



## 2023 ASSEMBLY BILL 417

September 19, 2023 - Introduced by Representatives J. ANDERSON, ALLEN, BALDEH, CABRERA, CONLEY, GOEBEN, JOERS, MOORE OMOKUNDE, ORTIZ-VELEZ, PALMERI, RATCLIFF, SINICKI, SNODGRASS, STUBBS, SUBECK and JACOBSON, cosponsored by Senators SPREITZER, CARPENTER, HESSELBEIN and LARSON. Referred to Committee on Consumer Protection.

\*\*\*AUTHORS SUBJECT TO CHANGE\*\*\*

1     **AN ACT to create** 134.495 of the statutes; **relating to:** automatic renewals of  
2             consumer contracts and providing a penalty.

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### *Analysis by the Legislative Reference Bureau*

This bill requires a person making a renewal offer, which is defined in the bill to mean a plan or arrangement for consumer goods or services offered to a consumer in which a subscription or purchasing agreement either continues until the consumer cancels or is automatically renewed at the end of a definite term for a subsequent term, to do all of the following:

1. Present the terms of the renewal offer clearly and conspicuously, in a manner capable of being retained by the consumer.

2. If the renewal offer includes a free gift or trial, present in the renewal offer a clear and conspicuous explanation of the price that will be charged after the trial ends or the manner in which the subscription or purchasing agreement pricing will change upon conclusion of the trial.

3. Refrain from charging a consumer for a renewal offer without the consumer's affirmative consent to the renewal offer terms.

4. Provide to the consumer certain acknowledgements, including the renewal offer terms, the cancellation policy, the available methods for cancellation, and information regarding how to cancel in a manner that is capable of being retained by the consumer.

5. Provide easy-to-use mechanisms for the consumer to cancel a renewal offer, including giving consumers who accept a renewal offer online the opportunity to terminate the renewal offer provisions online.

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6. Provide to consumers notice of any material change in the terms of a previously accepted renewal offer.

7. Under certain circumstances, provide certain notices to a consumer before the renewal offer automatically renews or continues for a subsequent term.

The bill also requires that any goods, wares, merchandise, or products sent to a consumer under a renewal offer without having first obtained the consumer's affirmative consent shall be considered an unconditional gift to the consumer.

The bill gives the Department of Agriculture, Trade and Consumer Protection the ability to investigate violations and commence an action to restrain by injunction violations and permits the department and any district attorney to commence actions to recover forfeitures for a violation of the bill's provisions. Individuals aggrieved by a violation of the bill may also bring a private civil action against the violating person.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 134.495 of the statutes is created to read:

2           **134.495   Automatic renewal offers in consumer contracts.   (1)**

3           DEFINITIONS. In this section:

4           (a) "Clear and conspicuous" or "clearly and conspicuously" means any of the  
5           following:

6           1. In larger type than the surrounding text, or in contrasting type, font, or color  
7           to the surrounding text of the same size, or set off from the surrounding text of the  
8           same size by symbols or other marks, in a manner that clearly calls attention to the  
9           language.

10          2. In the case of an audio disclosure, in a volume and cadence sufficient to be  
11          readily understandable.

12          (b) "Consumer" has the meaning given in s. 100.195 (1) (b).

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1 (c) “Consumer goods or services” means goods or services that are used or  
2 intended for use for personal, family, or household purposes. “Consumer goods or  
3 services” does not include any of the following:

4 1. The treatment of disease, as defined in s. 448.01 (2), by a health care provider,  
5 as defined in s. 155.01 (7), or the provision of emergency medical care.

6 2. Goods or services whose delivery is required by law even though the  
7 consumer has not agreed to purchase or lease those goods or services.

8 3. The sale or lease of a motor vehicle by a licensed motor vehicle dealer, as  
9 defined in s. 218.0101 (23) (a).

10 4. Services provided pursuant to an attorney-client relationship.

11 (d) “Renewal offer” means a plan or arrangement for consumer goods or  
12 services offered to a consumer in which a subscription or purchasing agreement  
13 either continues until the consumer cancels or is automatically renewed at the end  
14 of a definite term for a subsequent term.

15 (e) “Renewal offer terms” means the following clear and conspicuous  
16 disclosures:

17 1. That the subscription or purchasing agreement will automatically renew or  
18 continue until the consumer cancels.

19 2. The complete cancellation policy that applies to the renewal offer.

20 3. The recurring charges that will be charged to the consumer’s credit card,  
21 debit card, or payment account with a 3rd party as part of the renewal offer, and if  
22 applicable and known, that the amount of the charge may change and how much the  
23 amount of the charge will change.

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1           4. The length of the renewal offer's automatic renewal term and whether the  
2 length of the automatic renewal term has been chosen by the consumer, or that the  
3 renewal offer will continue until the consumer cancels.

4           5. The minimum purchase obligation, if any.

5           **(2) RENEWAL OFFER REQUIREMENTS.** A person that makes a renewal offer to a  
6 consumer shall do all of the following:

7           (a) Present the renewal offer terms in a clear and conspicuous manner before  
8 the subscription or purchasing agreement is fulfilled and in visual proximity, or in  
9 the case of a renewal offer conveyed by voice in temporal proximity, to the request  
10 for consent to the renewal offer. If the renewal offer includes a free trial, the renewal  
11 offer shall include a clear and conspicuous explanation of the price that will be  
12 charged after the trial ends or the manner in which the subscription or purchasing  
13 agreement pricing will change upon conclusion of the trial.

14           (b) Before charging the consumer's credit card, debit card, or payment account  
15 with a 3rd party, obtain the consumer's affirmative consent to the renewal offer and  
16 the renewal offer terms, including any term of a renewal offer that is made at a  
17 promotional or discounted price for a limited period.

18           (c) Provide to the consumer an acknowledgement that includes the renewal  
19 offer terms, cancellation policy, the available mechanisms for cancellation described  
20 under sub. (4), and information regarding how to cancel in a manner that is capable  
21 of being retained by the consumer. If the renewal offer includes a free gift or trial,  
22 the person shall also disclose in the acknowledgement under this paragraph how the  
23 consumer may cancel, and allow the consumer to cancel, the renewal offer before the  
24 customer is charged or pays.

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1           **(3) REQUIRED NOTICES.** (a) 1. For the purpose of this paragraph, “free gift” does  
2 not include a free promotional item or gift that differs from the consumer good or  
3 service that is the subject of the renewal offer.

4           2. Except as provided under subd. 4., if the consumer accepted under the  
5 renewal offer a free gift or trial lasting for more than 31 days or a promotional or a  
6 discounted price and the applicability of that price was for more than 31 days, the  
7 person that made the renewal offer shall provide the consumer with a notice that  
8 clearly and conspicuously states all of the following:

9           a. That the renewal offer will automatically renew or continue unless the  
10 consumer cancels.

11           b. The length and any additional terms of the renewal period.

12           c. One or more methods by which a consumer can cancel the renewal offer.

13           d. If the notice is sent electronically, either a web page link that directs the  
14 consumer to the cancellation process, or another reasonably accessible electronic  
15 method that directs the consumer to the cancellation process if no web page link  
16 exists.

17           e. Contact information for the person that made the renewal offer.

18           3. The person that made the renewal offer shall provide the notice required  
19 under subd. 2. to the consumer at least 3 days, and not more than 21 days, before the  
20 expiration of the predetermined period for which the free gift or trial or promotional  
21 or discounted price applies.

22           4. A person that made a renewal offer is exempt from the requirement under  
23 subd. 2. if the person did not collect or maintain the consumer’s valid email address,  
24 phone number, or another means of notifying the consumer electronically, and the  
25 consumer did not enter into the renewal offer electronically.

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1 (b) If the consumer accepted a renewal offer with an initial term of one year or  
2 longer, the person that made the renewal offer shall provide the consumer with a  
3 notice that clearly and conspicuously states the information under par. (a) 2. a. to d.  
4 The person shall provide the notice required under this paragraph to the consumer  
5 at least 15 days, and not more than 45 days, before the renewal offer automatically  
6 renews or continues for a subsequent term.

7 **(4) REQUIRED CANCELLATION INFORMATION.** (a) In addition to the requirements  
8 under par. (b), a person that makes a renewal offer shall provide a toll-free telephone  
9 number, email address, a postal address if the person directly bills the consumer, or  
10 another cost-effective, timely, and easy-to-use mechanism for cancellation of the  
11 renewal offer.

12 (b) 1. For a renewal offer that can be accepted online, a person that made a  
13 renewal offer to a consumer shall allow the consumer to terminate an automatic  
14 renewal or continuing service provision of a renewal offer exclusively online, at will,  
15 and without engaging in any further steps that impact or restrict the consumer's  
16 ability to immediately terminate automatic renewal, continuing service, or recurring  
17 service provisions of the renewal offer. The person shall provide to the consumer a  
18 method of termination that is either on the person's website in the form of a direct  
19 link to termination, by button to immediately terminate, or by a termination email  
20 formatted and provided by the person that a consumer can send to the person that  
21 made the renewal offer without the consumer having to include additional  
22 information.

23 2. Notwithstanding subd. 1., a person that made a renewal offer online may  
24 require a consumer that has an account with the person to enter account information  
25 or otherwise authenticate the consumer's account online before the consumer can

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1 terminate an automatic renewal or continuing service provision online. A consumer  
2 unable or unwilling to enter account information or otherwise authenticate the  
3 consumer's account online may not be precluded from authenticating or terminating  
4 an automatic renewal or continuing service provision of the renewal offer offline  
5 using another mechanism pursuant to par. (a).

6 **(5) CHANGES TO TERMS.** In the case of a material change in the terms of a renewal  
7 offer that has been accepted by a consumer, prior to implementation of the material  
8 change, the person that made the renewal offer shall provide the consumer with a  
9 clear and conspicuous notice of the material change and provide the consumer with  
10 information regarding how to cancel the renewal offer in a manner that is capable  
11 of being retained by the consumer.

12 **(6) FULFILLMENT OF REQUIREMENTS.** (a) A person making a renewal offer shall  
13 fulfill the requirements of subs. (2) and (4) (a) prior to the consumer's acceptance of  
14 the renewal offer.

15 (b) A person that made a renewal offer shall fulfill the requirements under sub.  
16 (4) (b) shortly after the consumer's acceptance of the renewal offer.

17 (c) A person that made a renewal offer shall fulfill the requirement under sub.  
18 (5) prior to the implementation of the material change.

19 **(7) UNCONDITIONAL GIFTS.** In any case in which a person sends any goods, wares,  
20 merchandise, or products to a consumer under a renewal offer without first obtaining  
21 the consumer's affirmative consent to receive such items under a renewal offer and  
22 the renewal offer's terms, such items shall for all purposes be considered an  
23 unconditional gift to the consumer. The consumer may use or dispose of the goods,  
24 wares, merchandise, or products in any manner he or she sees fit without any

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1 obligation to the consumer, including bearing the cost of or responsibility for  
2 shipping any goods, wares, merchandise, or products back to the person.

3 (8) PENALTIES AND REMEDIES. (a) The department of agriculture, trade and  
4 consumer protection may exercise its authority under ss. 93.14 and 93.15 to  
5 investigate violations of this section.

6 (b) Any consumer suffering pecuniary loss because of a violation of this section  
7 may commence an action to recover the pecuniary loss. If the consumer prevails, the  
8 consumer shall recover twice the amount of the pecuniary loss, or \$200 for each  
9 violation, whichever is greater, together with costs, including, notwithstanding s.  
10 814.04 (1), reasonable attorney fees.

11 (c) The department of agriculture, trade and consumer protection may  
12 commence an action in the name of the state to restrain by temporary or permanent  
13 injunction a violation of this section. Before entry of final judgment, the court may  
14 make any necessary orders to restore to a consumer any pecuniary loss suffered by  
15 the consumer because of the violation.

16 (d) The department of agriculture, trade and consumer protection or a district  
17 attorney may commence an action in the name of the state to recover a forfeiture to  
18 the state of not less than \$500 for a single violation and not more than \$1,000 for  
19 multiple violations resulting from a single act or incident.

20 **SECTION 2. Effective date.**

21 (1) This act takes effect on the first day of the 3rd month beginning after  
22 publication.

23 (END)