

House Bill 528 (AS PASSED HOUSE AND SENATE)

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" and the "Georgia Online Third-Party Delivery Service
4 Transparency Act"; to provide for short titles; to provide for legislative purpose and intent;
5 to provide for definitions; to provide for regulation of certain acts and practices of businesses
6 that offer paid subscriptions or purchasing agreements online subject to automatic renewal
7 or continuous service; to provide for online cancellation; to provide for exceptions; to
8 provide for limitations; to provide that certain automatic online renewal offers and online
9 continuous service offers shall be unlawful; to provide that terms shall be clear and
10 conspicuous; to provide for customer consent prior to any debit card, credit card, or
11 third-party consumer account charge authorization; to provide for notice and requirements;
12 to provide for consumers to opt out of renewal notice; to provide for unconditional gifts; to
13 provide for exclusions; to provide for construction; to provide for enforcement; to provide
14 for severability; to prohibit a third-party delivery service from taking orders for or arranging
15 for the pickup, transportation, or delivery of ready-to-eat food from a food service
16 establishment without prior written consent from such establishment; to prohibit a third-party
17 delivery service from using a food service establishment's name, likeness, registered
18 trademark, or intellectual property in a manner that implies association, sponsorship, or

19 endorsement without prior written consent from such establishment; to provide for a private
20 cause of action; to provide for related matters; to provide for an effective date and
21 applicability; to repeal conflicting laws; and for other purposes.

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

23 **SECTION 1.**

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

26 "Part 8

27 10-1-439.5.

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

30 10-1-439.6.

31 (a) The purpose of this part shall be to stop the practice of creating unnecessary barriers
32 for customers who wish to cancel automatic renewal or continuous service subscriptions
33 online, particularly when such subscriptions are offered online. It is the intent of the
34 General Assembly that such practice be swiftly stopped, and this part shall be liberally
35 construed and applied to promote its underlying purposes and policies.

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

40 10-1-439.7.

41 As used in this part, the term:

42 (1) 'Automatic renewal' means a plan or arrangement in which an online paid
43 subscription or purchasing agreement is automatically renewed at the end of a definite
44 term of more than 31 days for a subsequent definite term of more than 31 days.

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

47 (3) 'Continuous service' means a plan or arrangement for a paid definite term of more
48 than 31 days renewing for a subsequent definite term of more than 31 days in which an
49 online subscription or purchasing agreement continues until the consumer cancels such
50 service.

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

52 (A) The description of the cancellation policy as applicable to the automatic renewal
53 offer or arrangement;

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

58 (C) The length of the automatic renewal term or an indication that the service is
59 continuous, unless the length of the term is chosen by the consumer; and

60 (D) The minimum purchase obligation, if any.

61 10-1-439.8.

62 (a) Notwithstanding any law to the contrary, any business that allows a consumer to accept
63 an automatic renewal or continuous service offer online shall allow a consumer to cancel
64 the automatic renewal or continuous service online. The business shall provide a method
65 of cancellation that is available online, which may include:

66 (1) A clear and conspicuous link to a website or other online cancellation service; or
67 (2) A cancellation email formatted and provided by the business that a consumer can
68 send to the business without additional information.

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

78 (c) A business that allows a consumer to accept an automatic renewal or continuous
79 service offer online shall provide a toll-free telephone number, email address, postal
80 address if the seller directly bills the consumer, or another cost-effective, timely, and
81 easy-to-use mechanism for cancellation that shall be described in an acknowledgment that
82 includes the automatic renewal offer terms or continuous service offer terms, cancellation
83 policy, and information regarding how to cancel.

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

87 10-1-439.9.

88 (a) It shall be unlawful in this state for any business that allows a consumer to accept an
89 automatic renewal or continuous service offer online to:

90 (1) Fail to present the automatic renewal offer terms or continuous service offer terms
91 in a clear and conspicuous manner before the subscription or purchasing agreement is

92 fulfilled and in visual proximity, or in the case of an offer conveyed by voice, in temporal
93 proximity, to the request for consumer consent to the offer;

94 (2) Charge the consumer's credit or debit card, or the consumer's third-party payment
95 account for an automatic renewal or continuous service without first obtaining the
96 consumer's consent to the agreement containing such automatic renewal offer terms or
97 continuous service offer terms;

98 (3) Fail to provide an acknowledgment that includes the automatic renewal offer terms
99 or continuous service offer terms. Such acknowledgment may be from the business's own
100 website or it may be provided via a link to a separate resource that provides instructions
101 for unique platforms and services or other means that provide such offer terms in a
102 manner easily retained by the consumer; or

103 (4) Fail to provide a consumer with notice pursuant to subsection (b) of this Code
104 section.

105 (b) A business that allows a consumer to accept an automatic renewal or continuous
106 service offer online shall provide the consumer with a notice prior to or within three days
107 after charging the consumer's credit or debit card or payment account with a third party,
108 provided that the consumer has not opted out of receiving such notice. Such notice shall
109 clearly and conspicuously state:

110 (1) That the automatic renewal or continuous service shall automatically renew unless
111 it is canceled by the consumer;

112 (2) The length and any additional terms of the renewal period;

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

115 (4) Contact information for the business.

116 (c) In the case of a material change in the terms of the online automatic renewal offer or
117 continuous service offer that has been accepted by a consumer in this state, a business shall
118 provide the consumer with a clear and conspicuous notice of the material change and shall

119 provide information to the consumer regarding how to cancel such automatic renewal offer
120 or continuous service offer in a manner that is easily retained by the consumer.

121 10-1-439.10.

122 When a business that allows a consumer to accept an automatic renewal or continuous
123 service offer online sends any goods, wares, merchandise, or products to a consumer under
124 an automatic renewal of purchase or a continuous service agreement, without first
125 obtaining the consumer's consent pursuant to paragraph (2) of subsection (a) of Code
126 Section 10-1-439.9, such goods, wares, merchandise, or products shall for all purposes be
127 deemed an unconditional gift to the consumer, who may use or dispose of such goods,
128 wares, merchandise, and products in any manner he or she sees fit without obligation to the
129 business, including, but not limited to, bearing the cost of, or responsibility for shipping
130 any goods, wares, merchandise, or products to the business.

131 10-1-439.11.

132 The requirements of this part shall apply only prior to the completion of the initial order
133 for the online automatic renewal or continuous service; provided, however, that an
134 acknowledgment that includes the automatic renewal offer terms or continuous service
135 offer terms, cancellation policy, and information regarding how to cancel, and the notice
136 required pursuant to subsection (b) of Code Section 10-1-439.9 may be fulfilled after the
137 completion of the initial order.

138 10-1-439.12.

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

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

142 (2) Any service provided by a business or its affiliate when either the business or its
143 affiliate is regulated by the Georgia Public Service Commission, the Georgia Department
144 of Agriculture, the Federal Communications Commission, or the Federal Energy
145 Regulatory Commission;

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

147 (4) Any financial institution as defined in Code Section 7-1-4 or any subsidiary or
148 affiliate of such institution, or any bank holding company as defined in Code
149 Section 7-1-605; and

150 (5) Any foreign bank maintaining a branch or agency licensed under federal law or under
151 the laws of any state of the United States.

152 10-1-439.13.

153 (a) The Attorney General shall be authorized to bring an action under this part to obtain
154 a temporary or permanent injunction prohibiting the use of any method, act, or practice in
155 violation of this part and to obtain restitution for consumers who are residents of this state
156 and who incurred a loss of money or property as the direct result of a violation of this part.

157 (b) If a business that allows a consumer to accept an automatic renewal or continuous
158 service offer online complies with the provisions of this article in good faith, it shall not
159 be subject to civil penalty or damages.

160 (c) There shall be no private right of action for a violation of this part, nor shall a violation
161 of this part serve as the basis for a private right of action under any other provision of law.

162 (d) If any provision of this part or its application to any person or circumstance is held
163 invalid, such invalidity shall not affect other provisions or applications of this part that can
164 be given effect without the invalid provision or application. To this end, the provisions of
165 this part are severable."

166 **SECTION 2.**

167 Said article is further amended by adding a new part to read as follows:

168 "Part 9169 10-1-439.15.170 This part shall be known and may be cited as the 'Georgia Online Third-Party Delivery
171 Service Transparency Act.'172 10-1-439.16.173 The purpose of this part shall be to stop the practice of third-party delivery services taking
174 orders for or arranging for the pickup, transportation, or delivery of ready-to-eat food from
175 a food service establishment and from using such establishment's name, likeness, registered
176 trademark, or intellectual property without prior written consent from such establishment.177 10-1-439-17.178 As used in this part, the term:179 (1) 'Customer' means the person, business, or other entity placing or receiving an order,
180 for remuneration, for the pickup, transportation, or delivery of ready-to-eat food from a
181 food service establishment through a third-party delivery service.182 (2) 'Food service establishment' shall have the same meaning as provided in Code
183 Section 26-2-370.184 (3) 'Ready-to-eat food' means food in a form that is edible without additional preparation
185 to render it safe for consumption.186 (4) 'Third-party delivery service' means a business, other than a food service
187 establishment, that, for remuneration, operates a platform, website, mobile application,

188 or other electronic service through which the order, pickup, transportation, or delivery of
189 ready-to-eat food from a food service establishment to a customer is arranged.

190 10-1-439.18.

191 A third-party delivery service shall not:

192 (1) Take an order for or arrange for the pickup, transportation, or delivery of an order
193 from a food service establishment to a customer without such establishment's prior
194 written consent expressly authorizing such service to take such orders or arrange for the
195 pickup, transportation, and delivery of such orders from such establishment to a
196 customer; or

197 (2) Use a food service establishment's name, likeness, registered trademark, or
198 intellectual property on such service's platform, website, mobile application, or other
199 electronic service or other public-facing materials in a manner that implies association,
200 sponsorship, or endorsement without obtaining such establishment's prior written consent.

201 10-1-439.19.

202 (a) An aggrieved food service establishment alleging a third-party delivery service is in
203 violation of this part may seek judicial enforcement of the requirements of this part in an
204 action brought against such service in the county in which the violation occurred. The
205 following civil penalties shall be imposed for a violation of this part: for the first violation,
206 \$1,000.00; for the second violation, \$2,000.00; and for a third and any subsequent
207 violation, \$10,000.00.

208 (b) In addition to the penalties provided for in subsection (a) of this Code section, an
209 aggrieved food service establishment may bring an action to enjoin a third-party delivery
210 service's violation of this part. If the court finds a violation of this part, the court shall issue
211 an injunction against such service and may require such service to pay the injured
212 establishment all profits derived from or damages resulting from the wrongful acts;

213 provided, however, that, if the court finds that such service committed a wrongful act in
214 bad faith, in the court's discretion, the court shall enter a judgment in an amount not to
215 exceed three times the amount of profits derived and damages resulting from such wrongful
216 acts and award reasonable attorney's fees to such establishment."

217 **SECTION 3.**

218 This Act shall become effective on January 1, 2024. Section 1 of this Act shall apply to any
219 automatic renewal or continuous service plan or arrangement entered into on or after that
220 date. Section 2 of this Act shall apply to any acts, practices, or transactions occurring on or
221 after that date.

222 **SECTION 4.**

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