

7607

I N S E N A T E

April 26, 2010

Introduced by Sen. PERALTA -- (at request of the Consumer Protection Board) -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to automatic renewal and continuous service offers, and repealing section 5-903 and subdivision 11 of section 1-203 of the general obligations law, relating to automatic renewal contracts for service

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The general business law is amended by adding a new section
2 348 to read as follows:

3 S 348. AUTOMATIC RENEWAL AND CONTINUOUS SERVICE OFFERS. 1. FOR THE
4 PURPOSES OF THIS SECTION, THE FOLLOWING DEFINITIONS SHALL APPLY:

5 (A) "AUTOMATIC RENEWAL" MEANS A PAID SUBSCRIPTION OR PURCHASING AGREE-
6 MENT THAT IS AUTOMATICALLY RENEWED AT THE END OF A DEFINITE TERM FOR A
7 SUBSEQUENT TERM.

8 (B) "CLEAR AND CONSPICUOUS" OR "CLEARLY AND CONSPICUOUSLY" MEANS IN
9 LARGER TYPE THAN THE SURROUNDING TEXT, IN CONTRASTING TYPE, FONT OR
10 COLOR TO THE SURROUNDING TEXT OF THE SAME SIZE OR SET OFF FROM THE
11 SURROUNDING TEXT OF THE SAME SIZE BY SYMBOLS OR OTHER MARKS, IN A MANNER
12 THAT CLEARLY CALLS ATTENTION TO THE LANGUAGE. IN THE CASE OF AN AUDIO
13 DISCLOSURE, "CLEAR AND CONSPICUOUS" AND "CLEARLY AND CONSPICUOUSLY"
14 MEANS IN A VOLUME AND CADENCE SUFFICIENT TO BE READILY AUDIBLE AND
15 UNDERSTANDABLE.

16 (C) "CONSUMER" MEANS ANY NATURAL PERSON WHO SEEKS OR ACQUIRES, BY
17 PURCHASE OR LEASE, ANY GOODS OR SERVICES FOR PERSONAL, FAMILY OR HOUSE-
18 HOLD PURPOSES.

19 (D) "CONTINUOUS SERVICE" MEANS A PLAN OR ARRANGEMENT IN WHICH A
20 SUBSCRIPTION OR PURCHASING AGREEMENT CONTINUES UNTIL THE CONSUMER
21 CANCELS SUCH SERVICE.

22 2. AN AUTOMATIC RENEWAL OR CONTINUOUS SERVICE OFFER MUST CONTAIN THE
23 FOLLOWING TERMS, WHICH SHALL BE CLEARLY AND CONSPICUOUSLY DISCLOSED TO
24 THE CONSUMER:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD16095-03-0

1 (A) A STATEMENT ADVISING THAT THE SUBSCRIPTION OR PURCHASING AGREEMENT
2 WILL CONTINUE UNTIL THE CONSUMER CANCELS SUCH SUBSCRIPTION OR PURCHASING
3 AGREEMENT.

4 (B) A WRITTEN STATEMENT ADVISING THAT THE CONSUMER MAY CANCEL THE
5 AUTOMATIC RENEWAL OR CONTINUOUS SERVICE AT ANY TIME BEFORE IT BECOMES
6 EFFECTIVE.

7 (C) A WRITTEN STATEMENT OF THE RECURRING CHARGES THAT WILL BE BILLED
8 TO THE CONSUMER OR CHARGED TO THE CONSUMER'S CREDIT OR DEBIT CARD AS
9 PART OF THE AUTOMATIC RENEWAL OR CONTINUOUS SERVICE SUBSCRIPTION OR
10 AGREEMENT AND, IF THE AMOUNT OF THE CHARGE MAY CHANGE, THEN THE FUTURE
11 AMOUNT THAT WILL BE BILLED OR CHARGED.

12 (D) THE DURATION OF THE AUTOMATIC RENEWAL TERM OR A STATEMENT ADVISING
13 THAT THE SERVICE IS CONTINUOUS.

14 (E) THE MINIMUM PURCHASE OBLIGATION, IF ANY.

15 3. (A) IT SHALL BE UNLAWFUL FOR ANY INDIVIDUAL, FIRM, COMPANY, PART-
16 NERSHIP, LIMITED LIABILITY COMPANY, CORPORATION OR ENTITY MAKING AN
17 AUTOMATIC RENEWAL OR CONTINUOUS SERVICE OFFER TO A CONSUMER TO DO ANY OF
18 THE FOLLOWING:

19 (I) FAIL TO PRESENT THE AUTOMATIC RENEWAL OR CONTINUOUS SERVICE OFFER
20 TERMS IN A CLEAR AND CONSPICUOUS MANNER BEFORE THE SUBSCRIPTION OR
21 PURCHASING AGREEMENT.

22 (II) CHARGE THE CONSUMER'S CREDIT OR DEBIT CARD OR THE CONSUMER'S
23 ACCOUNT WITH A THIRD PARTY FOR AN AUTOMATIC RENEWAL OR CONTINUOUS
24 SERVICE SUBSCRIPTION OR AGREEMENT WITHOUT FIRST OBTAINING THE CONSUMER'S
25 INFORMED EXPRESS AFFIRMATIVE CONSENT TO THE AGREEMENT CONTAINING THE
26 AUTOMATIC RENEWAL OR CONTINUOUS SERVICE OFFER TERMS, INCLUDING THE TERM
27 AUTHORIZING A RECURRING CHARGE AGAINST THE CONSUMER'S CREDIT OR DEBIT
28 CARD.

29 (III) FAIL TO PROVIDE WITHIN TEN BUSINESS DAYS AFTER COMPLETION OF THE
30 INITIAL ORDER, EXCEPT WHEN THE CONSUMER IS AFFORDED THE RIGHT OF RESCIS-
31 SION BY THE PROVISIONS OF SECTION ONE THOUSAND SIX HUNDRED THIRTY-FIVE
32 OF THE FEDERAL CONSUMER CREDIT PROTECTION ACT OR THE REGULATIONS THERE-
33 UNDER, A WRITTEN CONFIRMATION THAT MEMORIALIZES THE DATE THE AUTOMATIC
34 RENEWAL OR CONTINUOUS SERVICE SUBSCRIPTION OR AGREEMENT COMMENCED AND
35 INCLUDES THE AUTOMATIC RENEWAL OR CONTINUOUS SERVICE OFFER COST AND
36 TERMS, CANCELLATION POLICY AND INFORMATION REGARDING HOW TO CANCEL.

37 (IV) IF THE AUTOMATIC RENEWAL OR CONTINUOUS SERVICE OFFER INCLUDES A
38 FREE TRIAL, SUCH OFFER SHALL DISCLOSE WHEN AND HOW TO CANCEL AND ALLOW
39 THE CONSUMER TO CANCEL BEFORE THE CONSUMER IS REQUIRED TO PAY FOR SUCH
40 GOODS OR SERVICES.

41 (B) AN INDIVIDUAL, FIRM, COMPANY, PARTNERSHIP, LIMITED LIABILITY
42 COMPANY, CORPORATION OR ENTITY MAKING AUTOMATIC RENEWAL OR CONTINUOUS
43 SERVICE OFFERS SHALL PROVIDE A TOLL FREE TELEPHONE NUMBER, ELECTRONIC
44 MAIL ADDRESS, POSTAL ADDRESS, OR ANOTHER COST-EFFECTIVE, TIMELY, AND
45 EASY TO USE CONSUMER MECHANISM FOR CANCELLATION THAT SHALL BE DESCRIBED
46 IN THE ACKNOWLEDGMENT SPECIFIED IN SUBPARAGRAPH (III) OF PARAGRAPH (A)
47 OF THIS SUBDIVISION.

48 (C) IN THE CASE OF A CHANGE IN THE TERMS OF THE AUTOMATIC RENEWAL OR
49 CONTINUOUS SERVICE OFFER THAT HAS BEEN ACCEPTED BY A CONSUMER, THE INDI-
50 VIDUAL, FIRM, COMPANY, PARTNERSHIP, LIMITED LIABILITY COMPANY, CORPO-
51 RATION OR ENTITY SHALL PROVIDE THE CONSUMER WITH A CLEAR AND CONSPICUOUS
52 WRITTEN NOTICE OF THE CHANGE PRIOR TO THE IMPLEMENTATION OF SUCH CHANGE
53 AND PROVIDE THE CONSUMER AN OPPORTUNITY TO CANCEL THE SUBSCRIPTION OR
54 AGREEMENT AND INFORMATION REGARDING HOW TO CANCEL.

55 4. IN ANY CASE IN WHICH AN INDIVIDUAL, FIRM, COMPANY, PARTNERSHIP,
56 LIMITED LIABILITY COMPANY, CORPORATION OR ENTITY SENDS ANY GOODS, WARES,

1 MERCHANDISE OR PRODUCTS TO A CONSUMER UNDER AN AUTOMATIC RENEWAL OR
2 CONTINUOUS SERVICE SUBSCRIPTION OR AGREEMENT WITHOUT FIRST OBTAINING THE
3 CONSUMER'S INFORMED EXPRESS AFFIRMATIVE CONSENT AS DESCRIBED IN SUBDIVI-
4 SION TWO OF THIS SECTION, THE GOODS, WARES, MERCHANDISE, OR PRODUCTS
5 SHALL BE DEEMED AN UNCONDITIONAL GIFT TO THE CONSUMER, WITHOUT ANY OBLI-
6 GATION ON THE PART OF THE CONSUMER TO THE INDIVIDUAL, FIRM, COMPANY,
7 PARTNERSHIP, LIMITED LIABILITY COMPANY, CORPORATION OR ENTITY, INCLUD-
8 ING, BUT NOT LIMITED TO, BEARING THE COST OF OR RESPONSIBILITY FOR SHIP-
9 PING ANY GOODS, WARES, MERCHANDISE OR PRODUCTS TO THE INDIVIDUAL, FIRM,
10 COMPANY, PARTNERSHIP, LIMITED LIABILITY COMPANY, CORPORATION OR ENTITY.

11 5. WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION, AN APPLICATION
12 MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE
13 STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION TO ISSUE AN
14 INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS,
15 TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH VIOLATIONS; AND IF IT
16 SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE
17 DEFENDANT HAS IN FACT VIOLATED THIS SECTION, AN INJUNCTION MAY BE ISSUED
18 BY SUCH COURT OR JUSTICE ENJOINING AND RESTRAINING ANY FURTHER VIOLATION
19 WITHOUT REQUIRING PROOF THAT ANY PERSON HAS IN FACT BEEN INJURED OR
20 DAMAGED THEREBY. IN ANY SUCH PROCEEDING THE COURT MAY MAKE ALLOWANCES TO
21 THE ATTORNEY GENERAL AS PROVIDED IN SECTION EIGHTY-THREE HUNDRED THREE
22 OF THE CIVIL PRACTICE LAW AND RULES AND DIRECT RESTITUTION. IN
23 CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS
24 AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS
25 AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND
26 RULES.

27 6. THE FOLLOWING ARE EXEMPT FROM THE REQUIREMENTS OF THIS ARTICLE:

28 (A) ANY SERVICE PROVIDED BY AN INDIVIDUAL, FIRM, COMPANY, PARTNERSHIP,
29 LIMITED LIABILITY COMPANY, CORPORATION, ENTITY OR ITS AFFILIATE WHERE
30 EITHER THE INDIVIDUAL, FIRM, COMPANY, PARTNERSHIP, LIMITED LIABILITY
31 COMPANY, CORPORATION, ENTITY OR ITS AFFILIATE IS DOING BUSINESS PURSUANT
32 TO A FRANCHISE ISSUED BY A POLITICAL SUBDIVISION OF THE STATE OR A
33 LICENSE, FRANCHISE, CERTIFICATE OR OTHER AUTHORIZATION ISSUED BY THE NEW
34 YORK STATE PUBLIC SERVICE COMMISSION.

35 (B) ANY SERVICE PROVIDED BY AN INDIVIDUAL, FIRM, COMPANY, PARTNERSHIP,
36 LIMITED LIABILITY COMPANY, CORPORATION, ENTITY OR ITS AFFILIATE WHERE
37 EITHER THE INDIVIDUAL, FIRM, COMPANY, PARTNERSHIP, LIMITED LIABILITY
38 COMPANY, CORPORATION, ENTITY OR ITS AFFILIATE IS REGULATED BY THE NEW
39 YORK STATE PUBLIC SERVICE COMMISSION, THE FEDERAL COMMUNICATIONS COMMIS-
40 SION, OR THE FEDERAL ENERGY REGULATORY COMMISSION.

41 (C) ANY INDIVIDUAL, FIRM, COMPANY, PARTNERSHIP, LIMITED LIABILITY
42 COMPANY, CORPORATION OR ENTITY REGULATED BY THE DEPARTMENT OF INSURANCE.

43 S 2. Section 5-903 of the general obligations law is REPEALED.

44 S 3. Subdivision 11 of section 1-203 of the general obligations law is
45 REPEALED.

46 S 4. This act shall take effect on the first of January next succeed-
47 ing the date on which it shall have become a law.