

# ALERT

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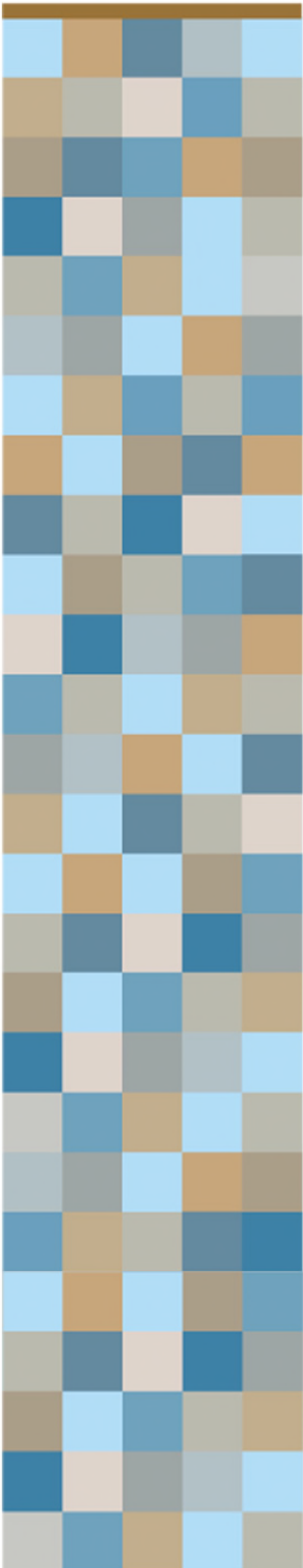
## New York Passes Comprehensive Automatic Renewal Law To Take Effect In February 2021

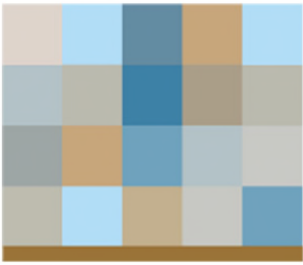
By: **Terese L. Arenth**

In recent years, several states have passed laws governing automatically renewing contracts. New York is the most recent state to join the ranks, by enacting a sweeping law that regulates automatic renewals and adopts many features of the California automatic renewal law, which is one of the most onerous in the country and has been subject of many class action suits. New York's current law governing automatic renewals only applies to certain contracts "for service, maintenance, or repair to or for any real or personal property" in which the renewal period is longer than one month. (*General Obligations Law* §5-903). The new law, which goes into effect on February 9, 2021, applies more broadly to any "paid subscription or purchasing agreement" that is "automatically renewed at the end of definite term for a subsequent term."

Under the new law, businesses must comply with the following key requirements:

- Presenting the material terms of the offer in a clear and conspicuous manner and in visual proximity to the request for the consumer's consent. Material terms include the cancellation policy, information about recurring charges, and the length of the renewal term.
- Obtaining the consumer's affirmative consent to the agreement containing the automatic renewal offer terms prior to charging the consumer.
- Providing an acknowledgement that includes the automatic renewal terms, the cancellation policy, and information regarding how to cancel in a manner that is capable of being retained by the consumer.
- Providing a cost-effective, timely and easy-to-use mechanism for cancellation, such as a toll-free telephone number or email address. In addition, a consumer that signs up for an automatic renewal online must be permitted to cancel exclusively online, which may include a termination email formatted and provided by the business that a consumer can send to the business without additional information.





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- Providing the consumer with clear and conspicuous notice of any material change in the terms of the automatic renewal and also providing information regarding how to cancel in a manner that is capable of being retained by the consumer.

The new law authorizes New York's attorney general to seek an injunction and permits courts to impose civil penalties up to \$100 per violation or up to \$500 for multiple violations resulting from a single act or incident. A knowing violation shall be subject to civil penalties up to \$500 per violation or up to \$1,000 for multiple violations resulting from a single act or incident. The law, however, also provides a good faith defense for businesses whose alleged violations were "not intentional and resulted from bona fide error made notwithstanding the maintenance of procedures reasonably adopted to avoid such error."

Of note, the existing automatic renewal law has not been repealed and, rather, will remain on the books even after the new automatic renewal law takes effect. While the existing automatic renewal law applies to both commercial and consumer contracts, the new law applies only to consumer contracts and will be codified in the *New York General Business Law*, §§527 and 527-A.

If you have any questions regarding this Alert, please feel free to reach out to [Terese Arenth](mailto:Terese.Arenth@moritthock.com) at (516) 880-7235 or [tarenth@moritthock.com](mailto:tarenth@moritthock.com).



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