

Senate Bill No. 340

Passed the Senate August 31, 2009

Secretary of the Senate

Passed the Assembly August 24, 2009

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, Yee. Advertising: automatic renewal and continuous service offers.

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, on and after December 1, 2010, make it unlawful for any business making an automatic renewal, as defined, or continuous service, as defined, offer to a consumer in this state to, among other things, fail to present the automatic renewal or continuous service offer terms in a clear and conspicuous manner, charge the consumer for an automatic renewal or continuous service without first obtaining the consumer's affirmative consent, and to fail to provide an acknowledgment that includes the automatic renewal or continuous service offer terms, cancellation policy, and information regarding how to cancel in a manner that is capable of being retained by the consumer. In the case of a material change in the terms of the automatic renewal or continuous service offer, the bill would require the business to provide the consumer with a clear and conspicuous notice of the material change and

information regarding how to cancel. The bill would declare the intent of the Legislature in this regard.

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

A violation of the bill's provisions would not be a crime, but would be subject to enforcement by any available civil remedies, except as specified. The bill would exempt certain services and businesses from its provisions.

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

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

Article 9. Automatic Purchase Renewals

17600. It is the intent of the Legislature to end the practice of ongoing charging of consumer credit or debit cards or third party payment accounts without the consumers' explicit consent for ongoing shipments of a product or ongoing deliveries of service.

17601. For the purposes of this article, the following definitions shall apply:

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

(b) "Automatic renewal offer terms" means the following clear and conspicuous disclosures:

(1) That the subscription or purchasing agreement will continue until the consumer cancels.

(2) The description of the cancellation policy that applies to the offer.

(3) 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.

(4) The length of the automatic renewal term or that the service is continuous, unless the length of the term is chosen by the consumer.

(5) The minimum purchase obligation, if any.

(c) “Clear and conspicuous” or “clearly and conspicuously” means in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks, in a manner that clearly calls attention to the language. In the case of an audio disclosure, “clear and conspicuous” and “clearly and conspicuously” means in a volume and cadence sufficient to be readily audible and understandable.

(d) “Consumer” means any individual who seeks or acquires, by purchase or lease, any goods, services, money, or credit for personal, family, or household purposes.

(e) “Continuous service” means a plan or arrangement in which a subscription or purchasing agreement continues until the consumer cancels the service.

17602. (a) It shall be unlawful for any business making an automatic renewal or continuous service offer to a consumer in this state to do any of the following:

(1) Fail to present the automatic renewal offer terms or continuous service offer terms in a clear and conspicuous manner before the subscription or purchasing agreement is fulfilled and in visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to the request for consent to the offer.

(2) Charge the consumer’s credit or debit card or the consumer’s account with a third party for an automatic renewal or continuous service without first obtaining the consumer’s affirmative consent to the agreement containing the automatic renewal offer terms or continuous service offer terms.

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

(b) A business making automatic renewal or continuous service offers shall provide a toll-free telephone number, electronic mail address, a postal address only when the seller directly bills the consumer, or another cost-effective, timely, and easy-to-use mechanism for cancellation that shall be described in the acknowledgment specified in paragraph (3) of subdivision (a).

(c) In the case of a material change in the terms of the automatic renewal or continuous service offer that has been accepted by a consumer in this state, the business shall provide the consumer with a clear and conspicuous notice of the material change and provide information regarding how to cancel in a manner that is capable of being retained by the consumer.

(d) The requirements of this article shall apply only prior to the completion of the initial order for the automatic renewal or continuous service, except as follows:

(1) The requirement in paragraph (3) of subdivision (a) may be fulfilled after completion of the initial order.

(2) The requirement in subdivision (c) shall be fulfilled prior to implementation of the material change.

17603. In any case in which a business sends any goods, wares, merchandise, or products to a consumer, under a continuous service agreement or automatic renewal of a purchase, without first obtaining the consumer's affirmative consent as described in Section 17602, the goods, wares, merchandise, or products shall for all purposes be deemed an unconditional gift to the consumer, who may use or dispose of the same in any manner he or she sees fit without any obligation whatsoever on the consumer's part to the business, including, but not limited to, bearing the cost of, or responsibility for, shipping any goods, wares, merchandise, or products to the business.

17604. (a) Notwithstanding Section 17534, a violation of this article shall not be a crime. However, all available civil remedies that apply to a violation of this article may be employed.

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

17605. The following are exempt from the requirements of this article:

(a) Any service provided by a business or its affiliate where either the business or its affiliate is doing business pursuant to a franchise issued by a political subdivision of the state or a license,

franchise, certificate, or other authorization issued by the California Public Utilities Commission (CPUC).

(b) Any service provided by a business or its affiliate where either the business or its affiliate is regulated by the CPUC, the Federal Communications Commission, or the Federal Energy Regulatory Commission.

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

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

(e) A bank, bank holding company, or the subsidiary or affiliate of either, or a credit union or other financial institution, licensed under state or federal law.

(f) Service contract sellers and service contract administrators regulated by the Bureau of Electronic and Appliance Repair pursuant to Article 4.5 (commencing with Section 9855) of Chapter 20 of Division 3.

17606. This article shall become operative on December 1, 2010.

Approved _____, 2009

Governor