

AMENDED IN SENATE APRIL 21, 2009

AMENDED IN SENATE APRIL 2, 2009

SENATE BILL

No. 340

Introduced by Senator Yee
(Coauthor: Senator DeSaulnier)
(Coauthor: Assembly Member Torlakson)

February 25, 2009

An act to add Article 9 (commencing with Section 17600) to Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, relating to advertising.

LEGISLATIVE COUNSEL'S DIGEST

SB 340, as amended, Yee. Advertising: automatic renewal purchases.

Existing law prohibits any person with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, from making or disseminating or causing to be made or disseminated before the public in this state, or in any state, any statement concerning that property or those services that is untrue or misleading, and that is known to be untrue or misleading, or for any person to make or disseminate or cause to be made or disseminated a statement as part of a plan or scheme with the intent not to sell that property or those services so advertised at the price stated. A violation of these provisions is a crime, punishable by specified penalties, and a violation of those provisions is subject to specified civil liability.

This bill would require all printed marketing materials containing an offer with automatic renewal offer terms, as defined, to have all automatic renewal offer terms appear on an order form in the immediate

proximity to the area on the form at which the customer selects the subscription or purchasing agreement billing terms or where the subscription or purchasing agreement billing terms are described. The bill would require the order form to clearly and conspicuously disclose that the customer is agreeing to an automatic renewal subscription or purchasing agreement. The bill would impose similar requirements for any automatic renewal offer made over the telephone or on an Internet Web page.

The bill would require, in any automatic renewal offer, a business to clearly and conspicuously state the automatic renewal offer terms and obtain the customer’s affirmative consent to those terms before fulfilling any subscription or purchasing agreement on an automatic renewal basis. The bill would also require an automatic renewal subscription or purchasing agreement to clearly and conspicuously display a toll-free telephone number, if available, or other specified means that the customer could use for cancellation.

The bill would also prohibit a business from representing a product as free if the cost of the product is incorporated into the price of the accompanying item to be purchased under automatic renewal conditions.

The bill would also make continuous renewals, as defined, subject to these provisions.

A violation of these provisions would not be a crime, but would be subject to enforcement by any available civil remedies.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 9 (commencing with Section 17600) is
2 added to Chapter 1 of Part 3 of Division 7 of the Business and
3 Professions Code, to read:

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5 Article 9. Automatic Purchase Renewals

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7 17600. It is the intent of the Legislature to end the practice of
8 charging consumer credit cards without their explicit consent for
9 ongoing shipments of a product or ongoing deliveries of service.

10 17601. For the purposes of this title:

- 1 (a) “Automatic renewal” means a plan or arrangement in which
2 a subscription or purchasing agreement is automatically renewed
3 at the end of a definite term for a subsequent term.
- 4 (b) “Automatic renewal offer terms” means the following clear
5 and conspicuous disclosures:
- 6 (1) That the subscription or purchasing agreement will continue
7 unless the customer notifies the business to stop.
- 8 (2) That the customer has the right to cancel.
- 9 (3) That the customer will be billed, credit card charged, or
10 other appropriate description of the payment method.
- 11 (4) The length of the automatic renewal term or that the renewal
12 is continuous, unless the length of the term is chosen by the
13 customer.
- 14 (5) That the price for future automatic renewal terms may
15 change.
- 16 (6) The minimum purchase obligation, if any.
- 17 (c) “Clear and conspicuous” or “clearly and conspicuously”
18 means ~~a statement or communication, written or oral,~~ *with respect*
19 *to a written statement or communication,*, presented in a font, size,
20 color, location, and contrast against the background in which it
21 appears, compared to the other matter with which it is presented,
22 so that it is readily understandable, noticeable, and readable. With
23 respect to any promotional materials communicated through any
24 nonprint medium, including such formats as telephone, television,
25 radio, CD-ROM, DVD, *or* other electronic, magnetic, or interactive
26 media, audio disclosures shall be delivered in a volume and
27 cadence sufficient to be readily audible and understandable.
- 28 (d) *“Continuous renewal” means a plan or arrangement in*
29 *which a subscription or purchasing agreement is continuously*
30 *renewed until the customer cancels the renewal.*
- 31 ~~(d)~~
- 32 (e) “Customer” means a person who accepts an offer or portion
33 or features of an offer.
- 34 ~~(e)~~
- 35 (f) “Marketing materials” include any offer, solicitation, script,
36 product description, publication, or other promotional materials,
37 renewal notice, purchase order device, fulfillment material, or any
38 agreement for the sale or trial viewing of products that are delivered
39 ~~by mail, in person~~ *in person or by mail,* television or radio
40 broadcast, e-mail, Internet, Internet Web page, or telephone or

1 other telecommunication device, or appearing in any newspaper
2 or magazine ~~or on any insert thereto,~~ *on any insert thereto, or on*
3 *any Internet link or pop-up window.*

4 *17601.5. All automatic renewal provisions in this article shall*
5 *apply to continuous renewals as defined in subdivision (d) of*
6 *Section 17601.*

7 17602. All printed marketing materials containing an offer
8 with an automatic renewal term shall comply with the following:

9 (a) The customer's agreement to the automatic renewal offer
10 terms shall be obtained in accordance with either paragraph (1) or
11 (2) so that the customer is given the opportunity to expressly
12 consent to the offer.

13 (1) All automatic renewal offer terms shall appear on the order
14 form in immediate proximity to the area on the form at which the
15 customer selects the subscription or purchasing agreement billing
16 terms or where the subscription or purchasing agreement billing
17 terms are described, and the order form shall clearly and
18 conspicuously disclose that the customer is agreeing to an
19 automatic renewal subscription or purchasing agreement. The
20 automatic renewal offer terms shall also appear on materials that
21 can be retained by the customer.

22 (2) ~~Both~~ Both of the following:

23 (A) On the front of the order form, the marketing materials shall
24 (i) refer to the subscription or purchasing agreement using the term
25 "automatic renewal" or "continuous renewal," (ii) clearly and
26 conspicuously state that the customer is agreeing to the automatic
27 renewal, and (iii) specify where the full terms of the automatic
28 renewal offer may be found.

29 (B) The marketing materials shall clearly and conspicuously
30 state the automatic renewal offer terms and these shall be presented
31 together preceded by a title identifying them specifically as the
32 "Automatic Renewal Terms," "Automatic Renewal Conditions,"
33 "Automatic Renewal Obligations," "Continuous Renewal Service
34 Terms," or other description of similar import.

35 (b) In addition to the requirements of subdivision (a) above, all
36 marketing materials that offer an automatic renewal, when viewed
37 as a whole, shall clearly and conspicuously disclose the material
38 terms of the automatic renewal offer and shall not misrepresent
39 the material terms of the offer.

1 (c) In addition to the requirements of subdivisions (a) and (b)
2 above, an automatic renewal shall clearly and conspicuously
3 describe the cancellation policy and how to cancel, including, but
4 not limited to, a toll-free telephone number if available, other
5 telephone number, postal address, or electronic mechanism on the
6 Internet Web site or a published page of printed material.

7 17603. In any automatic renewal offer made over the telephone,
8 a business shall clearly and conspicuously state the automatic
9 renewal offer terms prior to obtaining a customer's consent and
10 payment information. The business shall obtain a clear affirmative
11 statement from the customer agreeing to the automatic renewal
12 offer terms after they have been stated to the customer. The
13 business shall send a written acknowledgment to any customer
14 who accepts an automatic renewal offer over the telephone, and
15 that acknowledgment shall contain the toll-free telephone number
16 if available, other telephone number, postal address, or electronic
17 mechanism for cancellation. An offer consisting of printed material
18 that directs the customer to a telephone number as the method of
19 ordering shall be considered an offer made over the telephone for
20 purposes of this title provided that, if the printed material contains
21 all of the automatic renewal offer terms, the business shall not be
22 required to send a written acknowledgment to customers of such
23 an offer. *In any automatic renewal offer made over the telephone,*
24 *a business shall comply with Section 310.1(a)(6)(i) and Section*
25 *310.5(a)(5) of Title 16 of the Code of Federal Regulations.*

26 17604. In any automatic renewal offer made on an Internet
27 Web page, the business shall clearly and conspicuously disclose
28 the automatic renewal offer terms prior to the button or icon on
29 which the customer must click to submit the order (the submit
30 button). In addition, in any automatic renewal offer made on an
31 Internet Web page on which the automatic renewal offer terms do
32 not appear immediately above the submit button, the customer
33 shall be required to affirmatively consent to the automatic renewal
34 offer terms, such as by clicking "OK," checking an unchecked
35 box, or otherwise taking an affirmative action immediately adjacent
36 to the automatic renewal offer terms before the customer submits
37 the order. The automatic renewal offer terms shall be preceded by
38 a title identifying them as the "Automatic Renewal Terms,"
39 "Automatic Renewal Conditions," "Automatic Renewal
40 Obligations," "Continuous Renewal Service Terms," or other

1 description of similar import. An offer consisting of printed
2 material that directs the customer to an Internet Web page as the
3 method of ordering shall be considered an offer made on an Internet
4 Web page for purposes of this title.

5 17605. In any automatic renewal offer, a business shall clearly
6 and conspicuously state the automatic renewal offer terms and
7 obtain the customer’s affirmative consent to those terms before
8 fulfilling any subscription or purchasing agreement on an automatic
9 renewal basis. In addition, all marketing materials that offer an
10 automatic renewal subscription or purchasing agreement shall
11 clearly and conspicuously display the cancellation policy and how
12 to cancel.

13 17606. No business shall represent that a product is “free” if
14 the cost of the product is incorporated into the price of the
15 accompanying item to be purchased under automatic renewal
16 conditions.

17 17607. Notwithstanding Section 17534, a violation of this
18 article shall not be a crime. However, all available civil remedies
19 that are applicable to a violation of this article may be employed.

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