

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE CONSUMER AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 522

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

AN ACT

RELATING TO CONSUMER PROTECTION; DECLARING AS AN UNLAWFUL PRACTICE THE AUTOMATIC RENEWAL OF CONSUMER CONTRACTS OR CONTINUATION OF DELIVERY OF PRODUCTS OR SERVICES WITHOUT PRIOR CONSUMER CONSENT; REQUIRING CERTAIN DISCLOSURES IN OFFERS TO RENEW CONTRACTS FOR AND CONTINUE DELIVERY OF PRODUCTS OR SERVICES TO CONSUMERS; REQUIRING THAT CONSUMERS BE PROVIDED WITH AN OPTION TO TERMINATE THOSE CONTRACTS OR TO CONTINUE DELIVERIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Unfair Practices Act is enacted to read:

"[NEW MATERIAL] RENEWAL AND CONTINUOUS DELIVERY CONTRACTS--REQUIREMENTS--REMEDIES FOR VIOLATIONS.--

A. It is an unlawful practice within the meaning of

1 the Unfair Practices Act for a person to renew a contract,
2 other than a service contract as defined in the Service
3 Contract Regulation Act, for or continue delivery of a product
4 or service to a consumer after the expiration of the term of
5 the contract, including after a free trial, discount or other
6 introductory offer, without:

7 (1) obtaining the consumer's prior explicit
8 consent, which may be obtained at the time the consumer enters
9 into the contract; provided that, if the person fails to obtain
10 the consumer's prior explicit consent at the time the consumer
11 enters into the contract containing the automatic renewal
12 terms, an offer to:

13 (a) renew an annual contract for or
14 continue delivery of a product or service shall be provided to
15 the consumer not more than sixty days, and not less than thirty
16 days, prior to the expiration date of the term of the contract
17 for delivery of the product or service; and

18 (b) continue delivery of a product or
19 service upon the expiration of a free trial, discount or other
20 introductory offer period shall be provided to the consumer not
21 more than ten days, and not less than five days, prior to the
22 date of expiration; and

23 (2) at the time the consumer enters into the
24 contract:

25 (a) presenting to the consumer via

1 internet link, or on the contract confirmation page, in larger
2 type than the surrounding text, or in contrasting type, font or
3 color to the surrounding text of the same size, or set off from
4 the surrounding text of the same size by symbols or other
5 marks, in a manner that clearly calls attention to the
6 language: 1) clear instructions to the consumer on how to
7 cancel the contract for or continued delivery of the product or
8 service, including a toll-free telephone number, electronic
9 mail address and postal address, if the person directly bills
10 the consumer, for cancellation, or if a person makes and the
11 consumer accepts the offer online, instructions on how the
12 consumer may terminate the contract for or continued delivery
13 of the product or service online; 2) the recurring charges that
14 will be charged to the consumer's credit or debit account or
15 payment account with a third party as a result of accepting the
16 offer; 3) the length of the term of delivery of the product or
17 service; and 4) the minimum purchase obligation, if any; and

18 (b) in the case of an audio disclosure,
19 providing to the consumer the terms listed in Subparagraph (a)
20 of this paragraph in a volume and cadence sufficient to be
21 readily audible and understandable to the consumer prior to the
22 consumer's consent.

23 B. If a person violates a provision of this
24 section, in addition to any other remedy provided pursuant to
25 the Unfair Practices Act, the product or service that is the

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1 subject of a contract or continued delivery shall be deemed an
2 unconditional gift to the consumer. The consumer may use or
3 dispose of the product or service in any manner without any
4 obligation to that person.

5 C. The provisions of this section do not apply to a
6 federally insured depository institution or an insurer as
7 defined in Section 59A-1-8 NMSA 1978."