

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

a. fail to present to the consumer, in a clear and conspicuous manner, the material terms of any automatic renewal offer or continuous service offer, including but not limited to a description of the product or service subject to renewal, the amount of the costs that will be charged, the frequency of charges, the deadline by date or frequency by which the consumer must act to prevent or stop further charges, and cancellation mechanisms described in paragraphs d and d-1 of this subdivision, before consent to the offer or billing information has been requested 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, or the price is temporary, the offer shall include a clear and conspicuous explanation of how and when the price will change and the price or prices that will subsequently be charged to the consumer;

b. charge the consumer or the consumer's account with a third party for the initial term of an automatic renewal or continuous service without first obtaining the consumer's affirmative consent to the agreement containing the the terms of automatic renewal offer or continuous service offer, 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;

b-1. charge the consumer or the consumer's account with a third party following an increase in price, or a price higher than what was disclosed pursuant to paragraph a of this subdivision, relating to an automatic renewal or continuous service offer to which the consumer previously consented, without either: (i) first obtaining the consumer's affirmative consent to such increased price; or (ii) allowing the consumer to cancel such automatic renewal or continuous service anytime within, at least, fourteen days after such charge and refund the consumer in the amount equivalent to the price of the remaining term of the service, at the time of such cancellation, on a pro rata basis. The

provisions of this paragraph shall not be construed to require any business to obtain affirmative consent from the consumer regarding a price increase, or a price increase not disclosed pursuant to paragraph a of this subdivision, more than once prior to charging the consumer such increased price;

c. fail to provide a notice promptly following affirmative consent, in a manner that is capable of being retained by the consumer. Such notice shall include:

(i) the terms of the automatic renewal or continuous service agreement;

(ii) the amount of costs that will be charged;

(iii) the frequency of charges;

(iv) the deadline by date or frequency by which the consumer must act to prevent or stop further charges; and

(v) the cancellation mechanisms, as described in paragraphs d and d-1 of this subdivision;

d. fail to provide the consumer with the option to cancel at any time using a simple cancellation mechanism that is as easy to use as the mechanism that the consumer used to provide consent and that is through the same medium that the consumer used to provide consent;

d-1. fail to provide the consumer with the option to cancel, at any time through all mediums by which the business allows a consumer to provide affirmative consent to, the automatic renewal, continuous service offer, or any price increase. Provided further that, where consent was obtained in person, in addition to offering cancellation, where practical via an in-person method similar to that the user used to consent, the business shall at least offer cancellation through an online mechanism or over a telephone number;

e. impose unreasonable or unlawful conditions upon, refuse to acknowledge, obstruct or unreasonably delay cancellation requested or attempts to request cancellation by a consumer. Provided further that:

(i) unreasonable or unlawful conditions include, but without limitation, hanging up on consumers who call to cancel, providing false

information about how to cancel, misrepresenting the consequences or costs of cancellation, or misrepresenting the reasons for delays in processing consumers' cancellation requests; and

(ii) if a consumer conveys a request to cancel, the business may present the consumer with a discounted offer, retention benefit or information regarding the effect of cancellation but may not impose unreasonable or unlawful conditions upon consumer's ability to cancel, refuse to acknowledge, obstruct or unreasonably delay cancellation requested;

f. fail to notify a consumer of an automatic renewal or continuous service charge for an automatic renewal or continuous service offer with an initial paid term of one year or longer, provided that such automatic renewal or continuous service renews for a paid term of six months or longer, at least fifteen days before, but not more than forty-five days before, the cancellation deadline for such automatic renewal in the manner selected by the consumer, including text, email, app notification or any other notification channel offered by the business. Such notice shall include instructions on how to cancel such renewal charge;

g. fail to provide a consumer who has accepted an automatic renewal or continuous service offer with a clear and conspicuous notice of any material change to the terms of the automatic renewal or continuous service offer, including any price increases, at least five business days prior, but no more than thirty days prior, to the date of the change, in the same manner as required by paragraph f of this subdivision; or

h. fail to notify a consumer of an automatic renewal or continuous service charge for an automatic renewal or continuous service offer if the automatic renewal or continuous service offer includes a free gift or trial for a period of more than a month, followed by an upcoming automatic renewal or continuous service charge, at least three days before but not more than twenty-one days before the cancellation deadline for the first chargeable period in the manner selected by the consumer, including text, email, app notification or any other notification channel offered by the business. Such notice shall include

instructions on how to cancel such renewal charge.

2. 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, 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 such consumer 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.

3. Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding the court may make allowances to the attorney general as provided in section eighty-three hundred three of the civil practice law and rules, and direct restitution. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more than one hundred dollars for a single violation and not more than five hundred dollars for multiple violations resulting from a single act or incident. A knowing violation of this section shall be punishable by a civil penalty of not more than five hundred dollars for a single violation and not more than one thousand dollars for multiple violations resulting from a single act or incident. No business shall be deemed to have violated the provisions of this section if such

business shows, by a preponderance of the evidence, that the violation was not intentional and resulted from a bona fide error made notwithstanding the maintenance of procedures reasonably adopted to avoid such error.

4. 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;

b. any entity, or subsidiary or affiliate thereof, regulated by the department of financial services;

c. security system alarm operators;

d. banks, bank holding companies, or the subsidiary or affiliate of either, or credit unions or other financial institutions, licensed under state or federal law; and

e. sellers and administrators of a service contract, as defined pursuant to section seven thousand nine hundred two of the insurance law.