

4268

2013-2014 Regular Sessions

I N S E N A T E

March 18, 2013

Introduced by Sen. HOYLMAN -- 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 prohibiting certain practices by businesses making an automatic renewal or continuous service offer to consumers in the state

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

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

5 S 2. The general business law is amended by adding a new article 29-BB  
6 to read as follows:

7 ARTICLE 29-BB

8 PROHIBITED SERVICE OFFER PRACTICES

9 SECTION 527. DEFINITIONS.

10 527-A. UNLAWFUL PRACTICES.

11 S 527. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE, THE FOLLOWING  
12 DEFINITIONS SHALL APPLY:

13 1. "AUTOMATIC RENEWAL" MEANS A PLAN OR ARRANGEMENT IN WHICH A PAID  
14 SUBSCRIPTION OR PURCHASING AGREEMENT IS AUTOMATICALLY RENEWED AT THE END  
15 OF A DEFINITE TERM FOR A SUBSEQUENT TERM.

16 2. "AUTOMATIC RENEWAL OFFER TERMS" MEANS THE FOLLOWING CLEAR AND  
17 CONSPICUOUS DISCLOSURES:

18 A. THAT THE SUBSCRIPTION OR PURCHASING AGREEMENT WILL CONTINUE UNTIL  
19 THE CONSUMER CANCELS;

20 B. THE DESCRIPTION OF THE CANCELLATION POLICY THAT APPLIES TO THE  
21 OFFER;

22 C. THE RECURRING CHARGES THAT WILL BE CHARGED TO THE CONSUMER'S CREDIT  
23 OR DEBIT CARD OR PAYMENT ACCOUNT WITH A THIRD PARTY AS PART OF THE AUTO-  
24 MATIC RENEWAL PLAN OR ARRANGEMENT, AND THAT THE AMOUNT OF THE CHARGE MAY

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

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1 CHANGE, IF THAT IS THE CASE, AND THE AMOUNT TO WHICH THE CHARGE WILL  
2 CHANGE, IF KNOWN;

3 D. THE LENGTH OF THE AUTOMATIC RENEWAL TERM OR THAT THE SERVICE IS  
4 CONTINUOUS, UNLESS THE LENGTH OF THE TERM IS CHOSEN BY THE CONSUMER; AND

5 E. THE MINIMUM PURCHASE OBLIGATION, IF ANY.

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

14 4. "CONSUMER" MEANS ANY INDIVIDUAL WHO SEEKS OR ACQUIRES, BY PURCHASE  
15 OR LEASE, ANY GOODS, SERVICES, MONEY, OR CREDIT FOR PERSONAL, FAMILY, OR  
16 HOUSEHOLD PURPOSES.

17 5. "CONTINUOUS SERVICE" MEANS A PLAN OR ARRANGEMENT IN WHICH A  
18 SUBSCRIPTION OR PURCHASING AGREEMENT CONTINUES UNTIL THE CONSUMER  
19 CANCELS THE SERVICE.

20 S 527. UNLAWFUL PRACTICES. 1. IT SHALL BE UNLAWFUL FOR ANY BUSINESS  
21 MAKING AN AUTOMATIC RENEWAL OR CONTINUOUS SERVICE OFFER TO A CONSUMER IN  
22 THIS STATE TO DO ANY OF THE FOLLOWING:

23 A. FAIL TO PRESENT THE AUTOMATIC RENEWAL OFFER TERMS OR CONTINUOUS  
24 SERVICE OFFER TERMS IN A CLEAR AND CONSPICUOUS MANNER BEFORE THE  
25 SUBSCRIPTION OR PURCHASING AGREEMENT IS FULFILLED AND IN VISUAL PROXIMI-  
26 TY, OR IN THE CASE OF AN OFFER CONVEYED BY VOICE, IN TEMPORAL PROXIMITY,  
27 TO THE REQUEST FOR CONSENT TO THE OFFER;

28 B. CHARGE THE CONSUMER'S CREDIT OR DEBIT CARD OR THE CONSUMER'S  
29 ACCOUNT WITH A THIRD PARTY FOR AN AUTOMATIC RENEWAL OR CONTINUOUS  
30 SERVICE WITHOUT FIRST OBTAINING THE CONSUMER'S AFFIRMATIVE CONSENT TO  
31 THE AGREEMENT CONTAINING THE AUTOMATIC RENEWAL OFFER TERMS OR CONTINUOUS  
32 SERVICE OFFER TERMS; OR

33 C. FAIL TO PROVIDE AN ACKNOWLEDGMENT THAT INCLUDES THE AUTOMATIC  
34 RENEWAL OR CONTINUOUS SERVICE OFFER TERMS, CANCELLATION POLICY, AND  
35 INFORMATION REGARDING HOW TO CANCEL IN A MANNER THAT IS CAPABLE OF BEING  
36 RETAINED BY THE CONSUMER. IF THE OFFER INCLUDES A FREE TRIAL, THE BUSI-  
37 NESS SHALL ALSO DISCLOSE IN THE ACKNOWLEDGMENT HOW TO CANCEL AND ALLOW  
38 THE CONSUMER TO CANCEL BEFORE THE CONSUMER PAYS FOR THE GOODS OR  
39 SERVICES.

40 2. A BUSINESS MAKING AUTOMATIC RENEWAL OR CONTINUOUS SERVICE OFFERS  
41 SHALL PROVIDE A TOLL-FREE TELEPHONE NUMBER, ELECTRONIC MAIL ADDRESS, A  
42 POSTAL ADDRESS ONLY WHEN THE SELLER DIRECTLY BILLS THE CONSUMER, OR  
43 ANOTHER COST-EFFECTIVE, TIMELY, AND EASY-TO-USE MECHANISM FOR CANCELLA-  
44 TION THAT SHALL BE DESCRIBED IN THE ACKNOWLEDGMENT SPECIFIED IN PARA-  
45 GRAPH C OF SUBDIVISION ONE OF THIS SECTION.

46 3. IN THE CASE OF A MATERIAL CHANGE IN THE TERMS OF THE AUTOMATIC  
47 RENEWAL OR CONTINUOUS SERVICE OFFER THAT HAS BEEN ACCEPTED BY A CONSUMER  
48 IN THIS STATE, THE BUSINESS SHALL PROVIDE THE CONSUMER WITH A CLEAR AND  
49 CONSPICUOUS NOTICE OF THE MATERIAL CHANGE AND PROVIDE INFORMATION  
50 REGARDING HOW TO CANCEL IN A MANNER THAT IS CAPABLE OF BEING RETAINED BY  
51 THE CONSUMER.

52 4. THE REQUIREMENTS OF THIS ARTICLE SHALL APPLY ONLY PRIOR TO THE  
53 COMPLETION OF THE INITIAL ORDER FOR THE AUTOMATIC RENEWAL OR CONTINUOUS  
54 SERVICE, EXCEPT AS FOLLOWS:

55 A. THE REQUIREMENT IN PARAGRAPH C OF SUBDIVISION ONE OF THIS SECTION  
56 MAY BE FULFILLED AFTER COMPLETION OF THE INITIAL ORDER.

1 B. THE REQUIREMENT IN SUBDIVISION THREE OF THIS SECTION SHALL BE  
2 FULFILLED PRIOR TO IMPLEMENTATION OF THE MATERIAL CHANGE.

3 5. IN ANY CASE IN WHICH A BUSINESS SENDS ANY GOODS, WARES, MERCHAN-  
4 DISE, OR PRODUCTS TO A CONSUMER, UNDER A CONTINUOUS SERVICE AGREEMENT OR  
5 AUTOMATIC RENEWAL OF A PURCHASE, WITHOUT FIRST OBTAINING THE CONSUMER'S  
6 AFFIRMATIVE CONSENT, THE GOODS, WARES, MERCHANDISE, OR PRODUCTS SHALL  
7 FOR ALL PURPOSES BE DEEMED AN UNCONDITIONAL GIFT TO THE CONSUMER, WHO  
8 MAY USE OR DISPOSE OF THE SAME IN ANY MANNER HE OR SHE SEES FIT WITHOUT  
9 ANY OBLIGATION WHATSOEVER ON THE CONSUMER'S PART TO THE BUSINESS,  
10 INCLUDING, BUT NOT LIMITED TO, BEARING THE COST OF, OR RESPONSIBILITY  
11 FOR, SHIPPING ANY GOODS, WARES, MERCHANDISE, OR PRODUCTS TO THE BUSI-  
12 NESS.

13 6. A. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION ONE OF THIS  
14 SECTION, A VIOLATION OF THIS SECTION SHALL NOT BE A CRIME; PROVIDED,  
15 HOWEVER, THAT ALL AVAILABLE CIVIL REMEDIES THAT APPLY TO A VIOLATION OF  
16 THIS ARTICLE MAY BE EMPLOYED.

17 B. IF A BUSINESS COMPLIES WITH THE PROVISIONS OF THIS ARTICLE IN GOOD  
18 FAITH, IT SHALL NOT BE SUBJECT TO CIVIL REMEDIES.

19 7. THE FOLLOWING ARE EXEMPT FROM THE REQUIREMENTS OF THIS ARTICLE:

20 A. ANY SERVICE PROVIDED BY A BUSINESS OR ITS AFFILIATE WHERE EITHER  
21 THE BUSINESS OR ITS AFFILIATE IS DOING BUSINESS PURSUANT TO A FRANCHISE  
22 ISSUED BY A POLITICAL SUBDIVISION OF THE STATE;

23 B. ANY ENTITY REGULATED BY THE DEPARTMENT OF FINANCIAL SERVICES;

24 C. SECURITY SYSTEM ALARM OPERATORS;

25 D. BANKS, BANK HOLDING COMPANIES, OR THE SUBSIDIARY OR AFFILIATE OF  
26 EITHER, OR CREDIT UNIONS OR OTHER FINANCIAL INSTITUTIONS, LICENSED UNDER  
27 STATE OR FEDERAL LAW; AND

28 E. SERVICE CONTRACT SELLERS AND SERVICE CONTRACT ADMINISTRATORS.

29 S 3. This act shall take effect on the ninetieth day after it shall  
30 have become a law.