

STATE OF NEW YORK

3173--A

2019-2020 Regular Sessions

IN ASSEMBLY

January 28, 2019

Introduced by M. of A. DINOWITZ, GOTTFRIED, ARROYO, STIRPE, GALEF, JOYNER, PICHARDO, ABINANTI, FAHY, SEAWRIGHT -- Multi-Sponsored by -- M. of A. BRAUNSTEIN, COOK, GLICK, RIVERA -- read once and referred to the Committee on Consumer Affairs and Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

ARTICLE 29-BB

PROHIBITED SERVICE OFFER PRACTICES

Section 527. Definitions.

527-a. Unlawful practices.

11 § 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;

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

LBD01191-05-9

1 b. the description of the cancellation policy that applies to the
2 offer;

3 c. the recurring charges that will be charged to the consumer's credit
4 or debit card or payment account with a third party as part of the auto-
5 matic renewal plan or arrangement, and that the amount of the charge may
6 change, if that is the case, and the amount to which the charge will
7 change, if known;

8 d. the length of the automatic renewal term or that the service is
9 continuous, unless the length of the term is chosen by the consumer; and

10 e. the minimum purchase obligation, if any.

11 3. "Clear and conspicuous" means in larger type than the surrounding
12 text, or in contrasting type, font, or color to the surrounding text of
13 the same size, or set off from the surrounding text of the same size by
14 symbols or other marks, in a manner that clearly calls attention to the
15 language. In the case of an audio disclosure, "clear and conspicuous"
16 means in a volume and cadence sufficient to be readily audible and
17 understandable.

18 4. "Consumer" means any individual who seeks or acquires, by purchase
19 or lease, any goods, services, money, or credit for personal, family, or
20 household purposes.

21 5. "Continuous service" means a plan or arrangement in which a
22 subscription or purchasing agreement continues until the consumer
23 cancels the service.

24 § 527-a. Unlawful practices. 1. It shall be unlawful for any business
25 making an automatic renewal or continuous service offer to a consumer in
26 this state to do any of the following:

27 a. fail to present the automatic renewal offer terms or continuous
28 service offer terms in a clear and conspicuous manner before the
29 subscription or purchasing agreement is fulfilled and in visual proximi-
30 ty, or in the case of an offer conveyed by voice, in temporal proximity,
31 to the request for consent to the offer. If the offer also includes a
32 free gift or trial, the offer shall include a clear and conspicuous
33 explanation of the price that will be charged after the trial ends or
34 the manner in which the subscription or purchasing agreement pricing
35 will change upon conclusion of the trial;

36 b. charge the consumer's credit or debit card or the consumer's
37 account with a third party for an automatic renewal or continuous
38 service without first obtaining the consumer's affirmative consent to
39 the agreement containing the automatic renewal offer terms or continuous
40 service offer terms, including the terms of an automatic renewal offer
41 or continuous service offer that is made at a promotional or discounted
42 price for a limited period of time; or

43 c. fail to provide an acknowledgment that includes the automatic
44 renewal or continuous service offer terms, cancellation policy, and
45 information regarding how to cancel in a manner that is capable of being
46 retained by the consumer. If the offer includes a free gift or trial,
47 the business shall also disclose in the acknowledgment how to cancel and
48 allow the consumer to cancel before the consumer pays for the goods or
49 services.

50 2. A business that makes an automatic renewal offer or continuous
51 service offer shall provide a toll-free telephone number, electronic
52 mail address, a postal address only when the seller directly bills the
53 consumer, or another cost-effective, timely, and easy-to-use mechanism
54 for cancellation that shall be described in the acknowledgment specified
55 in paragraph c of subdivision one of this section.

1 3. In addition to the requirements of subdivision two of this section,
2 a consumer who accepts an automatic renewal or continuous service offer
3 online shall be allowed to terminate the automatic renewal or continuous
4 service exclusively online, which may include a termination email
5 formatted and provided by the business that a consumer can send to the
6 business without additional information.

7 4. In the case of a material change in the terms of the automatic
8 renewal or continuous service offer that has been accepted by a consumer
9 in this state, the business shall provide the consumer with a clear and
10 conspicuous notice of the material change and provide information
11 regarding how to cancel in a manner that is capable of being retained by
12 the consumer.

13 5. The requirements of this article shall apply only prior to the
14 completion of the initial order for the automatic renewal or continuous
15 service, except as follows:

16 a. The requirement in paragraph c of subdivision one of this section
17 may be fulfilled after completion of the initial order.

18 b. The requirement in subdivision four of this section shall be
19 fulfilled prior to implementation of the material change.

20 6. In any case in which a business sends any goods, wares, merchan-
21 dise, or products to a consumer, under a continuous service agreement or
22 automatic renewal of a purchase, without first obtaining the consumer's
23 affirmative consent, the goods, wares, merchandise, or products shall
24 for all purposes be deemed an unconditional gift to the consumer, who
25 may use or dispose of the same in any manner he or she sees fit without
26 any obligation whatsoever on the consumer's part to the business,
27 including, but not limited to, bearing the cost of, or responsibility
28 for, shipping any goods, wares, merchandise, or products to the busi-
29 ness.

30 7. Whenever there shall be a violation of this section, an application
31 may be made by the attorney general in the name of the people of the
32 state of New York to a court or justice having jurisdiction to issue an
33 injunction, and upon notice to the defendant of not less than five days,
34 to enjoin and restrain the continuance of such violations; and if it
35 shall appear to the satisfaction of the court or justice that the
36 defendant has in fact, violated this section, an injunction may be
37 issued by such court or justice, enjoining and restraining any further
38 violation, without requiring proof that any person has, in fact, been
39 injured or damaged thereby. In any such proceeding the court may make
40 allowances to the attorney general as provided in section eighty-three
41 hundred three of the civil practice law and rules, and direct restitu-
42 tion. In connection with any such proposed application, the attorney
43 general is authorized to take proof and make a determination of the
44 relevant facts and to issue subpoenas in accordance with the civil prac-
45 tice law and rules. Whenever the court shall determine that a violation
46 of this section has occurred, the court may impose a civil penalty of
47 not more than one hundred dollars for a single violation and not more
48 than five hundred dollars for multiple violations resulting from a
49 single act or incident. A knowing violation of this section shall be
50 punishable by a civil penalty of not more than five hundred dollars for
51 a single violation and not more than one thousand dollars for multiple
52 violations resulting from a single act or incident. No business shall be
53 deemed to have violated the provisions of this section if such business
54 shows, by a preponderance of the evidence, that the violation was not
55 intentional and resulted from a bona fide error made notwithstanding the
56 maintenance of procedures reasonably adopted to avoid such error.

- 1 8. The following are exempt from the requirements of this article:
- 2 a. any service provided by a business or its affiliate where either
- 3 the business or its affiliate is doing business pursuant to a franchise
- 4 issued by a political subdivision of the state;
- 5 b. any entity regulated by the department of financial services;
- 6 c. security system alarm operators;
- 7 d. banks, bank holding companies, or the subsidiary or affiliate of
- 8 either, or credit unions or other financial institutions, licensed under
- 9 state or federal law; and
- 10 e. sellers and administrators of a service contract, as defined pursu-
- 11 ant to section seven thousand nine hundred two of the insurance law.

12 § 3. This act shall take effect on the ninetieth day after it shall
13 have become a law.