

AMENDED IN ASSEMBLY JUNE 16, 2009

AMENDED IN SENATE APRIL 21, 2009

AMENDED IN SENATE APRIL 2, 2009

**SENATE BILL**

**No. 340**

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

February 25, 2009

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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:~~

*This bill would require all marketing materials containing an offer with an automatic renewal, as defined, to comply with specified requirements, including that the automatic renewal offer terms, as defined, be presented in a clear and conspicuous manner before the subscription or purchasing agreement is fulfilled, that the business obtain the customer's consent to the terms, and that the marketing materials comply with various other requirements. The bill would require, for printed marketing materials, that the automatic renewal offer terms be presented together preceded by a title identifying them as the "Automatic Renewal Terms," "Continuous Service Terms," or other similar description, in accordance with certain procedures. The bill would impose similar requirements for automatic renewals and continuous service offers made on an Internet Web page. The bill would also require, in any automatic renewal offer made over the telephone, that the business comply with federal regulations, as specified.*

*The bill would provide that in any case in which a business sends any goods, wares, merchandise, or products to a customer, under a continuous service agreement or automatic renewal of a purchase, without first obtaining the customer’s affirmative consent, the goods, wares, merchandise, or products shall for all purposes be deemed an unconditional gift to the customer.*

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

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:

4

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Article 9. Automatic Purchase Renewals

6

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~~ *article*:

11

(a) “Automatic renewal” means a plan or arrangement in which  
12 a subscription or purchasing agreement is automatically renewed  
13 at the end of a definite term for a subsequent term.

14

(b) “Automatic renewal offer terms” means the following clear  
15 and conspicuous disclosures:

16

(1) That the subscription or purchasing agreement will continue  
17 unless the customer ~~notifies the business to stop~~  *cancels.*

18

(2) ~~That the customer has the right to cancel~~ *The description of*  
19 *the cancellation policy.*

20

(3) That the customer will be billed, ~~credit card~~  *that his or her*  
21  *online payment account will be* charged, or other ~~appropriate~~  
22  *description of the payment method.*

23

(4) The length of the automatic renewal term or that the ~~renewal~~  
24  *service* is continuous, unless the length of the term is chosen by  
25 the customer.

1 (5) That the price for future automatic renewal terms may  
2 change.

3 (6) The minimum purchase obligation, if any.

4 (c) “Clear and conspicuous” or “clearly and conspicuously”  
5 means, with respect to a written statement or communication,  
6 presented in a font, size, color, location, and contrast against the  
7 background in which it appears, compared to the other matter with  
8 which it is presented, so that it is readily understandable,  
9 noticeable, and readable. With respect to any promotional materials  
10 communicated through any nonprint medium, including such  
11 formats as telephone, television, radio, CD-ROM, DVD, or other  
12 electronic, magnetic, or interactive media, audio disclosures shall  
13 be delivered in a volume and cadence sufficient to be readily  
14 audible and understandable.

15 (d) “Continuous renewal” means a plan or arrangement in which  
16 a subscription or purchasing agreement is continuously renewed  
17 until the customer cancels the renewal.

18 (e) “Customer” means a person who accepts an offer or portion  
19 or features of an offer. *means in larger type than the surrounding*  
20 *text, or in contrasting type, font, or color to the surrounding text*  
21 *of the same size, or set off from the surrounding text of the same*  
22 *size by symbols or other marks, in a manner that clearly calls*  
23 *attention to the language. With respect to any communication*  
24 *through any nonprint medium, audio disclosures shall be delivered*  
25 *in a volume and cadence sufficient to be readily audible and*  
26 *understandable.*

27 (d) “Continuous service” means a plan or arrangement in which  
28 a subscription or purchasing agreement continues until the  
29 customer cancels the service.

30 (e) “Customer” means a person who accepts an offer or portion  
31 or features of an offer, but does not mean commercial customers,  
32 including those accepting an offer through business-to-business  
33 contracts.

34 (f) “Marketing materials” include any offer, solicitation, script,  
35 product description, publication, or other promotional materials,  
36 renewal notice, purchase order device, fulfillment material, or any  
37 agreement for the sale or trial viewing of products that are delivered  
38 in person or by mail, television or radio broadcast, e-mail, Internet,  
39 Internet Web page, or telephone or other telecommunication device,

1 or appearing in any newspaper or magazine, on any insert thereto,  
2 or on any Internet link or pop-up window.

3 ~~17601.5. All automatic renewal provisions in this article shall~~  
4 ~~apply to continuous renewals as defined in subdivision (d) of~~  
5 ~~Section 17601.~~

6 ~~17602. All printed marketing materials containing an offer~~  
7 ~~with an automatic renewal term shall comply with the following:~~

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

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

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

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

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

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

39 ~~(c) In addition to the requirements of subdivisions (a) and (b)~~  
40 ~~above, an automatic renewal shall clearly and conspicuously~~

1 describe the cancellation policy and how to cancel, including, but  
2 not limited to, a toll-free telephone number if available, other  
3 telephone number, postal address, or electronic mechanism on the  
4 Internet Web site or a published page of printed material.

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

24 ~~17604. In any automatic renewal offer made on an Internet  
25 Web page, the business shall clearly and conspicuously disclose  
26 the automatic renewal offer terms prior to the button or icon on  
27 which the customer must click to submit the order (the submit  
28 button). In addition, in any automatic renewal offer made on an  
29 Internet Web page on which the automatic renewal offer terms do  
30 not appear immediately above the submit button, the customer  
31 shall be required to affirmatively consent to the automatic renewal  
32 offer terms, such as by clicking "OK," checking an unchecked  
33 box, or otherwise taking an affirmative action immediately adjacent  
34 to the automatic renewal offer terms before the customer submits  
35 the order. The automatic renewal offer terms shall be preceded by  
36 a title identifying them as the "Automatic Renewal Terms,"  
37 "Automatic Renewal Conditions," "Automatic Renewal  
38 Obligations," "Continuous Renewal Service Terms," or other  
39 description of similar import. An offer consisting of printed  
40 material that directs the customer to an Internet Web page as the~~

1 method of ordering shall be considered an offer made on an Internet  
2 Web page for purposes of this title.

3 ~~17605. In any automatic renewal offer, a business shall clearly  
4 and conspicuously state the automatic renewal offer terms and  
5 obtain the customer's affirmative consent to those terms before  
6 fulfilling any subscription or purchasing agreement on an automatic  
7 renewal basis. In addition, all marketing materials that offer an  
8 automatic renewal subscription or purchasing agreement shall  
9 clearly and conspicuously display the cancellation policy and how  
10 to cancel.~~

11 ~~17606. No business shall represent that a product is "free" if  
12 the cost of the product is incorporated into the price of the  
13 accompanying item to be purchased under automatic renewal  
14 conditions.~~

15 ~~17607. Notwithstanding Section 17534, a violation of this  
16 article shall not be a crime. However, all available civil remedies  
17 that are applicable to a violation of this article may be employed.~~

18 *17602. All marketing materials containing an offer with an  
19 automatic renewal shall comply with all of the following:*

20 *(a) The automatic renewal offer terms shall be presented in a  
21 clear and conspicuous manner and these terms, as well as the  
22 cancellation policy, shall be presented before the subscription or  
23 purchasing agreement is fulfilled.*

24 *(b) The business shall obtain the customer's affirmative consent  
25 that he or she agrees to the automatic renewal offer terms.*

26 *(c) The automatic renewal offer terms, cancellation policy, and  
27 how to cancel shall appear in a written acknowledgment that can  
28 be retained by the customer. The written acknowledgment may be  
29 mailed to the customer separately or included with a welcome  
30 letter or the first invoice or first delivery of the subscription or  
31 purchase. The customer's ability to store or print the automatic  
32 renewal offer terms, cancellation policy, and how to cancel shall  
33 comply with this subdivision. If the offer includes a free trial, the  
34 business shall disclose how to cancel before the customer pays for  
35 the goods or services.*

36 *(d) A business making automatic renewal offers shall provide  
37 a toll-free telephone number or another cost-effective and  
38 consumer friendly mechanism for cancellation to be described in  
39 the written acknowledgment.*

1 (e) *The marketing materials, when viewed as a whole, shall not*  
2 *misrepresent the material terms of the offer.*

3 (f) *The requirements of this article shall apply prior to the*  
4 *completion of the initial order and then again only prior to any*  
5 *material change in the terms of the automatic renewal.*

6 17603. *For printed marketing materials, the automatic renewal*  
7 *offer terms shall be presented together, preceded by a title*  
8 *identifying them as the “Automatic Renewal Terms,” “Continuous*  
9 *Service Terms,” or other similar description. The automatic*  
10 *renewal terms shall be presented in accordance with either of the*  
11 *following:*

12 (a) *The automatic renewal offer terms shall appear on the order*  
13 *form.*

14 (b) *On the order form, the offer shall clearly and conspicuously*  
15 *(1) refer to the subscription or purchasing agreement using the*  
16 *term “automatic renewal,” “continuous service,” or other words*  
17 *of similar meaning, (2) state that the customer is agreeing to the*  
18 *automatic renewal, and (3) specify where the full terms of the*  
19 *automatic renewal offer may be found.*

20 17604. *In any automatic renewal offer made over the telephone,*  
21 *a business shall comply with Section 310.4(a)(6)(i)(C) and Section*  
22 *310.5(a)(5) of Title 16 of the Code of Federal Regulations. An*  
23 *offer consisting of printed material that directs the customer to*  
24 *place an inbound call to a telephone number as the method of*  
25 *ordering shall be considered an offer made over the telephone.*

26 17605. *In any automatic renewal or continuous service offer*  
27 *made on an Internet Web page, the automatic renewal offer terms*  
28 *shall be preceded by a title identifying them as the “Automatic*  
29 *Renewal Terms,” “Continuous Service Terms,” or other similar*  
30 *description.*

31 17606. *All automatic renewal provisions in this article shall*  
32 *apply to a continuous service. Marketing materials for*  
33 *month-to-month contracts containing an offer with an automatic*  
34 *renewal shall be required to comply with the requirements of this*  
35 *article only prior to the completion of the initial order and then*  
36 *again only prior to any material change in the terms of the*  
37 *automatic renewal.*

38 17607. *In any case in which a business sends any goods, wares,*  
39 *merchandise, or products to a customer, under a continuous service*  
40 *agreement or automatic renewal of a purchase, without first*

1 *obtaining the customer’s affirmative consent to automatic renewal*  
2 *offer terms or to any material change in the terms of the automatic*  
3 *renewal, as described in this article, the goods, wares,*  
4 *merchandise, or products shall for all purposes be deemed an*  
5 *unconditional gift to the customer, who may use or dispose of the*  
6 *same in any manner he or she sees fit without any obligation*  
7 *whatsoever on the customer’s part to the business, including, but*  
8 *not limited to, bearing the cost of or responsibility for shipping*  
9 *any goods, wares, merchandise, or products to the business.*

10 *17608. (a) Notwithstanding Section 17534, a violation of this*  
11 *article shall not be a crime. However, all available civil remedies*  
12 *that apply to a violation of this article may be employed.*

13 *(b) If a business complies with the provisions of this article in*  
14 *good faith, it shall not be subject to civil remedies.*

15 *17609. The following are exempt from the requirements of this*  
16 *article:*

17 *(a) Any service provided by a business or its affiliate where*  
18 *either the business or its affiliate is doing business pursuant to a*  
19 *franchise issued by a political subdivision of the state or a license,*  
20 *franchise, certificate, or other authorization issued by the*  
21 *California Public Utilities Commission (CPUC).*

22 *(b) Any service provided by a business or its affiliate where*  
23 *either the business or its affiliate is regulated by the CPUC, the*  
24 *Federal Communication Commission, or the Federal Energy*  
25 *Regulation Commission.*

26 *(c) Any entity regulated by the Department of Insurance.*

27 *(d) Alarm company operators, as defined in Section 7590.2,*  
28 *and regulated pursuant to Chapter 11.6 (commencing with Section*  
29 *7590) of Division 3.*

30 *17610. This article shall become operative on June 1, 2010.*

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