The New York City Council

Legislation Details (With Text)

File #:	Int 1455-2017 **Version:** *
Name:	Requiring consumers to affirmatively consent to continue being charged at least once a year in any contract containing automatic payments that lasts more than one year.
Type:	Introduction
Status:	Filed (End of Session)
In control:	Committee on Consumer Affairs
On agenda:	2/1/2017
Enactment date:	**Enactment #:**
Title:	A Local Law to amend the administrative code of the city of New York, in relation to requiring consumers to affirmatively consent to continue being charged at least once a year in any contract containing automatic payments that lasts more than one year
Sponsors:	David G. Greenfield, Rafael Salamanca, Jr., Donovan J. Richards
Indexes:	Agency Rule-making Required
Attachments:	1. Summary of Int. No. 1455, 2. Int. No. 1455 - 2/1/17, 3. February 1, 2017 - Stated Meeting Agenda with Links to Files

Date	Ver.	Action By	Action	Result
2/1/2017	*	City Council	Introduced by Council	
2/1/2017	*	City Council	Referred to Comm by Council	
12/31/2017	*	City Council	Filed (End of Session)	

Int. No. 1455

By Council Members Greenfield, Salamanca and Richards

A Local Law to amend the administrative code of the city of New York, in relation to requiring consumers to affirmatively consent to continue being charged at least once a year in any contract containing automatic payments that lasts more than one year

Be it enacted by the Council as follows:

Section 1. Chapter 5 of title 20 of the administrative code of the city of New York is amended by adding

a new subchapter 19 to read as follows:

SUBCHAPTER 19

ANNUAL AFFIRMATION OF SUBSCRIPTION-BASED CONTRACTS

§ 20-824 Affirmative consent for automatic payment contracts lasting more than one year.
§ 20-825 Administrative remedies

§ 20-826 Civil action.

§ 20-824 Affirmative consent for automatic payment contracts lasting more than one year. a. In any consumer contract for a good or service purchased by an individual consumer that contains periodic, automatic payments for a period lasting more than one year:

1. The party providing the good or service must obtain affirmative consent from the consumer at least one time per 12-month period to be able to continue charging the receiving party;

2. The party providing the good or service commits a violation of this section for each automatic charge it applies without affirmative consent; however, the providing party is only subject to one violation per year per contract; and

3. Each contract can lead to an independent violation.

b. For purposes of this subchapter, "affirmative consent" means one or more of the following actions confirming a desire to be charged:

1. Signing a form;

2. Replying to an email with acknowledgment of continued charges;

3. Checking a webpage box where it is made clear that doing so constitutes an electronic signature; and

4. Other actions that indicate an understanding that charges will continue and consent to continue being charged.

c. The affirmative consent requirement is not satisfied if the party providing the good or service presents the request to consent to continue charging within a larger block of text or information, such as a terms and conditions statement and the consumer must consent to the entirety of the block of text or information.

d. This section does not apply to:

1. Any contract in which the city or any local, state or federal government is a party;

2. Any contract involving utility services; or

3. Any contract for the provision or payment of insurance.

§ 20-825 Administrative remedies. a. The commissioner has the power to impose penalties provided for in this subchapter and to grant a consumer all appropriate relief.

b. An individual consumer who is aggrieved by a violation of this subchapter may file a complaint with the commissioner within one year of the party providing the good or service having failed to obtain affirmative consent pursuant to section 20-824.

c. The commissioner shall promulgate rules outlining the department's procedures for addressing and investigating alleged violations of this subchapter.

d. Jurisdiction. 1. The commissioner does not have jurisdiction over a complaint if either party to the contract already has initiated a civil action in a court of competent jurisdiction alleging a violation of this subchapter, unless such civil action has been dismissed without prejudice to future claims.

2. Where the commissioner lacks jurisdiction over a complaint, the commissioner shall notify the following, in writing, within 10 days of discovering the lack of jurisdiction:

(a) The consumer; and

(b) The party providing the good or service.

e. Any provider of goods or services found to be in violation of section 20-824 is liable for:

1. A penalty payable to the consumer in the amount of the annual value of the contract plus an amount of no less than $25 and no more than $250; and

2. A civil penalty payable to the city not to exceed $200.

§ 20-826 Civil action. a. Cause of action. 1. Except as otherwise provided by law, any individual consumer alleging a violation of this subchapter may bring an action in any court of competent jurisdiction for damages as described in subdivision b of this section.

2. Any action alleging a violation of section 20-824 shall be brought within two years after the acts alleged to have violated this chapter occurred.

b. Damages. A plaintiff who prevails on a claim alleging a violation of this chapter shall be awarded

damages in the amount of:

1. The annual value of the contract plus an amount of no less than $25 and no more than $250;

2. Reasonable attorney's fees and costs; and

3. Any other appropriate relief.

§ 2. This local law takes effect one year after it becomes law, except that the commissioner of consumer affairs shall take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such date.

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LS #8146
1/26/17 1:30pm