



# Wine Clubs and the CA Automatic Renewal Law

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# Legal Trends: Class Action Litigation Regarding Wine Club Subscription Programs

- Recently, a major California winery was hit with a class action lawsuit against its Wine Club automatic renewal, recurring subscription program.
- Complaint by Daniel Pirali against Domaine Chandon, Inc. alleges violations of:
  - California Automatic Renewal Law, Bus. & Prof. Code §§ 17600, *et seq.* (“ARL” effective December 1, 2010); and
  - California Unfair Competition Law, Bus. & Prof. Code §§ 17200, *et seq.* (“UCL”).
- Wine Club programs typically are subject to the ARL.

# California's Automatic Renewal Law

- The ARL codifies a long line of litigation against automatic renewal subscriptions, which started 20-30 years ago with actions by the Federal Trade Commission against Book of the Month Club and Time Magazine.
- The federal Restore Online Shoppers' Confidence Act, 15 U.S.C. §§ 8401, et seq. ("ROSCA" effective December 29, 2010) established a set of similar principles that are applicable in all 50 states. The ARL is similar to but stricter than ROSCA.
- The ARL is **very prescriptive** and detailed, with counter-intuitive **micro-disclosure requirements** and cancellation rules.
- Eleven states have similar laws, of which CA is the toughest. (See also CT, FL, HI, IL, LA, NM, NY, NC, OR, UT.)
- **Practical advice: Conform your Wine Club website and in-person contracts to the stricter CA standards.**

# The ARL: Application to Wine Clubs

- Applies to most Wine Club subscription programs in the wine and spirits industries, which typically have an automatic renewal feature. (§ 17601(a)).
- Applies to both in-person hard copy contracts and to online contracts “for personal, family or household purposes.” (§§ 17601(d), 17602(a)).
- Applies “to a [individual] consumer in this state” and arguably to contracts “accepted” in CA (§§ 17602(a),(d)).
- Does not support a B2B claim, nor a national, all-states class action.
- However, a class of California individual subscribers and for contracts made in California is large enough to be a real threat.

# The ARL: Implication for Wine Clubs

- The ARL is a “no fault” statute that purports to impose liability regardless of intent. (§ 17602(a)).
- The ARL is enforced through the UCL which provides a remedy of restitution rather than damages.
- For Wine Club recurring subscriptions, where the subject matter is the price paid by the consumer for wine or spirits products, the restitution remedy in the UCL is easy to calculate and may be greater than traditional “damages.”
- Gross receipts by the merchant, not just profits, may be at issue. (§ 17603).
- Injunctive relief may also be sought, and is sought by plaintiff in *Pirali v. Domaine Chandon*.

# In brief, the ARL requires:

- “Clear and conspicuous” disclosure of auto-renewal, price, frequency terms
- Affirmative consent
- Method of cancellation
- Confirmation letter or email

# ARL Requirements: Disclosure

- Disclosure of the auto-renewal terms of a consumer contract must be “**clear and conspicuous.**”
- Disclosure must be in **more prominent** text than the surrounding text, either larger font or set off by contrasting font, color type or other markings. §§ 17601(c), 17602(a)(1).
- Disclosure must recite: the price, frequency, minimum purchase, auto-renewal terms, and cancellation terms of the subscription. § 17601(a).
- Such disclosure must be **before and in visual proximity to the purchase** button or signature line. § 17602(a)(1).

# ARL Requirements: Affirmative Consent

- The consumer must give ***affirmative consent***. § 17602(a)(2).
- Government agencies interpret ***affirmative consent*** to be an affirmative statement and signature, or an affirmative click box online.
- At the very least the affirmative consent must be in active voice and express language close to the price and subscription terms and ***before the signature line or purchase button***. § 17602(a)(1).



# ARL Requirements: Cancellation Method

- The consumer must be given a readily available ***method of cancellation***.
- This can be a toll-free phone number or e-mail address.
- In the case of online sales, the cancellation options must include an electronic method of cancellation. § 17602(b),(c).

# ARL Requirements: Confirmation

- The consumer must receive a ***confirmation letter or email***.
- The confirmation must repeat the required disclosure and cancellation information in a manner that may be preserved by the consumer.
- This can include a letter, email printout, leaving the email in one's computer inbox or folder, etc. § 17602(a)(3).

# ARL Requirements: Practical Advice

- ***Practical advice:*** fine print disclosure of auto-renewal terms at the bottom of the page is common but is a violation.
- ***Active voice:*** avoid passive voice.
- ***Consumers want your product, understand auto-renewal (which is very common these days), and won't be deterred by disclosure.***

# Draconian Potential Penalty

- Importantly, section 17603 of the ARL states that:

“goods, wares, merchandise or products” to a consumer that do not comply with the above requirements “**shall for all purposes be deemed an unconditional gift to the consumer**, who may use or dispose of the same in any manner he or she sees fit without any obligation on the consumer’s part to the business, including . . . bearing the cost of . . . shipping any goods, wares, merchandise, or products to the business.” (emphasis added).

- ***Plaintiffs’ attorneys argue that this means the gross receipts received by the merchant for auto-renewal contracts in violation of the ARL are subject to forfeiture and restitution to the consumers.*** Another view is that this means only that a consumer doesn’t have to pay for goods received where the contract is in violation of the ARL.

# Frequent ARL Non-Compliance And Industry Targets

- The ARL was passed in 2009 and became effective December 1, 2010.
- It did not attract much notice from the Chamber of Commerce, other industry trade groups, or associations of company general counsels, and there is widespread non-compliance with the ARL.
- The detailed, cook-book prescriptive standards of the ARL are often not on GCs' radar screens—but they are easy to comply with.
- In recent years the ARL has become a favorite plaintiff's class action subject for both private plaintiffs and also government enforcement.
- The ARL and UCL may be enforced by private plaintiffs and also by the California Attorney General and/or County District Attorneys and also City Attorneys.

# Frequent Targets, Cont.

- Active group of California District Attorneys who enforce the ARL, bring down seven figure settlements, and closely coordinate with the Federal Trade Commission and its Guidelines.
- Industry targets for government enforcement and serious private class actions go in waves by industry and by dollar volume of the targets: Large Internet merchants, health club chains, internet dating services, publishers and now wine clubs.
- Bottom-feeder private plaintiff class action attorneys send out demand letters looking for quick and smaller settlements, but they are highly competent; they DO LITIGATE if you ignore them; and they account for several major reported cases.
- Due to Draconian potential liability, these claims can become bet-the-company cases if not given immediate attention.

# Problem Prevention

- Be pro-active: Don't wait for the Attorney General, District Attorney, or private class action lawyer to attack you.
- Review hard copy contracts and website flow, purchase pages, and confirmation letters/emails for ARL compliance.
- Coordinate the ARL contract requirements with your Terms of Service or Terms and Conditions, which must also contain the same disclosures and compliance.
- Add fulsome, well-articulated arbitration agreements and class action waivers to your TOS or T&C if you don't already have them. They must be compliant with recent case law.
- Beware of traditional False Advertising Law ("FAL") compliance issues, Cal. Bus. & Prof. Code §§ 17500, et seq.

# Problem Prevention, Cont.

- Many honest, well-intentioned companies inadvertently fail to comply with the minutiae of the ARL and the parallel federal ROSCA, and/or traditional False Advertising Law standards.
- Don't just copy from your competitor's website and/or TOS. The DIY approach is a false economy.
- We highly recommend the use of skilled counsel in this field, who know both the contract-drafting **and** have litigated these issues as to ARL, ROSCA, FAL, and arbitration agreement enforcement.
- The old proverb of “An ounce of prevention is worth a pound of cure” is wrong. The actual ratio is that an ounce of prevention is worth ten tons of cure!



# DLA Piper Attorneys

The DLA Piper, LLP law firm has extensive experience in the successful defense of auto-renewal class action claims brought by government agencies and private plaintiffs, **and** in drafting appropriate contracts, website flows, TOS and T&C. Also attached are the bios of partners Paul Hall and Amanda Morgan.

Partner Paul Hall has specialized in class action defense since 1983, primarily in the subject areas of internet commerce, financial institutions, and labor wage and hour class actions. Over the last ten years Paul has defended several dozen cases brought under the ARL or similar UCL principles, first for Monster.com, and over the last four years for eHarmony (the internet matchmaking service) and a chain of health clubs, Pleasanton Fitness, in public cases that we can disclose here. Paul also has handled many dozens of confidential litigation settlements and client advice and drafting on ARL matters.

Partner Amanda Morgan also has extensive experience in class action defense under the UCL, including a large and hard-fought portfolio of cases for Applied Underwriters, involving regulatory compliance and related allegations of unfair competition in the sale of workers' compensation insurance. In those cases we recently defeated class certification in five class actions in federal courts in California, Nebraska and New York, resulting in settlement with all but one plaintiff, and achieved dismissal of the remaining case on motion for summary judgment.

Associate Mandy Chan also has worked extensively with Paul on auto-renewal cases and was active in the eHarmony and Pleasanton Fitness public matters, as well as in confidential client counseling and drafting with numerous clients.

# Contact



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Paul Hall wins, resolves and prevents client problems with class actions, government investigations, and complex commercial litigation. Paul focuses on class actions and business issues involving unfair competition, internet sales, wage and hour claims, and financial institutions. In recent years, Paul has worked extensively on the defense and successful resolution of government enforcement actions and threatened private class actions involving the California Automatic Renewal Law and the parallel federal Restore Online Shoppers' Confidence Act.

Paul's winning trial and appellate cases include enforcement of arbitration agreements, unfair competition, lender liability and financial services, corporate raiding and non-competition, corporate acquisitions, labor, tax, real estate, Fifth Amendment takings (inverse condemnation), and administrative law cases. When advantageous for the client, Paul analyzes and settle cases early, for the avoidance of expensive litigation and the prompt, net best outcome for the client.

Paul brings his trial lawyer experience to client counseling and drafting for the avoidance of disputes, and prompt resolution if necessary. Paul works with clients across many industry groups, including food and beverage, retail sales, health and fitness, internet dating, and career advancement—most involving internet sales—for the drafting of contracts, website flows, and terms and conditions that achieve both legal compliance and the avoidance of disputes. When disputes arise, Paul counsels clients for prompt resolutions to their business advantage.

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Amanda Morgan resolves complex litigation and commercial disputes for DLA Piper clients, focusing on business competition and the protection of business assets.

Amanda has experience representing and advising clients in commercial litigation, arbitration and pre-litigation disputes, involving unfair competition, protection of intellectual property and other business assets, class actions, financial services, contracts, real estate, fraud and fraudulent conveyance, business torts, and corporate governance and partnership disputes.

Amanda has represented clients as plaintiffs and defendants in state and federal courts, and in arbitration, including banks and financial services firms, insurance carriers and brokers, private equity fund portfolio companies, public and private corporations in technology, telecommunications and fashion industries, technology start-ups and emerging companies, partnerships and limited liability companies, and individuals.

Amanda has extensive experience representing clients in corporate raiding and employee mobility cases, as well as in business competition disputes between competitors following the sale or acquisition of a business.

Thank you

# Exhibit A: The California Automatic Renewal Law

BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 7. GENERAL BUSINESS REGULATIONS [16000 - 18001] ( Division 7 added by Stats. 1941, Ch. 61. )

PART 3. REPRESENTATIONS TO THE PUBLIC [17500 - 17943] ( Part 3 added by Stats. 1941, Ch. 63. )

CHAPTER 1. Advertising [17500 - 17606] ( Chapter 1 added by Stats. 1941, Ch. 63. )

ARTICLE 9. Automatic Purchase Renewals [17600 - 17606] ( Article 9 added by Stats. 2009, Ch. 350, Sec. 1. )

17600. It is the intent of the Legislature to end the practice of ongoing charging of consumer credit or debit cards or third party payment accounts without the consumers' explicit consent for ongoing shipments of a product or ongoing deliveries of service.

(Added by Stats. 2009, Ch. 350, Sec. 1. (SB 340) Effective January 1, 2010. Section operative December 1, 2010, pursuant to Section 17606.)

17601. For the purposes of this article, the following definitions shall apply:

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

(b) "Automatic renewal offer terms" means the following clear and conspicuous disclosures:

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

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

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

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

(5) The minimum purchase obligation, if any.

(c) "Clear and conspicuous" or "clearly and conspicuously" 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. In the case of an audio disclosure, "clear and conspicuous" and "clearly and conspicuously" means in a volume and cadence sufficient to be readily audible and understandable.

(d) "Consumer" means any individual who seeks or acquires, by purchase or lease, any goods, services, money, or credit for personal, family, or household purposes.

(e) "Continuous service" means a plan or arrangement in which a subscription or purchasing agreement continues until the consumer cancels the service.

(Added by Stats. 2009, Ch. 350, Sec. 1. (SB 340) Effective January 1, 2010. Section operative December 1, 2010, pursuant to Section 17606.)

# Exhibit A (continued)

17602. (a) It shall be unlawful for any business that makes an automatic renewal offer or continuous service offer to a consumer in this state to do any of the following:

(1) Fail to present the automatic renewal offer terms or continuous service offer terms in a clear and conspicuous manner before the subscription or 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 shall 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) Charge the consumer's credit or debit card, or the consumer's account with a third party, for an automatic renewal or continuous service without first obtaining the consumer's affirmative consent to the agreement containing the automatic renewal offer terms or continuous service offer terms, including the terms of an automatic renewal offer or continuous service offer that is made at a promotional or discounted price for a limited period of time.

(3) Fail to provide an acknowledgment that includes the automatic renewal offer terms or continuous service 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 or continuous service offer includes a free gift or trial, the business shall also disclose in the acknowledgment how to cancel, and allow the consumer to cancel, the automatic renewal or continuous service before the consumer pays for the goods or services.

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

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

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

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

(1) The requirement in paragraph (3) of subdivision (a) may be fulfilled after completion of the initial order.

(2) The requirement in subdivision (d) shall be fulfilled prior to implementation of the material change.

(f) This section shall become operative on July 1, 2018.

(Repealed (in Sec. 1) and added by Stats. 2017, Ch. 356, Sec. 2. (SB 313) Effective January 1, 2018. Section operative July 1, 2018, by its own provisions.)

17603. In any case in which a business sends any goods, wares, merchandise, or products to a consumer, under a continuous service agreement or automatic renewal of a purchase, without first obtaining the consumer's affirmative consent as described in Section 17602, the goods, wares, merchandise, or products shall for all purposes be deemed an unconditional gift to the consumer, who may use or dispose of the same in any manner he or she sees fit without any obligation whatsoever on the consumer's part to the business, including, but not limited to, bearing the cost of, or responsibility for, shipping any goods, wares, merchandise, or products to the business.

(Added by Stats. 2009, Ch. 350, Sec. 1. (SB 340) Effective January 1, 2010. Section operative December 1, 2010, pursuant to Section 17606.)

# Exhibit A (continued)

17604. (a) Notwithstanding Section 17534, a violation of this article shall not be a crime. However, all available civil remedies that apply to a violation of this article may be employed.

(b) If a business complies with the provisions of this article in good faith, it shall not be subject to civil remedies.

(Added by Stats. 2009, Ch. 350, Sec. 1. (SB 340) Effective January 1, 2010. Section operative December 1, 2010, pursuant to Section 17606.)

17605. The following are exempt from the requirements of this article:

(a) Any service provided by a business or its affiliate where either the business or its affiliate is doing business pursuant to a franchise issued by a political subdivision of the state or a license, franchise, certificate, or other authorization issued by the California Public Utilities Commission (CPUC).

(b) Any service provided by a business or its affiliate where either the business or its affiliate is regulated by the CPUC, the Federal Communications Commission, or the Federal Energy Regulatory Commission.

(c) Any entity regulated by the Department of Insurance.

(d) Alarm company operators, as defined in Section 7590.2, and regulated pursuant to Chapter 11.6 (commencing with Section 7590) of Division 3.

(e) A bank, bank holding company, or the subsidiary or affiliate of either, or a credit union or other financial institution, licensed under state or federal law.

(f) Service contract sellers and service contract administrators regulated by the Bureau of Electronic and Appliance Repair pursuant to Article 4.5 (commencing with Section 9855) of Chapter 20 of Division 3.

(Added by Stats. 2009, Ch. 350, Sec. 1. (SB 340) Effective January 1, 2010. Section operative December 1, 2010, pursuant to Section 17606.)

17606. This article shall become operative on December 1, 2010.

(Added by Stats. 2009, Ch. 350, Sec. 1. (SB 340) Effective January 1, 2010. Note: This section prescribes a delayed operative date for Article 9, commencing with Section 17600.)

# Exhibit B: Online Shopper Protection

## CHAPTER 110—ONLINE SHOPPER PROTECTION

Sec.

8401.Findings; declaration of policy.

8402.Prohibitions against certain unfair and deceptive Internet sales practices.

8403.Negative option marketing on the Internet.

8404.Enforcement by Federal Trade Commission.

8405.Enforcement by State attorneys general.

§8401. Findings; declaration of policy

The Congress finds the following:

- (1) The Internet has become an important channel of commerce in the United States, accounting for billions of dollars in retail sales every year. Over half of all American adults have now either made an online purchase or an online travel reservation.
- (2) Consumer confidence is essential to the growth of online commerce. To continue its development as a marketplace, the Internet must provide consumers with clear, accurate information and give sellers an opportunity to fairly compete with one another for consumers' business.
- (3) An investigation by the Senate Committee on Commerce, Science, and Transportation found abundant evidence that the aggressive sales tactics many companies use against their online customers have undermined consumer confidence in the Internet and thereby harmed the American economy.
- (4) The Committee showed that, in exchange for "bounties" and other payments, hundreds of reputable online retailers and websites shared their customers' billing information, including credit card and debit card numbers, with third party sellers through a process known as "data pass". These third party sellers in turn used aggressive, misleading sales tactics to charge millions of American consumers for membership clubs the consumers did not want.
- (5) Third party sellers offered membership clubs to consumers as they were in the process of completing their initial transactions on hundreds of websites. These third party "post-transaction" offers were designed to make consumers think the offers were part of the initial purchase, rather than a new transaction with a new seller.
- (6) Third party sellers charged millions of consumers for membership clubs without ever obtaining consumers' billing information, including their credit or debit card information, directly from the consumers. Because third party sellers acquired consumers' billing information from the initial merchant through "data pass", millions of consumers were unaware they had been enrolled in membership clubs.
- (7) The use of a "data pass" process defied consumers' expectations that they could only be charged for a good or a service if they submitted their billing information, including their complete credit or debit card numbers.
- (8) Third party sellers used a free trial period to enroll members, after which they periodically charged consumers until consumers affirmatively canceled the memberships. This use of "free-to-pay conversion" and "negative option" sales took advantage of consumers' expectations that they would have an opportunity to accept or reject the membership club offer at the end of the trial period.

(Pub. L. 111-345, §2, Dec. 29, 2010, 124 Stat. 3618.)



# Exhibit B (continued)

## Short Title

Pub. L. 111–345, §1, Dec. 29, 2010, 124 Stat. 3618, provided that: "This Act [enacting this chapter] may be cited as the 'Restore Online Shoppers' Confidence Act!'"

## §8402. Prohibitions against certain unfair and deceptive Internet sales practices

### (a) Requirements for certain Internet-based sales

It shall be unlawful for any post-transaction third party seller to charge or attempt to charge any consumer's credit card, debit card, bank account, or other financial account for any good or service sold in a transaction effected on the Internet, unless—

(1) before obtaining the consumer's billing information, the post-transaction third party seller has clearly and conspicuously disclosed to the consumer all material terms of the transaction, including—

(A) a description of the goods or services being offered;

(B) the fact that the post-transaction third party seller is not affiliated with the initial merchant, which may include disclosure of the name of the post-transaction third party in a manner that clearly differentiates the post-transaction third party seller from the initial merchant; and

(C) the cost of such goods or services; and

(2) the post-transaction third party seller has received the express informed consent for the charge from the consumer whose credit card, debit card, bank account, or other financial account will be charged by—

(A) obtaining from the consumer—

(i) the full account number of the account to be charged; and

(ii) the consumer's name and address and a means to contact the consumer; and

(B) requiring the consumer to perform an additional affirmative action, such as clicking on a confirmation button or checking a box that indicates the consumer's consent to be charged the amount disclosed.

### (b) Prohibition on data-pass used to facilitate certain deceptive Internet sales transactions

It shall be unlawful for an initial merchant to disclose a credit card, debit card, bank account, or other financial account number, or to disclose other billing information that is used to charge a customer of the initial merchant, to any post-transaction third party seller for use in an Internet-based sale of any goods or services from that post-transaction third party seller.

### (c) Application with other law

Nothing in this chapter shall be construed to supersede, modify, or otherwise affect the requirements of the Electronic Funds 1 Transfer Act (15 U.S.C. 1693 et seq.) or any regulation promulgated thereunder.

### (d) Definitions

# Exhibit B (continued)

In this section:

(1) Initial merchant

The term "initial merchant" means a person that has obtained a consumer's billing information directly from the consumer through an Internet transaction initiated by the consumer.

(2) Post-transaction third party seller

The term "post-transaction third party seller" means a person that—

(A) sells, or offers for sale, any good or service on the Internet;

(B) solicits the purchase of such goods or services on the Internet through an initial merchant after the consumer has initiated a transaction with the initial merchant; and

(C) is not—

(i) the initial merchant;

(ii) a subsidiary or corporate affiliate of the initial merchant; or

(iii) a successor of an entity described in clause (i) or (ii).

(Pub. L. 111–345, §3, Dec. 29, 2010, 124 Stat. 3619.)

References in Text

The Electronic Fund Transfer Act, referred to in subsec. (c), is title IX of Pub. L. 90–321, as added by Pub. L. 95–630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3728, which is classified generally to subchapter VI (§1693 et seq.) of chapter 41 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

1 So in original. Probably should be "Fund".

§8403. Negative option marketing on the Internet

It shall be unlawful for any person to charge or attempt to charge any consumer for any goods or services sold in a transaction effected on the Internet through a negative option feature (as defined in the Federal Trade Commission's Telemarketing Sales Rule in part 310 of title 16, Code of Federal Regulations), unless the person—

(1) provides text that clearly and conspicuously discloses all material terms of the transaction before obtaining the consumer's billing information;

(2) obtains a consumer's express informed consent before charging the consumer's credit card, debit card, bank account, or other financial account for products or services through such transaction; and

(3) provides simple mechanisms for a consumer to stop recurring charges from being placed on the consumer's credit card, debit card, bank account, or other financial account.

(Pub. L. 111–345, §4, Dec. 29, 2010, 124 Stat. 3620.)

# Exhibit B (continued)

## §8404. Enforcement by Federal Trade Commission

### (a) In general

Violation of this chapter or any regulation prescribed under this chapter shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices. The Federal Trade Commission shall enforce this chapter in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this chapter.

### (b) Penalties

Any person who violates this chapter or any regulation prescribed under this chapter shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated in and made part of this chapter.

### (c) Authority preserved

Nothing in this section shall be construed to limit the authority of the Commission under any other provision of law.

(Pub. L. 111–345, §5, Dec. 29, 2010, 124 Stat. 3620.)

## References in Text

The Federal Trade Commission Act, referred to in subsecs. (a) and (b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

## §8405. Enforcement by State attorneys general

### (a) Right of action

Except as provided in subsection (e), the attorney general of a State, or other authorized State officer, alleging a violation of this chapter or any regulation issued under this chapter that affects or may affect such State or its residents may bring an action on behalf of the residents of the State in any United States district court for the district in which the defendant is found, resides, or transacts business, or wherever venue is proper under section 1391 of title 28, to obtain appropriate injunctive relief.

### (b) Notice to Commission required

A State shall provide prior written notice to the Federal Trade Commission of any civil action under subsection (a) together with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall provide such notice immediately upon instituting such action.

### (c) Intervention by the Commission

# Exhibit B (continued)

The Commission may intervene in such civil action and upon intervening—

- (1) be heard on all matters arising in such civil action; and
- (2) file petitions for appeal of a decision in such civil action.

## (d) Construction

Nothing in this section shall be construed—

- (1) to prevent the attorney general of a State, or other authorized State officer, from exercising the powers conferred on the attorney general, or other authorized State officer, by the laws of such State; or
- (2) to prohibit the attorney general of a State, or other authorized State officer, from proceeding in State or Federal court on the basis of an alleged violation of any civil or criminal statute of that State.

## (e) Limitation

No separate suit shall be brought under this section if, at the time the suit is brought, the same alleged violation is the subject of a pending action by the Federal Trade Commission or the United States under this chapter.

(Pub. L. 111–345, §6, Dec. 29, 2010, 124 Stat. 3621.)