*, 2017 WL 3131700, at *6-7 (S.D. Cal. July 24, 2017) (describing the inadequacies of defendant's disclosures in finding plaintiff's allegations of violations of §§ 17601 and 17602 sufficient to state a claim).

While California's definition of clear and conspicuous is typical of those states that define the term, businesses operating in Vermont should note that Vermont's automatic renewal law requires that the automatic renewal terms be presented in **bold** font (9 V.S.A. § 2454a).

Not all states regulating automatic renewal contracts have these detailed formatting requirements. Connecticut, Florida, Idaho, Illinois, and Maine use terms like "clear and conspicuous," but do not define those terms or provide examples. Courts in those states may look to other states' definitions of "clear and conspicuous" or similar terms for guidance.

Considering the requirements in laws across the country, a best practice would be to include the following formatting separately or in combination (keeping in mind that Vermont permits only the bold option):

- Using bold, highlighted, all-capitalized, or different-colored text for the automatic renewal terms.
- Putting a heavy-line box around the terms.
- On a webpage, the automatic renewal terms should appear next to or above the button that the consumer clicks to complete the purchase (for example, the "submit order" button). The terms should not appear below the purchase button, or solely:
 - via a hyperlink; or
 - on a separate webpage.

For more information and best practices on making clear and conspicuous disclosures, see [Practice Note, Advertising: Overview: Clear and Conspicuous Disclosures](#).

Affirmative Consent to Offer

States regulating automatic renewals more comprehensively typically require the business to demonstrate that the consumer affirmatively consented to the offer. For example, under the California law, a business must ensure that it obtains the consumer's affirmative consent to the agreement containing the

automatic renewal offer terms before the business charges the consumer (Cal. Bus. & Prof. Code § 17602(a)(1)).

A recent Ninth Circuit decision confirmed that the consumer must agree to “the agreement containing” the terms, not to the terms themselves, as stated in the law. In that unpublished decision, which is only persuasive authority for future courts addressing the issue, the court determined that California’s affirmative consent requirement is satisfied if the consumer clicks “Submit Order” or a similar button indicating agreement to the automatic renewal offer at the end of a sign-up process that contains all of the required disclosures. (*Hall*, 857 Fed. App’x at 386-87; see also *Gershfeld*, 2021 WL 3046775, at *4 and *Rutter*, 2022 WL 1443336, at *5 (both citing *Hall*)).

Businesses operating nationally and in Vermont should note that Vermont requires that the consumer take an “affirmative action to opt in to the automatic renewal provision” that is separate from the acceptance of the contract (9 V.S.A. § 2454a(a)(2); see [Practice Note, Automatic Renewal State Laws Charts: Overview: Vermont](#)). Therefore, a best practice to establish affirmative consent in Vermont and nationwide for an automatic renewal program would be a checkbox (not pre-checked) indicating assent to the automatic renewal program terms (and to hyperlinked general terms and conditions, if applicable, that also contain the automatic renewal terms).

An additional best practice is for the business to ensure that it retains electronic records of each consumer’s consent (such as a time and date stamp tied to that specific consumer).

Acknowledgment Sent to Consumer

A number of states – including California and those states that modeled their automatic renewal laws after California’s, require that the business provide the consumer with an acknowledgment of the order in a manner that the consumer can retain.

The California law requires a business to send the consumer an acknowledgment containing certain specific information about the automatic renewal transaction. The acknowledgment must be in a form that can be retained by the consumer (such as an email), and must include:

- The automatic renewal offer’s terms (see [Content and Timing of Disclosures](#)).
- The cancellation policy.
- A description of how to cancel.

(Cal. Bus. & Prof. Code § 17602(a)(3), (c).)

If the offer includes a free gift or trial period, the business must also disclose in the acknowledgment how to cancel, and allow the consumer to cancel before the consumer pays for the goods or services (Cal. Bus. & Prof. Code § 17602(a)(3)).

The Ninth Circuit confirmed in 2021 that the law requires no specific timing requirement for the acknowledgment. The court held that a later notice of an upcoming automatic renewal that met the disclosure requirements of section 17602(a)(3) satisfied the law. (*Hall*, 857 Fed. App’x. at 387; see also *Gershfeld*, 2021 WL 3046775, at *4.) Another court recently confirmed that the timing requirement is flexible, holding that the acknowledgment can be provided before the transaction is consummated as part of the terms and conditions that the consumer can review before completing the purchase (*Rutter*, 2022 WL 1443336, at *7).

Best practices include:

- Sending an email with the required information after the initial order is completed.
- In addition to or instead of a confirmation email, including a hard-copy notice stating the required information in the first shipment, if the contract is for a product.
- Ensuring that the disclosures regarding the automatic renewal terms in the acknowledgment match those that the seller provided to the consumer during the purchase process (see *Morrell*, 551 F.Supp.3d at 187 (finding information provided in the acknowledgment insufficient)).
- For an automatic renewal program that includes a free gift or trial period, sending the consumer an email that arrives far enough in advance of the end of the trial period and the first charge to the consumer’s payment account so that the consumer can cancel without being charged.

Cancellation Method

Streamlining the cancellation process for automatic renewals has been and continues to be a focus of both federal and state regulators. Several states’ laws contain a relatively new requirement that an automatic renewal program entered into online must be able to be cancelled online, and California’s law was recently amended to add language seeking to simplify the cancellation process (see [Legal Update, California Adopts Stricter Automatic Renewal Notice and Cancellation Requirements](#)).

California’s law requires a business to provide at least one of the following methods for a consumer to cancel an

automatic renewal program, and a consumer who entered into the program online must be able to cancel online:

- A toll-free telephone number.
- An email address.
- A postal address if the business directly bills the consumer.
- Any other mechanism that is cost-effective, timely, and easy-to-use.

(Cal. Bus. & Prof. Code § 17602(c), (d)(1).)

A number of other states have adopted California's "sign up online, cancel online" requirement, including New York, Idaho, Illinois, Maine, Vermont, and Virginia. Idaho's law also mandates that consumers must be provided with at least two methods of cancellation. For more information, see [Practice Note, Automatic Renewal State Laws Charts: Overview](#).

In addition, as of July 1, 2022, a California consumer cancelling online must be able to cancel "at will, and without engaging any further steps that obstruct or delay the consumer's ability to terminate" the program immediately (Cal. Bus. & Prof. Code § 17602(d)(1)). The business must provide the consumer with one of two online options for cancellation:

- A prominently located direct link or button which may be located within either a customer account or profile, or within either device or user settings.

An immediately accessible termination email formatted and provided by the business that a consumer can send to the business without additional information.

(Cal. Bus. & Prof. Code § 17602(d)(1)(A)-(B).)

If the consumer has an existing online account with the business, the business is permitted to require the consumer to enter account information or otherwise authenticate themselves before terminating the automatic renewal program. If a consumer is unable or unwilling to sign in or provide this information, they cannot be prevented from cancelling via other means. (Cal. Bus. & Prof. Code § 17602(d)(3).)

Some states with automatic renewal laws that otherwise follow California's law, such as Oregon, do not require that consumers who entered into an automatically renewing contract online be able to cancel that contract online.

Renewal Notice

In a reversal of the usual trend, it was other states, not California, that first instituted a requirement that

businesses send notices to consumers before a consumer contract automatically renews. California made this requirement effective as of July 1, 2022. Businesses should look closely at the requirements for a renewal notice in their particular state(s), as the notices often differ as to:

- How long before the renewal the notices must be sent.
- What the notices must contain.
- The lengths of contracts to which they apply.
- Whether a free trial or discount period changes the notice parameters.

California's law describes two scenarios, each with different requirements:

- If the consumer accepted a free gift, trial period, or similar promotion or discount lasting for more than 31 days as part of an automatic renewal offer:
 - a renewal notice must be sent at least three days before and at most 21 days before the expiration of the trial or promotional period;
 - a renewal notice is not required if the consumer does not enter into the contract electronically and the business has not collected or maintained any means of notifying the consumer electronically (such as email address or phone number); and
 - if the promotional offer is a free gift and that gift differs from the subscribed product, a renewal notice is not required.

(Cal. Bus. & Prof. Code § 17602(b)(1)(A)-(C).)

- If the consumer accepted an automatic renewal or continuous service offer with an initial term of one year or longer, the renewal notice must be provided at least 15 days and not more than 45 days before the date of renewal. (Cal. Bus. & Prof. Code § 17602(2).)

If both scenarios apply to the same consumer, only the notice described in the second scenario must be sent (Cal. Bus. & Prof. Code § 17602(b)). In either scenario, the renewal notice must state the following clearly and conspicuously (see Format of Disclosures):

- That the contract will automatically renew unless the consumer cancels.
- The length and any additional terms of the renewal period.
- One or more methods by which the consumer can cancel the automatic renewal.
- Contact information for the business.

Automatic Renewal State Laws

- If the notice is sent electronically, it must include either:
 - a 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 link exists.

(Cal. Bus. & Prof. Code § 17602(a)(4)(A)-(E).)

California's notice does not explicitly require the consumer's deadline to be provided, but other jurisdictions, such as Washington, DC and Vermont, do (D.C. Code § 28A-203 and 9 V.S.A. § 2454a(a)).

Other states set out slightly different renewal notice timings. For example:

- Between 25 and 40 days before each renewal (Colorado).
- Between 15 and 30 days before the expiration of the free trial period, and between 30 and 60 days before the deadline to cancel the main contract renewal (DC).
- Between 30 and 60 days in advance of the date of the delivery or provision of goods or services (Idaho).
- Between 30 and 60 days before the renewal date or the expiration of the period for cancellation (North Dakota).
- Between 30 and 60 days before the earliest of the automatic renewal date, the termination date, or the date by which the consumer must provide notice to cancel the contract (Vermont).

North Dakota also forbids the renewal period from being longer than 12 months (N.D.C.C. § 51-37-02).

As demonstrated by the related but distinct provisions above, the renewal notice is an area where each relevant jurisdiction's requirements must be examined closely to ensure compliance, both as to the content and timing of the notice. For more information about particular states, see [Practice Note, Automatic Renewal State Laws Charts: Overview](#).

Notice of Material Change

Many automatic renewal laws require notice to the consumer of any material change to the terms before the change becomes effective. For example, under the California law, before implementing any material change to the automatic renewal terms that were accepted by the consumer, the business must provide the consumer with the following information in a manner that is capable of being retained by the consumer (such as an email):

- Clear and conspicuous notice of the change.
- Information regarding how to cancel the automatic renewal program.

(Cal. Bus. & Prof. Code § 17602(e).)

A best practice includes sending all consumers participating in an automatic renewal program that is materially changing a notice via email in which:

- The change is featured prominently and set apart in some manner from the rest of the notice (for example, bold text, colored text, boxed, or all caps).
- The cancellation process is described, with a link included.

This email would be timed so that consumers received it before the change is implemented.

Penalties and Enforcement

The states' automatic renewal laws have a number of different penalties that can be imposed for violations. The most common are one or more of the following:

- Deeming all products or services provided under the contract a gift if the required affirmative consent was not obtained.
- A financial penalty for each violation.
- Establishing a per se violation of the state's general consumer protection law.
- Cancellation of the contract.

For example, California allows consumers to:

- Demand restitution of all funds paid for the product or service under the automatic renewal program if the business is found not to have obtained affirmative consent (because the lack of consent results in the good or service being deemed an unconditional gift).
- Pursue "all available civil remedies" under state law that may apply, including injunctive relief and relief via California's consumer protection laws.

(Cal. Bus. & Prof. Code §§ 17603, 17604; see [Litigation and Settlements](#).)

An example of a state imposing a financial penalty is New York, which sets out the following amounts that may be imposed by a court:

- Not more than \$100 for a single violation or \$500 for multiple violations resulting from a single act or incident.

Automatic Renewal State Laws

- Not more than \$500 for a single “knowing” violation or \$1,000 for multiple “knowing” violations resulting from a single act or incident.

(N.Y. Gen. Bus. Law § 527-a(7).)

Virginia’s penalties are even higher: up to \$5,000 per violation (Va. Code Ann. § 59.1-207.49).

A number of states deem a violation of their automatic renewal law to be a per se violation of the state’s broader consumer protection statute. These states include Connecticut, Delaware, Hawaii, Idaho, Illinois, Maine, Nevada, New Hampshire, New Mexico, North Dakota, Vermont, and Virginia. For more information on these states, see [Practice Note, Automatic Renewal State Laws Charts: Overview](#).

There is also some variety among the states regarding how an automatic renewal law may be enforced. For example, it is generally considered established law in the Ninth Circuit that California’s automatic renewal law **does not** provide a private right of action (see *Litigation and Settlements*). This means that a private plaintiff can only sue for violation of the law via another consumer protection statute, such as California’s:

- Unfair Competition Law (see [Practice Note: California’s Unfair Competition Law: Overview](#)).
- False Advertising Law (see [Practice Note, California’s False Advertising Law: Overview](#)).
- Consumers Legal Remedies Act (see [State Q&A, Consumer Financial Regulation: California: Consumers Legal Remedies Act: Cal. Civ. Code §§ 1750 to 1784](#)).

(See *Johnson v. Pluralsight, LLC*, 728 F. App’x 674, 676 (9th Cir. 2018) and *Arnold v. Hearst Magazine Media, Inc.*, 2021 WL 488343, at *6 (S.D. Cal. Feb. 10, 2021) (“There is no private right of action under the ARL”) (citing *Johnson*) (see *Litigation and Settlements*).)

Some states in contrast, like Virginia, expressly provide a private right of action for consumers to enforce the law (Va. Code Ann. § 59.1-207.49).

New York allows the state’s Attorney General to seek an injunction for violations of the law, even without a showing of an injury or damage to a consumer (N.Y. Gen. Bus. Law § 527-a(7)). Like California’s law, New York’s law does not expressly provide a private right of action.

Other states, like Colorado, give governmental authorities **exclusive** authority to enforce the automatic renewal law (Colo. Rev. Stat. Ann. § 6-1-732(6)).

Businesses should carefully examine the enforcement mechanism(s) for any states in which they are offering automatic renewal programs to determine whether a violation could subject them to a governmental enforcement action, a private lawsuit, or both.

Good Faith Exception

Several states’ laws provide a “good faith” or “safe harbor” exception (see, for example, [Practice Note, Automatic State Renewal Laws Charts: Overview: California, Delaware, District of Columbia, Florida, Illinois, Louisiana, New York, North Carolina, Virginia, and Wisconsin](#)). These exceptions generally allow a business to avoid liability if it can demonstrate that it complied with the law in good faith (California) or that the violation resulted from a bona fide error that the business had measures in place to avoid (New York).

The nuances of the good faith defense have yet to be meaningfully litigated, however. Several courts have turned aside the defense at the pleading stage as premature or improper (see, for example, *Jenkins v. j2 Glob., Inc.*, 2014 WL 12687417, at *5 (C.D. Cal. May 23, 2014); *Morrell*, 551 F.Supp.3d at 187; *Lopez v. Stages of Beauty, LLC*, 307 F. Supp. 3d 1058, 1073 (S.D. Cal. 2018); *Price*, 2017 WL 3131700, at *7; *Bagg v. HighBeam Research, Inc.*, 2013 WL 3466846, at *5-6 (N.D. Ill. July 10, 2013)).

A California defendant did successfully use the defense at the motion for summary judgment stage to create a genuine issue of material fact regarding its good-faith compliance, which the court relied on (in part) to deny plaintiff’s motion for summary judgment (*Roz v. Nestle Waters N. Am., Inc.*, 2017 WL 6942661 (C.D. Cal. Dec. 6, 2017) (the defendant provided “evidence that it, in good faith communicated repeatedly with its customers. . . regarding the nature of their relationship, how to cancel, charges to their credit cards, and price changes”).

Because relatively few cases have addressed it, it is unclear what a court would consider exculpatory “good-faith compliance.” In addition, the exception may create privilege issues, including potential waiver, to the extent a defendant may attempt to rely on the advice of counsel to demonstrate good faith compliance.

Litigation and Settlements

The newer and more stringent automatic renewal laws have most frequently been litigated in California. These suits have involved both governmental and consumer

actions. The discussion here includes some of the more notable litigations and results, primarily from California, but some from other jurisdictions.

Consumer Lawsuit Settlements

Many companies have litigated and eventually settled automatic renewal lawsuits brought by consumers in California, typically as class actions, including major technology companies, entertainment providers, and newspaper and magazine publishers. The settlements in these actions have typically run into the millions of dollars, usually in the form of payments, credits, or vouchers sent to class members. For example:

- The New York Times and the Washington Post in 2021 settled significant class actions in the Southern District of New York and the Northern District of California, respectively, brought under California's automatic renewal law. The Times's settlement was valued at \$5.5 million and the Post's at \$6.7 million, and both included a combination of cash payments and subscription credits. (See *Moses v. New York Times Company*, 2021 WL 4931657 (S.D.N.Y. Sept. 13, 2021) (granting final approval to settlement).)
- In 2022, online weight-loss program Noom settled an automatic renewal class action in the Southern District of New York with a \$56 million cash fund and \$6 million in subscription fee credits (see *Nichols v. Noom, Inc.*, 2022 WL 2698430, at *2 (S.D.N.Y. July 12, 2022)).

Enforcement Actions and Settlements

California's law is also enforced by the California Auto Renewal Task Force (CART), which includes the Santa Monica City Attorney's office and the District Attorneys' offices of Santa Cruz, Los Angeles, San Diego, and Santa Clara counties. CART has obtained settlements and consent judgments in automatic renewal enforcement actions against dating apps, online storage programs, online record-search engines, and many others. These companies have agreed to:

- Pay anywhere from hundreds of thousands to millions of dollars in penalties and restitution.
- Update their website and sales practices.

In New York, its attorney general, Letitia James, released a consumer alert in November 2021 regarding automatic renewal programs, possibly indicating stepped-up enforcement of that state's automatic renewal law (see [Consumer Alert: Attorney General James Issues Warning Against Marketing Schemes Aimed at Trapping Consumers into Recurring Payments](#)).

California Court Decisions

Decisions in Favor of Businesses

In one California state court case, a superior court judge held at the summary judgment stage that the defendant had fully complied with the automatic renewal law, a rare judgment on the merits in the automatic renewal law context (see *Colucci v. Pristine Bay LLC*, 2017 WL 8940281, at *1 (Cal. Super. Aug. 30, 2017)). Certain courts have also on occasion granted motions to dismiss with prejudice because they found the defendant's automatic renewal compliance satisfactory. (See *Hall*, 857 Fed. App'x. at 386-87; *Gershfeld*, 2021 WL 3046775, *4.)

Decisions in Favor of Plaintiffs

Trial courts more frequently determine that plaintiffs have sufficiently pled an automatic renewal violation to survive the pleading stage (see, for example, *Robbins v. Plushcare, Inc.*, 2021 WL 4924856, *1 (N.D. Cal. Oct. 21, 2021); *Arnold*, 2021 WL 488343, at *7; *King v. Bumble Trading, Inc.*, 393 F. Supp. 3d 856, 870 (N.D. Cal. 2019); *McKee v. Audible, Inc.*, 2018 WL 11263238, at *17-19 (C.D. Cal. Mar. 12, 2018); *Stages of Beauty*, 307 F. Supp. 3d 1058, 1970-73).

Even if a court makes an initial determination that a plaintiff has failed to state an automatic renewal claim, court will frequently give the plaintiff leave to amend the complaint (see, for example, *Rutter*, 2022 WL 1443336, at *7; *Turnier v. Bed Bath & Beyond Inc.*, 517 F. Supp. 3d 1132, 1141 (S.D. Cal. 2021); *Arnold v. Hearst Magazine Media, Inc.*, 2020 WL 3469367, *10 (S.D. Cal. June 25, 2020)).

Miscellaneous Decisions

Various California state and federal courts have held as follows regarding the state's automatic renewal law:

- It **does not** provide a private right of action. However, as discussed in Penalties and Enforcement, California consumers can sue under the state's more general consumer-protection laws for an automatic renewal violation. Cases holding that there is no private right of action include:
 - state courts: *Mayron v. Google LLC*, 54 Cal. App. 5th 566, 573-74 (2020); and
 - federal courts: *Johnson v. Pluralsight, LLC*, 728 F. App'x 674, 676 (9th Cir. 2018); *Arnold*, 2021 WL 488343, at *6; *Tan v. Quick Box, LLC*, 2020 WL 7226440, at *27 (S.D. Cal. Dec. 8, 2020); but see *Kissel v. Code 42 Software, Inc.*, 2016 WL 7647691, at *7 (C.D. Cal. Apr. 14, 2016) (finding a legislative intent to provide a private right of action). Subsequent

Automatic Renewal State Laws

decisions have expressly disagreed with *Kissel* (see, for example, *Stages of Beauty*, 307 F. Supp. 3d at 1074).

- It limits relief to California consumers only (see, for example, *Wahl v. Yahoo! Inc.*, 2017 WL 4098884, at *1 (N.D. Cal. Sept. 15, 2017) and *Noll v. eBay Inc.*, 2013 WL 2384250, at *6 (N.D. Cal. May 30, 2013)). Other states' courts may hold similarly if their law's language resembles California's.
- It applies to loyalty programs, where consumers pay a membership fee to receive price and shipping discounts (see, for example, *Turnier*, 517 F. Supp. 3d at 1139 ("Although the Legislature relied on investigations into magazine subscriptions when drafting the statute, there is nothing to suggest it intended to limit the protections under ARL to magazine or periodical subscriptions")).

California courts have held that consumers have standing to allege a violation of the automatic renewal law if they:

- Use one of California's consumer protection statutes (see Penalties and Enforcement).
- Truthfully allege they would not have purchased the item or subscription, or would have cancelled the item or subscription sooner, had the disclosures been compliant (see, for example, *Mayron*, 54 Cal. App. 5th at 574-75 (citing *Kwikset Corp. v. Superior Court*, 51 Cal.4th 310, 317 (2011)); *McKee v. Audible, Inc.*, 2018 WL 11263238, at *18 (C.D. Cal. Mar. 12, 2018)).

By contrast, the Northern District of California recently observed that the plaintiffs in *Rutter v. Apple Inc.* did not appear to have standing because they did not allege that they relied on the defendant's allegedly faulty automatic renewal disclosures (2022 WL 1443336, *6 ("The Amended Complaint does not allege that any of the Plaintiffs even read the iCloud Terms and Conditions, so it does not plausibly explain how they were deceived by the type, font, or color of certain disclosures in them.")).

Authority is mixed, however, on whether the California law's unconditional gift provision alone can provide standing. The law deems any automatically renewing service or merchandise provided without obtaining the required affirmative consent a gift (Cal. Bus. & Prof. Code § 17603). Plaintiffs therefore have claimed that individuals who paid for such an item have been injured in the amount they paid (because the item is now deemed a gift). The California Court of Appeal has rejected this theory. The court found that it "misses the crucial requirement of causation" because "a consequence imposed on a defendant for violating a statute is not the same thing as a loss caused by the

defendant's conduct." (*Mayron*, 54 Cal. App. 5th at 575-76.) In so holding, the *Mayron* court:

- Declined to follow three federal cases coming to the opposite conclusion: *Johnson v. Pluralsight*, 728 Fed. App'x 674 (9th Cir. 2018); *Roz v. Nestle Waters North America, Inc.*, 2017 WL 132853 (C.D. Cal. Jan. 11, 2017); and *Stages of Beauty*, 307 F. Supp. 3d at 1070).
- Stated that:
 - the two district court cases, *Roz* and *Stages of Beauty*, failed to address the issue of causation; and
 - *Johnson*, the unpublished Ninth Circuit opinion, did not consider the fact that the standing requirement for an Unfair Competition Law claim is narrower than the requirement for Article III standing (*Mayron*, 54 Cal. App. 5th at 576).

Because several other states have largely copied California's automatic renewal law and include this same provision, the issue is likely to recur elsewhere.

Decisions From Other Jurisdictions

While California courts have seen the majority of automatic renewal law litigation, other states' courts have adjudicated cases relating to automatically renewing contracts (for a list of cases, see 32 A.L.R.7th Art. 5).

One recent example is *Morrell*, 551 F. Supp. 3d 173, 184-86 (S.D.N.Y. 2021), in which the court determined that the defendant's initial disclosures satisfied California's law, but that the information provided in the acknowledgment email was inadequate. Older instances include a 2014 Florida class-action lawsuit against SeaWorld, where plaintiffs alleged that the automatically renewing contracts for annual park passes violated the Electronic Funds Transfer Act (15 U.S.C. §§ 1693 to 1693r) (see *Herman v. SeaWorld Parks & Entm't, Inc.*, 2015 WL 12859433, at *1 (M.D. Fla. Oct. 6, 2015)). The case was settled in June 2018 when class members received a pro rata share of an \$11.5 million settlement fund (after attorneys' fees and service awards are paid) (see *Herman v. SeaWorld Parks*, 2018 WL 8619586 (M.D. Fla.)).

Illinois saw several early cases as well (see *Pulcini v. Bally Total Fitness Corp.*, 353 Ill. App. 3d 712 (2004) (reversing lower court's dismissal of complaint for failure to state an automatic renewal violation); *Bagg v. HighBeam Research, Inc.*, 2013 WL 3466846, at *5-6 (N.D. Ill. July 10, 2013) (finding plaintiffs stated a claim for an automatic renewal violation and that defendants could not demonstrate compliance with the statute's safe harbor provision at the motion to dismiss stage).)

Arbitration Provisions in Automatic Renewal Litigation

Automatic renewal litigation often implicates dispute resolution provisions, such as arbitration agreements and class action waivers, that appear in a business's online terms and conditions. Some companies have had success in having courts send automatic renewal law-based complaints to arbitration (see, for example, *Bleak v. Spotify USA, Inc.*, Case No. 3:13-cv-05653 (N.D. Cal. Apr. 25, 2014) (entire case compelled to arbitration); *Habelito v. Guthy-Renker LLC*, Case No. BC499558 (Cal. Super. 2016) (class limited to shorter time period based on institution of arbitration provision)).

However, these efforts are not always successful. For example:

- In late 2021, the California Court of Appeal denied a motion to compel arbitration in an automatic-renewal case, and included an extensive discussion of the principles underlying online contract formation in California in the context of online terms and conditions. The court denied the motion in part because the disclosures and consent necessary to demonstrate agreement to the arbitration provision and class action waiver did not satisfy the requirements for disclosures and consent under the automatic renewal law. (*Sellers v. JustAnswer LLC*, 73 Cal. App. 5th 444, 477-84 (2021) ("Enforcing a mandatory arbitration provision that includes a class action waiver based on these textual notices—which are less conspicuous than the statutory notice requirements governing Plaintiffs' underlying claims—would permit JustAnswer to end-run around legislation designed to protect consumers in these specific transactions.").)
- In *Ingalls v. Spotify USA, Inc.*, 2016 WL 6679561 (N.D. Cal. Nov. 14, 2016), the court denied a motion to compel arbitration in an automatic renewal case, finding that Spotify's arbitration agreement was substantially unconscionable.

Companies offering automatic renewal programs should:

- Consider including in their terms and conditions dispute resolution provisions, such as mandatory binding arbitration and class/representative action waivers, to the extent permitted by law in the jurisdictions in which they operate.
- Stay up-to-date on the latest requirements for online contract formation in their jurisdictions (see [Standard Clause, Class Arbitration Waiver \(US\)](#); see also [Class Arbitration Waivers in the US: Case Tracker](#)).
- In California, following *Sellers*, ensure that their disclosures and consent process for agreement to any arbitration clauses, class action waivers, or similar provisions satisfy the formatting and consent requirements of California's automatic renewal law.

For more on arbitration in the US, see [Practice Note, Understanding US Arbitration Law](#).

Credit Card Requirements

Credit card issuers Visa and Mastercard have recently updated their requirements for businesses offering automatic renewal and subscription arrangements. Visa's latest updates became effective as of April 2020 and Mastercard's effective as of March 2022 (certain elements) and September 2022 (remaining elements). While these requirements do not have the force of law, businesses accepting credit card payments for automatic renewal programs should keep them in mind, as they largely track the requirements of the states with more robust automatic renewal laws. The specifics of these updates are discussed in [Practice Note, Negative Option Offers: Positive Practices to Keep Them Compliant: Additional Considerations](#).

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