

## Virginia

### Code Section

§ 59.1-200 Code of Virginia, Chapter 17.8, *effective January 1, 2019.*

### Contracts Applicable to Law

Contracts for goods and/or services with an automatic renewal or continuous service offer to a consumer

### Requirements

A supplier making the automatic renewal or continuous service offer must:

- (1) Present the automatic renewal offer terms in a clear and conspicuous manner before the purchasing agreement is fulfilled and in visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to the request for consent to the offer. If the offer also includes a free gift or trial, the offer must include 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;
- (2) Obtain consumer's affirmative consent to the agreement with the automatic renewal offer terms (including those made at a promotional or discounted price for a limited period of time) *before charging* the consumer's credit or debit card, or the consumer's account with a third party;
- (3) Provide an acknowledgement that includes the automatic renewal offer terms, cancellation policy and information regarding how to cancel in a manner that is capable of being retained by the consumer. If the automatic renewal offer includes a free gift or trial, the business must also disclose in the acknowledgement how to cancel, and allow the consumer to cancel *before the consumer pays for the goods or services*;
- (4) Provide a toll-free telephone number, e-mail address, a postal address if the business directly bills the consumer, or another cost-effective, timely, and easy-to-use mechanism for cancellation; and
- (5) Prior to implementation of a material change, provide the consumer notice of any material change to the terms of the automatic renewal that has been accepted by a consumer via a clear and conspicuous notice, as well as information regarding how to cancel in a manner that is capable of being retained by the consumer.

A violation is a prohibited practice under the Virginia Consumer Protection Act, though a supplier is not subject to civil penalties or damages if the supplier makes a good faith effort to comply with the measure's requirements.

## **Definition of “Clear and Conspicuous”**

Clear and conspicuous means:

- 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.
- If it's an audio disclosure, clear and conspicuous means: in a volume and cadence sufficient to be readily audible and understandable.

## **Penalty for Failure to Comply**

Violations are subject to the enforcement provisions of the Virginia Consumer Protection Act. Suppliers may be subject to civil penalties (up to \$5,000 per violation) and/or damages (private right of action from individual consumers).

## **Proposed bills**

House Bill No. 2430 By Simon, Boysko, Kory and Plum.

*STATUS: Last recorded action on 02/02/2017 House: Tabled in Commerce and Labor by voice vote (2017 Session).*

2018 Session - HB 911 By Simon. Automatic renewal offers and continuous service offers; penalties.

*STATUS: Bill passed House and Senate and approved by Governor (Chapter 704)*

[Full bill text](#)

**Overview:** The 2018 session bill passed, and therefore will amend and reenact § 59.1-200 of the Code of Virginia by adding in Title 59.1, a chapter numbered 17.8, relating to automatic renewal offers and continuous service offers; charging accounts for ongoing shipments of a product or ongoing deliveries of a service and the related penalties. **The bill goes into effect on January 1, 2019.**