

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 368

BY SENATORS JEFFRIES, BEACH, AND RUCKER

[Introduced January 24, 2018; Referred
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §46A-6N-1, §46A-6N-2, §46A-6N-3, §46A-6N-4, §46A-6N-5, §46A-6N-6, and
 3 §46A-6N-7, all relating to restricting automatic purchase renewals; stating legislative
 4 intent; defining terms; setting notice requirements for using automatic purchase renewals;
 5 providing certain business conduct is unlawful with respect to automatic purchase
 6 renewals; detailing consumer responsibility; authorizing civil actions; and stating
 7 exemptions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6N. AUTOMATIC PURCHASE RENEWALS.

§46A-6N-1. Legislative Intent.

1 It is the intent of the Legislature to end the practice of ongoing charging of consumer credit
 2 or debit cards or third party payment accounts without the consumers' explicit consent for ongoing
 3 shipments of a product or ongoing deliveries of service.

§46A-6N-2. Definitions.

1 As used in this article:

2 "Automatic renewal" means a plan or arrangement in which a paid subscription or
 3 purchasing agreement is automatically renewed at the end of a definite term for a subsequent
 4 term.

5 "Automatic renewal offer terms" means the following clear and conspicuous disclosures:

6 (1) That the subscription or purchasing agreement will continue until the consumer
 7 cancels.

8 (2) The description of the cancellation policy that applies to the offer.

9 (3) The recurring charges that will be charged to the consumer's credit or debit card or
 10 payment account with a third party as part of the automatic renewal plan or arrangement, and that
 11 the amount of the charge may change, if that is the case, and the amount to which the charge will
 12 change, if known.

13 (4) The length of the automatic renewal term or that the service is continuous, unless the
14 length of the term is chosen by the consumer.

15 (5) The minimum purchase obligation, if any.

16 “Clear and conspicuous” or “clearly and conspicuously” means in larger type than the
17 surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or
18 set off from the surrounding text of the same size by symbols or other marks, in a manner that
19 clearly calls attention to the language. In the case of an audio disclosure, “clear and conspicuous”
20 and “clearly and conspicuously” means in a volume and cadence sufficient to be readily audible
21 and understandable.

22 “Consumer” means any individual who seeks or acquires, by purchase or lease, any
23 goods, services, money, or credit for personal, family, or household purposes.

24 “Continuous service” means a plan or arrangement in which a subscription or purchasing
25 agreement continues until the consumer cancels the service.

§46A-6N-3. Automatic renewal or continuous service offer requirements.

1 (a) It shall be unlawful for any business that makes an automatic renewal or continuous
2 service offer to a consumer in this state to do any of the following:

3 (1) Fail to present the automatic renewal offer terms or continuous service offer terms in
4 a clear and conspicuous manner before the subscription or purchasing agreement is fulfilled and
5 in visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to the
6 request for consent to the offer.

7 (2) Charge the consumer’s credit or debit card, or the consumer’s account with a third
8 party, for an automatic renewal or continuous service without first obtaining the consumer’s
9 affirmative consent to the agreement containing the automatic renewal offer terms or continuous
10 service offer terms.

11 (3) Fail to provide an acknowledgment that includes the automatic renewal or continuous
12 service offer terms, cancellation policy, and information regarding how to cancel in a manner that

13 is capable of being retained by the consumer. If the offer includes a free trial, the business shall
14 also disclose in the acknowledgment how to cancel, and allow the consumer to cancel, before the
15 consumer pays for the goods or services.

16 (b) A business that makes automatic renewal or continuous service offers shall provide a
17 toll-free telephone number, electronic mail address, a postal address if the seller directly bills the
18 consumer, or another cost-effective, timely, and easy-to-use mechanism for cancellation that shall
19 be described in the acknowledgment specified in subdivision (3) of subsection (a) of this section.

20 (c) In the case of a material change in the terms of the automatic renewal or continuous
21 service offer that has been accepted by a consumer in this state, the business shall provide the
22 consumer with a clear and conspicuous notice of the material change and provide information
23 regarding how to cancel in a manner that is capable of being retained by the consumer.

24 (d) In the case of an automatic renewal or continuous service offer that charges once a
25 year or less frequently, the business shall provide a reminder of the recurring charge and
26 information on how the consumer may cancel at least 30 days prior to the charge.

27 (e) The requirements of this article shall apply only prior to the completion of the initial
28 order for the automatic renewal or continuous service, except as follows:

29 (1) The requirement in subdivision (3) of subsection (a) of this section may be fulfilled after
30 completion of the initial order.

31 (2) The requirement in subsection (c) of this section shall be fulfilled at least 30 days prior
32 to implementation of the material change.

§46A-6N-4. Certain conduct prohibited.

1 (a) It shall be unlawful for any business that makes an automatic renewal offer or
2 continuous service offer to a consumer in this state to do any of the following:

3 (1) Fail to present the automatic renewal offer terms or continuous service offer terms in
4 a clear and conspicuous manner before the subscription or purchasing agreement is fulfilled and
5 in visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to the

6 request for consent to the offer. If the offer also includes a free gift or trial, the offer shall include
7 a clear and conspicuous explanation of the price that will be charged after the trial ends or the
8 manner in which the subscription or purchasing agreement pricing will change upon conclusion
9 of the trial.

10 (2) Charge the consumer's credit or debit card, or the consumer's account with a third
11 party, for an automatic renewal or continuous service without first obtaining the consumer's
12 affirmative consent to the agreement containing the automatic renewal offer terms or continuous
13 service offer terms, including the terms of an automatic renewal offer or continuous service offer
14 that is made at a promotional or discounted price for a limited period.

15 (3) Fail to provide an acknowledgment that includes the automatic renewal offer terms or
16 continuous service offer terms, cancellation policy, and information regarding how to cancel in a
17 manner that is capable of being retained by the consumer. If the automatic renewal offer or
18 continuous service offer includes a free gift or trial, the business shall also disclose in the
19 acknowledgment how to cancel, and allow the consumer to cancel, the automatic renewal or
20 continuous service before the consumer pays for the goods or services.

21 (b) A business that makes an automatic renewal offer or continuous service offer shall
22 provide a toll-free telephone number, electronic mail address, a postal address if the seller directly
23 bills the consumer, or it shall provide another cost-effective, timely, and easy-to-use mechanism
24 for cancellation that shall be described in the acknowledgment specified in subdivision (3) of
25 subsection (a) of this section.

26 (c) In addition to the requirements of subsection (b) of this section, a consumer who
27 accepts an automatic renewal or continuous service offer online shall be allowed to terminate the
28 automatic renewal or continuous service exclusively online, which may include a termination email
29 formatted and provided by the business that a consumer can send to the business without
30 additional information.

31 (d) In the case of a material change in the terms of the automatic renewal or continuous

32 service that has been accepted by a consumer in this state, the business shall provide the
 33 consumer with a clear and conspicuous notice of the material change and provide information
 34 regarding how to cancel in a manner that is capable of being retained by the consumer.

35 (e) The requirements of this article shall apply only prior to the completion of the initial
 36 order for the automatic renewal or continuous service, except as follows:

37 (1) The requirement in subdivision (3) of subsection (a) of this section may be fulfilled after
 38 completion of the initial order.

39 (2) The requirement in subsection (d) of this section shall be fulfilled prior to
 40 implementation of the material change.

§46A-6N-5. Consumer responsibility.

1 In any case in which a business sends any goods, wares, merchandise, or products to a
 2 consumer, under a continuous service agreement or automatic renewal of a purchase, without
 3 first obtaining the consumer’s affirmative consent as described in this article, the goods, wares,
 4 merchandise, or products shall for all purposes be deemed an unconditional gift to the consumer,
 5 who may use or dispose of the same in any manner he or she sees fit without any obligation
 6 whatsoever on the consumer’s part to the business, including, but not limited to, bearing the cost
 7 of, or responsibility for, shipping any goods, wares, merchandise, or products to the business.

§46A-6N-6. Civil action permitted.

1 Notwithstanding section five of this article, a violation of this article shall not be a crime.
 2 However, all available civil remedies that apply to a violation of this chapter may be employed.

§46A-6N-7. Exemptions.

1 The following are exempt from the requirements of this article:

2 (1) Any service provided by a business or its affiliate where either the business or its
 3 affiliate is doing business pursuant to a franchise issued by a political subdivision of the state or
 4 a license, franchise, certificate, or other authorization issued by the Public Service Commission;

5 (2) Any service provided by a business or its affiliate where either the business or its

- 6 affiliate is regulated by the Public Service Commission, the Federal Communications
- 7 Commission, or the Federal Energy Regulatory Commission;
- 8 (3) Any entity regulated by the Insurance Commission; and
- 9 (4) A bank, bank holding company, or the subsidiary or affiliate of either, or a credit union
- 10 or other financial institution, licensed under state or federal law;

NOTE: The purpose of this bill is to protect consumers against businesses using automatic purchase renewals without consent.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.