



**Electronic Retailing Association**  
*Leaders in Direct-to-Consumer Commerce*

July 13, 2017

**RE: OPPOSITION TO SB 313 (HERTZBERG)**

Dear Members of the Assembly Committee on Privacy and Consumer Protection:

On behalf of the ERA, the Electronic Retailing Association, which serves as a leading trade association representing the global \$350-billion direct-to-consumer marketplace, I write in respectful opposition to SB 313 as amended on April 3, 2017, which would impose new and unnecessary burdens on legitimate businesses that offer automatic renewal and continuous services contracts in a way that is not viable for business and not helpful for consumers.

ERA is committed to responsible marketing practices that benefit both consumers and businesses. Current regulation at the state and federal levels requires businesses to clearly and conspicuously disclose all material terms and conditions for trial offers, introductory offers, and automatic renewal and continuous service offers; obtain explicit consent for the offer; and, provide a simple mechanism to cancel future charges. Legitimate businesses work diligently to comply with current laws and regulatory standards while also ensuring that customer service and related functions provide customers with a positive shopping experience.

In particular, the proposed requirement in SB 313 of a standalone consent form for the free gift or trial would create an unnecessary, confusing, and impractical multi-step process. California law, as well as federal and other state laws, already prohibit deceptive marketing practices such that introductory or trial offers, or the offer of a free gift, must be clearly and conspicuously disclosed to consumers. For free gifts in particular, California (as well as other states and the Federal Trade Commission) have constructed regulatory frameworks for offering such incentives to consumers.

As currently proposed in SB 313, the concept of having an additional checkbox or other extra consent mechanisms only and specifically for the introductory, trial, or free gift offer is likely to confuse consumers about whether an introductory offer can be accepted without also agreeing to enroll in an automatic renewal program, leaving consumers with an erroneous understanding of the effect of their action. The confusion will strain customer services resources and change the economics of businesses' sales ratios. Some businesses may ultimately choose to eliminate introductory, trial, or free gift offers, which have otherwise proven to be useful for consumers who want to try a product.

Similarly, SB 313's cancellation requirements are vague and unworkable. As currently proposed, the bill requires that consumers be able to terminate the automatic renewal and continuous service offers "as easily" as they sign up. This ambiguous standard would only serve to add confusion for many legitimate businesses that provide consumers with countless ways of signing up for valuable offers. Such an outcome



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will have a harmful impact for consumers because businesses will be driven to change their practices and provide consumers with fewer options due to the expansive nature of these proposed requirements.

These new marketing requirements would unjustifiably burden businesses by creating a regulatory patchwork at the state level. For instance, the proposed provision to require standalone consent from the consumer to sign up to receive a free gift and/or a trial offer would be a major difference among states, creating significant compliance costs for legitimate businesses. Notably, such additional requirements would likely provide negligible benefits to consumers, as these laws will only affect legitimate business and continue to be ignored by bad actors.

ERA is supportive of proposed amendments to SB 313 submitted by the California Chamber of Commerce and other organizations submitted to this Assembly Committee on July 5, 2017.

I appreciate the opportunity to provide our input and urge you to keep these concerns in mind as you continue to debate automatic renewal and continuous service contracts requirements. If ERA can provide you or your staff with additional information regarding ERA's views, or if we can be of further assistance, please contact me at 703-841-1751.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bill McClellan', written over a white background.

Bill McClellan  
Vice President Government Affairs  
Electronic Retailing Association

cc: Honorable Bob Hertzberg  
Tom Dyer, Office of the Governor  
Hank Dempsey, Chief Counsel, Assembly Committee of Privacy and Consumer Protection  
Jared Yoshiki, Assembly Republican Caucus