

NY Passes Law Governing Automatic Renewals

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In recent years, a number of states have passed laws governing automatic renewals. New York is the latest state to jump on this trend. Its current law only applies to certain contracts “for service, maintenance, or repair to or for any real or personal property.” The new law, which will become effective in February 2021, applies more broadly to any automatically renewing “subscription” or “purchasing agreement,” as those terms are defined by the statute.

Under the new law, businesses must generally:

- Present the material terms of the offer – including information about recurring charges, the length of the renewal term, and cancellation policy – in a clear and conspicuous manner and in visual proximity to the request for a consumer’s consent.
- Obtain affirmative consent to the agreement containing the automatic renewal terms before charging the consumer.
- Provide an acknowledgement that includes the automatic renewal terms, the cancellation policy, and information on how to cancel in a manner that is capable of being retained by the consumer.
- Establish an easy-to-use cancellation policy.
- Provide consumers with notice of material changes, along with information on how to cancel, in a manner that is capable of being retained by the consumer.

The law authorizes New York’s attorney general to seek an injunction, and permits courts to impose civil penalties of \$100 per violation, or up to \$500 per knowing violation. However, the law also provides a good faith defense for businesses whose alleged violations were “not intentional and resulted from a bona fide error made notwithstanding the maintenance of procedures reasonably adopted to avoid such error.”

Although it’s too early to predict what enforcement will look like, regulators and plaintiffs’ attorneys have been quick to challenge violations of other state and federal laws governing automatic renewals. See, for example, our posts about a [\\$10 million FTC settlement](#) or a [class action seeking around \\$250 million](#). If you haven’t taken a look at how you structure your automatic renewal programs recently, the enactment of this law may provide a good excuse to do that.