

House Bill 528

By: Representatives Gaines of the 120th, Sainz of the 180th, Smith of the 18th, Wiedower of the 121st, Burchett of the 176th, and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Article 15 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated,
2 relating to deceptive or unfair trade practices, so as to enact the "Georgia Online Automatic
3 Renewal Transparency Act"; to provide for legislative purpose and intent; to provide for a
4 short title; to provide for definitions; to provide for regulation of certain acts and practices
5 of businesses that offer paid subscriptions or purchasing agreements online subject to
6 automatic renewal or continuous service; to provide for online cancellation; to provide for
7 exceptions; to provide for limitations; to provide that certain automatic online renewal offers
8 and online continuous service offers shall be unlawful; to provide that terms shall be clear
9 and conspicuous; to provide that such online businesses shall obtain customers' consent prior
10 to authorizing a charge to any debit card, credit card, or consumer's account with a third
11 party; to provide for notice and requirements; to provide for unconditional gifts; to provide
12 for exclusions; to provide for construction; to provide for penalties; to provide for related
13 matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 **SECTION 1.**

16 Article 15 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to
17 deceptive or unfair trade practices, is amended by adding a new part to read as follows:

18 "Part 819 10-1-439.5.

20 (a) The purpose of this part shall be to stop the practice of the charging of consumer credit
21 or debit cards or third-party payment accounts for ongoing shipments of a product or
22 ongoing deliveries of service without the consumer's consent and without providing clear
23 and conspicuous methods of cancellation by businesses that operate all or a portion of their
24 business online. It is the intent of the General Assembly that such practices be swiftly
25 stopped, and this part shall be liberally construed and applied to promote its underlying
26 purposes and policies.

27 (b) It is the further intent of the General Assembly that this part be interpreted and
28 construed consistently with interpretations given by the Federal Trade Commission in the
29 federal courts pursuant to Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C.
30 Section 45(a)(1)), as from time to time amended.

31 10-1-439.6.

32 This part shall be known and may be cited as the 'Georgia Online Automatic Renewal
33 Transparency Act.'

34 10-1-439.7.

35 As used in this part, the term:

36 (1) 'Automatic renewal' means a plan or arrangement in which an online paid
37 subscription or purchasing agreement is automatically renewed at the end of a definite
38 term for a subsequent term.

39 (2) 'Consumer' means a natural person residing in this state who enters into a transaction
40 primarily for personal, family, or household purposes.

41 (3) 'Continuous service' means a plan or arrangement in which an online subscription or
42 purchasing agreement continues until the consumer cancels such service.

43 (4) 'Offer terms' means the following clear and conspicuous disclosures to the consumer:

44 (A) That the online subscription or purchasing agreement shall continue until
45 cancellation by the consumer;

46 (B) The description of the cancellation policy as applicable to the automatic renewal
47 offer or arrangement;

48 (C) The recurring charges to be charged to the consumer's credit or debit card or
49 payment account with a third-party payment account as part of the online automatic
50 renewal plan or arrangement, and that the amount of such charge may change, and the
51 amount to which such charge will change, if known;

52 (D) The length of the automatic renewal term or an indication that the service is
53 continuous, unless the length of the term is chosen by the consumer; and

54 (E) The minimum purchase obligation, if any.

55 10-1-439.8.

56 (a) A business that operates all or a portion of its business online that allows a consumer
57 to accept an automatic renewal or continuous service offer online shall allow a consumer
58 to cancel the automatic renewal or continuous service online, at will, and without engaging
59 any further steps that obstruct or delay the consumer's ability to cancel the automatic
60 renewal or continuous service immediately. The business shall provide a method of
61 cancellation that is available online in the form of either:

62 (1) A clear and conspicuous direct link or button which may be located either within a
63 customer account or profile or within the device or user settings; or

64 (2) By an immediately accessible cancellation email formatted and provided by the
65 business that a consumer can send to the business without additional steps or required
66 information.

67 (b) Notwithstanding subsection (a) of this Code section, a business that operates all or a
68 portion of its business online may require a consumer to enter account information or
69 otherwise authenticate their account online before online cancellation of the automatic
70 renewal or continuous service if the consumer has an account with the business. A
71 consumer who is unwilling or unable to enter account information or otherwise
72 authenticate online before online cancellation of the automatic renewal or continuous
73 service shall not be precluded from authenticating or cancelling the automatic renewal or
74 continuous service offline using an alternate method pursuant to subsection (c) of this Code
75 section.

76 (c) A business that operates all or a portion of its business online that makes an automatic
77 renewal offer or continuous service offer shall provide a toll-free telephone number, email
78 address, postal address if the seller directly bills the consumer, or another cost-effective,
79 timely, and easy-to-use mechanism for cancellation that shall be described in the
80 acknowledgment specified in paragraph (3) of Code Section 10-1-439.9.

81 (d) The requirements of this Code section apply to the automatic renewal terms and
82 continuous service terms of the contract entered into online, and the remaining provisions
83 of the contract shall continue to be governed by all applicable laws and regulations.

84 10-1-439.9.

85 It shall be unlawful in this state for any business that operates all or a portion of its business
86 online that makes an automatic renewal offer or continuous service offer to a consumer to:

87 (1) Fail to present the automatic renewal offer terms or continuous service offer terms
88 in a clear and conspicuous manner before the subscription or purchasing agreement is
89 fulfilled and in visual proximity to the request for consumer consent to the offer;

90 (2) Charge the consumer's credit or debit card, or the consumer's third-party payment
91 account, for an automatic renewal or continuous service without first obtaining the
92 consumer's consent to the agreement containing such automatic renewal offer terms or
93 continuous service offer terms, including the terms of an automatic renewal offer or
94 continuous service offer that is made at a promotional or discounted price for a limited
95 period of time;

96 (3) Fail to provide, in a form that is easily retained by the consumer, an acknowledgment
97 that includes the automatic renewal offer terms or continuous service offer terms,
98 cancellation policy, and information regarding how to cancel; or

99 (4) Fail to provide a consumer with notice pursuant to Code Section 10-1-439.10 that
100 clearly and conspicuously states:

101 (A) That the automatic renewal or continuous service shall automatically renew unless
102 it is canceled by the consumer;

103 (B) The length and any additional terms of the renewal period;

104 (C) If sent electronically, the notice shall include either a link or another reasonably
105 accessible electronic method that directs the consumer to the cancellation process; and

106 (D) Contact information for the business.

107 10-1-439.10.

108 (a) A business that operates all or a portion of its business online shall provide a consumer
109 with a notice when:

110 (1) The consumer accepted a free gift or a trial, lasting for more than 31 days, that was
111 included in an automatic renewal offer or continuous service offer;

- 112 (2) The consumer accepted an automatic renewal offer or continuous service offer at a
113 promotional or discounted price, and the applicability of such promotional or discounted
114 price was more than 31 days; or
- 115 (3) The consumer accepted an automatic renewal offer or continuous service offer with
116 an initial term of one year or longer that automatically renews unless the consumer
117 cancels the automatic renewal or continuous service.
- 118 (b) In the case of a material change in the terms of the automatic renewal offer or
119 continuous service offer that has been accepted by a consumer in this state, a business that
120 operates all or a portion of its business online shall provide the consumer with a clear and
121 conspicuous notice of the material change and shall provide information to the consumer
122 regarding how to cancel such automatic renewal offer or continuous service offer in a
123 manner that is easily retained by the consumer.
- 124 (c) The notice required pursuant to paragraphs (1) and (2) of subsection (a) of this Code
125 section shall be provided at least three days before and not more than 21 days before the
126 expiration of the predetermined period of time for which the free gift or trial, or
127 promotional or discounted price, applies.
- 128 (d) The notice required pursuant to paragraph (3) of subsection (a) of this Code section
129 shall be provided at least 15 days and not more than 45 days before the automatic renewal
130 offer or continuous service offer renews.
- 131 (e) If an automatic renewal offer or a continuous service offer requires a notice pursuant
132 to paragraphs (1), (2), and (3) of subsection (a) of this Code section, only the noticed
133 specified in subsection (d) of this Code section shall be required.
- 134 (f) For purposes of this Code section, the term 'free gift' shall not include a free
135 promotional item or gift given by the business that differs from the subscribed product.

136 10-1-439.11.

137 When a business that operates all or a portion of its business online sends any goods,
138 wares, merchandise, or products to a consumer under an automatic renewal of purchase or
139 a continuous service agreement, without first obtaining the consumer's consent pursuant
140 to paragraph (2) of Code Section 10-1-439.9, such goods, wares, merchandise, or products
141 shall for all purposes be deemed an unconditional gift to the consumer, who may use or
142 dispose of such goods, wares, merchandise, and products in any manner he or she sees fit
143 without obligation to the business, including, but not limited to, bearing the cost of, or
144 responsibility for shipping any goods, wares, merchandise, or products to the business.

145 10-1-439.12.

146 The requirements of this part shall apply only prior to the completion of the initial order
147 for the online automatic renewal or continuous service, except:

148 (1) The requirements in paragraphs (3) and (4) of Code Section 10-1-439.9 may be
149 fulfilled after completion of the initial order; and

150 (2) The requirements in Code Section 10-1-439.10 may be fulfilled after completion of
151 the initial order, with the exception of subsection (b) of such Code section, which shall
152 be fulfilled prior to implementation of any material change.

153 10-1-439.13.

154 The following are exempt from the requirements of this part:

155 (1) Any service provided by a business or its affiliate when either the business or its
156 affiliate is doing business as a franchise issued by a political subdivision of this state;

157 (2) Any service provided by a business or its affiliate when either the business or its
158 affiliate is regulated by the Georgia Public Service Commission, the Federal
159 Communications Commission, or the Federal Energy Regulatory Commission;

160 (3) Any entity regulated by the Office of Insurance and Safety Fire Commissioner;

161 (4) Any financial institution as provided in Chapter 1 or 2 of Title 7 or any depository
162 institution as defined in 12 U.S.C. Section 1813(c)(2);

163 (5) Any foreign bank maintaining a branch or agency licensed under the laws of any state
164 of the United States; and

165 (6) Service contract sellers and service contract administrators regulated pursuant to
166 Chapter 12 of Title 13.

167 10-1-439.14.

168 (a) Failure to comply with the provisions of this part shall be considered a deceptive or
169 unfair act or practice which is unlawful and shall therefore be punishable by the provisions
170 of this part; provided, however, that notwithstanding Code Section 10-1-399, a claim of a
171 violation of this part may be brought in a representative capacity and may be the subject
172 of a class action under Code Section 9-11-23; and provided, further, that damages for such
173 violation shall be the actual damages or \$200.00 per violation, whichever is greater.

174 (b) If a business that operates all or a portion of its business online complies with the
175 provisions of this article in good faith, it shall not be subject to civil remedies."

176 **SECTION 2.**

177 This Act shall become effective on January 1, 2024.

178 **SECTION 3.**

179 All laws and parts of laws in conflict with this Act are repealed.