

ASSEMBLY, No. 3515

STATE OF NEW JERSEY

219th LEGISLATURE

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Sponsored by:

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District 16 (Hunterdon, Mercer, Middlesex and Somerset)

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District 16 (Hunterdon, Mercer, Middlesex and Somerset)

SYNOPSIS

Imposes certain requirements on businesses that make automatic renewal or continuous service offers.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning automatic renewal or continuous service offers
2 and supplementing P.L.1960, c.39 (C.56:8-1 et seq.).

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. a. Every business that makes an automatic renewal offer or
8 continuous service offer to a consumer in this State shall:

9 (1) present the automatic renewal offer terms or continuous
10 service offer terms in a clear and conspicuous manner before the
11 subscription or purchasing agreement is fulfilled and in visual
12 proximity, or in the case of an offer conveyed by voice, in temporal
13 proximity, to the request for consent to the offer. If the offer also
14 includes a free gift or trial, the offer shall include a clear and
15 conspicuous explanation of the price that will be charged after the
16 trial ends or the manner in which the subscription or purchasing
17 agreement pricing will change upon conclusion of the trial;

18 (2) obtain the consumer's affirmative consent to the agreement
19 containing the automatic renewal offer terms or continuous service
20 offer terms, including the terms of an automatic renewal offer or
21 continuous service offer that is made at a promotional or discounted
22 price for a limited period of time, prior to charging the consumer's
23 credit or debit card or the consumer's account with a third party for
24 an automatic renewal or continuous service; and

25 (3) provide an acknowledgment that includes the automatic
26 renewal offer terms or continuous service offer terms, cancellation
27 policy, and information regarding how to cancel in a manner that is
28 capable of being retained by the consumer. If the automatic
29 renewal offer or continuous service offer includes a free gift or trial,
30 the business shall also disclose in the acknowledgement how to
31 cancel, and allow the consumer to cancel, the automatic renewal or
32 continuous service before the consumer pays for the goods or
33 services.

34 b. A business that makes an automatic service offer or
35 continuous service offer shall provide a toll-free telephone number,
36 electronic mail address, postal address if the seller directly bills the
37 consumer, or another cost-effective, timely, and easy-to-use
38 mechanism for cancellation that shall be described in the
39 acknowledgement pursuant to paragraph (3) of subsection a. of this
40 section.

41 c. In addition to the requirements contained in subsection b. of
42 this section, a consumer who accepts an automatic renewal or
43 continuous service offer online shall be allowed to terminate the
44 automatic renewal or continuous service exclusively online, which
45 may include a termination email formatted and provided by the
46 business that a consumer may send to the business without
47 additional information.

1 d. In the case of a material change in the terms of the automatic
2 renewal or continuous service that has been previously accepted by
3 a consumer, the business shall provide the consumer with clear and
4 conspicuous notice of the material change and provide information
5 regarding how to cancel in a manner that is capable of being
6 retained by the consumer.

7 e. The requirements imposed pursuant to this section shall only
8 apply prior to the completion of the initial order for the automatic
9 renewal or continuous service, except that the requirement
10 contained in paragraph (3) of subsection a. of this section may be
11 fulfilled after completion of the initial order and the requirement
12 contained in subsection d. of this section shall be fulfilled prior to
13 the implementation of the material change.

14 f. In any case where a business sends any goods, wares,
15 merchandise, or products to a consumer under an automatic renewal
16 or continuous service agreement without first obtaining the
17 consumer's affirmative consent pursuant to this section, the goods,
18 wares, merchandise, or products shall be deemed an unconditional
19 gift to the consumer. The consumer may dispose of the goods,
20 wares, merchandise, or products in any manner without any
21 obligation to the business including, but not limited to, bearing the
22 cost or responsibility for shipping the goods, wares, merchandise, or
23 products to the business. If the consumer has been charged for the
24 goods, wares, merchandise, or products, the business shall provide a
25 full refund to the consumer within 30 days of the request for a
26 refund by the consumer.

27 g. A violation of this section shall be an unlawful practice
28 pursuant to P.L.1960, c.39 (C.56:8-1 et seq.).

29 h. As used in this section:

30 "Automatic renewal" means a plan or arrangement in which a
31 paid subscription or purchasing agreement is automatically renewed
32 at the end of a definite term for a subsequent term.

33 "Automatic renewal offer terms" means the following clear and
34 conspicuous disclosures:

35 (1) that the subscription or purchasing agreement will continue
36 until the consumer cancels;

37 (2) the description of the cancellation policy that applies to the
38 offer;

39 (3) the recurring charges that will be charged to the consumer's
40 credit or debit card or payment account with a third party as part of
41 the automatic renewal plan or arrangement, that the amount of the
42 charge may change, and the amount to which the charge will
43 change, if known;

44 (4) the length of the automatic renewal term or that the service is
45 continuous, unless the length of the term is chosen by the consumer;
46 and

47 (5) the minimum purchase obligation, if any.

1 In addition, the bill requires a business that makes an automatic
2 renewal or continuous service offer to provide a toll-free telephone
3 number, electronic mail address, postal address if the seller directly
4 bills the consumer, or another cost-effective, timely, and easy-to-
5 use mechanism for cancellation. In addition, a consumer who
6 accepts an automatic renewal or continuous service offer online is
7 required to be allowed to terminate the automatic renewal or
8 continuous service exclusively online.

9 Further, under the bill, if there is a material change in the terms
10 of the automatic renewal or continuous service that has previously
11 been accepted by the consumer, the business is required to provide
12 the consumer with clear and conspicuous notice of the material
13 change and information regarding how to cancel the automatic
14 renewal or continuous service prior to implementing the change.

15 The bill also provides that in any case where a business sends
16 any goods, wares, merchandise, or products to a consumer under an
17 automatic renewal or continuous service agreement without first
18 obtaining the consumer's affirmative consent, the goods, wares,
19 merchandise, or products are to be deemed an unconditional gift to
20 the consumer. The consumer may dispose of the goods, wares,
21 merchandise, or products in any manner without any obligation to
22 the business. If the consumer has been charged for the goods,
23 wares, merchandise, or products, the business is required to provide
24 a full refund to the consumer within 30 days of the request for a
25 refund by the consumer.

26 A violation of the bill's provisions is an unlawful practice under
27 the consumer fraud act. An unlawful practice under the consumer
28 fraud act is punishable by a monetary penalty of not more than
29 \$10,000 for a first offense and not more than \$20,000 for any
30 subsequent offense. In addition, violations may result in cease and
31 desist orders issued by the Attorney General, the assessment of
32 punitive damages, and the awarding of treble damages and costs to
33 the injured party.

34 Under the bill, "automatic renewal" is defined as a plan or
35 arrangement in which a paid subscription or purchasing agreement
36 is automatically renewed at the end of a definite term for a
37 subsequent term. In addition, "continuous service" means a plan or
38 arrangement in which a subscription or purchasing agreement
39 continues until the consumer cancels the service.