

# Client Alert

November 2020

## New York Enacts Comprehensive Automatic Renewal Law Modeled After California Law

Subscription-based business models and the automatic renewal techniques they regularly utilize have garnered significant attention from legislators, regulators, and plaintiff's attorneys. An increasing number of U.S. states have enacted automatic renewal laws, or enhanced existing ones, to address aspects of these contracts, including how the terms must be disclosed to consumers, the type of consent that must be obtained from purchasers prior to signing them up to an automatic renewal program, and the ways in which cancellation of an automatically renewing contract may be effectuated. This has resulted in a patchwork system whereby the requirements placed on businesses may vary state to state.

New York has now joined other states with some of the most burdensome automatic renewal laws, enacting a sweeping law that regulates automatic renewal disclosures and cancellation procedures. New York Senate Bill 1475, signed into law by Governor Cuomo on November 11, 2020, reflects a significant extension from the existing automatic renewal law. The law, which will be codified as New York General Business Law §527 and entitled "Prohibits certain practices by businesses making an automatic renewal or continuous service offer to consumers in the state," goes into effect on February 9, 2021. In short, the law is essentially a carbon copy of the onerous California automatic renewal law. The new law applies to any "paid subscription or purchasing agreement" that is "automatically renewed at the end of a definite term for a subsequent term."

Key requirements of the new law are outlined below:

1. The automatic renewal offer terms must be displayed in more clear and conspicuous type than the surrounding text. In other words, in larger font than surrounding text, contrasting type font or color to the surrounding text, or set off by a symbol or other mark in close proximity to the consent. Note that the law uses the term "clear and conspicuous" but, like California, has a special definition for clear and conspicuous, i.e., more conspicuous.
2. The automatic renewal terms must include the following disclosures:
  - a) that the subscription or purchasing agreement will continue until the

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- consumer cancels; b) the description of the cancellation policy that applies to the offer; c) the recurring charges that will be charged to the consumer's credit or debit card or payment account with a third party as part of the automatic renewal plan or arrangement, and that the amount of the charge may change, if that is the case, and the amount to which the charge will change, if known; d) the length of the automatic renewal term or that the service is continuous, unless the length of the term is chosen by the consumer; and e) the minimum purchase obligation, if any.
3. A business must first obtain the consumer's affirmative consent to the automatic renewal offer terms prior to charging the consumer's credit or debit card.
  4. To effectuate cancellations, a business must provide a toll-free number, email address, postal address (only when the seller directly bills the customer), or another cost-effective, timely, and easy-to-use mechanism for cancellation. In addition, a consumer that signs up for an automatic renewal online must be permitted to cancel online. This may include a termination email formatted and provided by the business that a consumer can send to the business without additional information.
  5. A business must provide an acknowledgment that includes the automatic renewal terms, cancellation policy, and information regarding how to cancel.
  6. If the offer includes a free gift or trial, the offer must include a clear and conspicuous explanation of the price that will be charged at the end of the trial.
  7. If there is a material change in the terms of an automatic renewal offer that has been accepted by a New York consumer, then the business must provide the consumer with a clear and conspicuous notice of the material change and provide information regarding how to cancel.

If there is a violation of this law, the New York Attorney General may seek an injunction and an order for restitution. Further, courts may impose civil penalties of \$100 per violation, or up to \$500 per "knowing" violation.

Marketers offering subscription arrangement programs to New York consumers should take steps now to ensure that their enrollment path meets these stringent requirements. Please contact the Olshan attorney with whom you regularly work or one of the attorneys listed below if you would like to discuss further or have questions.

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