

House Bill 2016

Sponsored by Representative OWENS (at the request of Barbara Cannady) (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires person that makes automatic renewal or continuous service offer to consumer in this state to provide to consumer before consumer enters into subscription or purchase agreement clear and conspicuous notice in separate communication of renewal or continuous service terms and material changes in terms of renewal or continuous service. Prohibits person from charging consumer for renewal or continuous service before obtaining consumer's affirmative consent for renewal or extension of continuous service or for material changes in terms of renewal or continuous service.

Removes exemptions from provisions of Act for certain persons.

A BILL FOR AN ACT

1
2 Relating to protections for consumers in automatically renewing agreements; creating new pro-
3 visions; and amending ORS 646A.295.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 646A.295 is amended to read:

6 646A.295. (1) [*It is unlawful for*] A person that makes an automatic renewal or continuous ser-
7 vice offer to a consumer in this state [*to*] **may not** do any of the following:

8 (a) Fail to present **to a consumer before the consumer enters into a subscription or pur-**
9 **chasing agreement** the automatic renewal offer terms or continuous service offer terms **or any**
10 **material changes to the automatic renewal offer terms or continuous service offer terms in**
11 **a communication that is clear and conspicuous and is separate from any other communi-**
12 **cation the person sends to the consumer** [*in a clear and conspicuous manner before a subscription*
13 *or purchasing agreement is fulfilled and*]. **The offer terms must be** in visual proximity, or in the
14 case of an offer conveyed by voice, in temporal proximity, to the request for consent to the offer.

15 (b) Charge the consumer's credit or debit card or payment account with a third party for an
16 automatic renewal or continuous service without first obtaining the consumer's affirmative consent
17 to the [*agreement containing the automatic*] renewal **or extension of continuous service and to any**
18 **material changes in the** offer terms [*or continuous service offer terms*].

19 (c) Fail to provide an acknowledgment **of the consumer's acceptance of the renewal or ex-**
20 **tension to continuous service** that includes the automatic renewal offer terms or continuous ser-
21 vice offer terms **that the consumer has accepted** and information regarding how to cancel in a
22 manner that [*is capable of being retained by*] the consumer **can retain**. If the offer includes a free
23 trial, the person shall also disclose in the acknowledgment how to cancel and allow the consumer
24 to cancel before the consumer pays for the goods or services.

25 (2) A person [*making*] **that makes an** automatic renewal or continuous service [*offers*] **offer**
26 shall provide a toll-free telephone number, electronic mail address, a post-office address only when
27 the person directly bills the consumer, or another cost-effective, timely and easy-to-use mechanism
28 for cancellation that must be described in the acknowledgment required by subsection (1)(c) of this

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 section.

2 (3) *[In the case of]* **If a person makes** a material change in the terms of the automatic renewal
 3 or continuous service offer that *[has been accepted by]* a consumer **has accepted**, the person shall
 4 provide the consumer with *[a clear and conspicuous]* notice of the material change **that is clear and**
 5 **conspicuous and is separate from any other communications the person sends to the con-**
 6 **sumer. The notice must also** *[and]* provide information regarding how to cancel in a manner that
 7 *[is capable of being retained by]* the consumer **can retain**.

8 (4) The requirements of this section must be met prior to the completion of the initial order for
 9 the automatic renewal or continuous service, except as follows:

10 (a) The requirement in subsection (1)(c) of this section may be fulfilled after completion of the
 11 initial order.

12 (b) The *[requirement in subsection]* **requirements related to material changes in the offer**
 13 **terms in subsections (1) and (3)** of this section must be fulfilled prior to implementation of the
 14 material change.

15 *[(c) The requirements in subsection (1)(a) and (c) of this section may be fulfilled in the initial billing*
 16 *statement or invoice provided to the consumer when the person directly bills the consumer.]*

17 (5) *[In the event]* **If** a person sends goods, wares, merchandise or products to a consumer **or**
 18 **provides services to the consumer** under a continuous service agreement or *[pursuant to]* **in**
 19 **connection with** an automatic renewal of a purchase without first obtaining the consumer's affir-
 20 mative consent as required in subsection (1) of this section, the goods, wares, merchandise *[or]* pro-
 21 ducts *[shall]* **or services are** for all purposes *[be deemed]* an unconditional gift to the consumer who
 22 may use or dispose of *[them]* **the goods, wares, merchandise, products or services** in any manner
 23 the consumer sees fit without any obligation to the person including, but not limited to, requiring
 24 the consumer to ship, or bear the cost of shipping, any goods, wares, merchandise or products to the
 25 person.

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

27 (a) A person that provides a service pursuant to a franchise issued by a political subdivision of
 28 the state or a license, franchise, certificate or other authorization issued by the Public Utility
 29 Commission of Oregon.

30 (b) A person that provides a service regulated by the Public Utility Commission of Oregon*[, the*
 31 *Federal Communications Commission]* or the Federal Energy Regulatory Commission.

32 (c) A person regulated by the Department of Consumer and Business Services under the Insur-
 33 ance Code.

34 (d) A bank, bank holding company, or the subsidiary or affiliate of either, or a credit union or
 35 other financial institution or trust company as those terms are defined in ORS 706.008, that is li-
 36 censed under state or federal law.

37 (e) A person that is regulated as a service contract seller under ORS 646A.150 to 646A.172.

38 (f) A consumer finance company licensed under ORS chapter 725.

39 *[(g) A person that provides direct-to-home satellite services subject to regulation by the Federal*
 40 *Communications Commission.]*

41 **SECTION 2. The amendments to ORS 646A.295 by section 1 of this 2021 Act apply to**
 42 **contracts that a consumer first enters into or renews on or after the effective date of this**
 43 **2021 Act.**