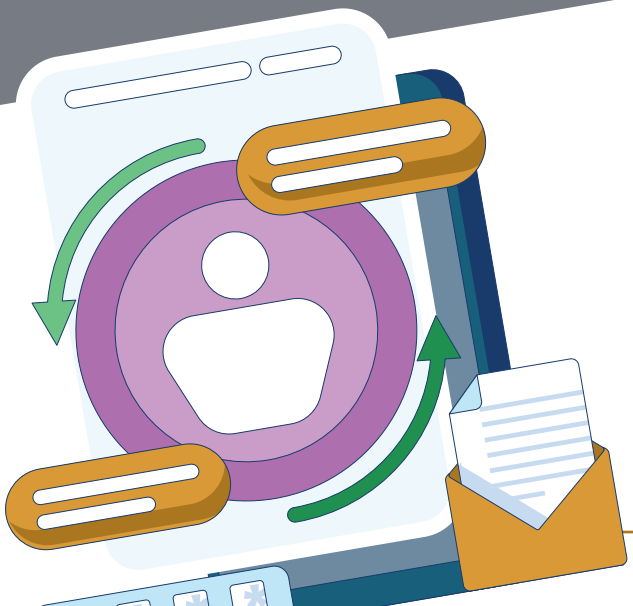
DAVIS+GILBERT

Are Your Subscriptions Compliant?

What Every Business Needs to Know About **Auto-Renewal Laws** to Survive in 2025

A practical breakdown of what's changing and what businesses need to do now.



If you're in the business of selling subscription services to your customers in 2025, compliance is about to get a lot trickier. Tune in below for some sweeping (and increasingly complex) updates from the FTC and individual states governing auto-renewals.

The FTC's final **Rule Concerning Recurring Subscriptions and Other Negative Option Plans** (colloquially known as the "Click to Cancel Rule") is already partially in effect and is slated to go into effect in full in July 2025*.

Since the FTC's new Rule does not preempt more restrictive state laws, states from coast to coast are free to enact their own narrower laws on the topic. We are seeing a wave of new state laws with several requirements that go above and beyond what the FTC requires – and we expect state level enforcement and class actions to be on the rise accordingly.

* This alert originally published on April 21, 2025, has been updated in light of the FTC's announcement to further defer enforcement of some provisions of the Negative Option Rule to July 14, 2025. The previous compliance deadline was May 14, 2025.

© 2025 Davis+Gilbert LLP | Attorney Advertising

Today's Reality

What To Know About the FTC's "Click to Cancel" Rule

Starting in July 2025, the FTC's highly anticipated **Rule Concerning Recurring Subscriptions and Other Negative Option Plans** (the Rule) will be in full effect. Otherwise known as the "Click to Cancel" Rule, the Rule governs automatic subscription renewal programs in all forms of media.

The Rule notably governs B2B transactions – not just B2C – meaning B2B marketers who may previously have disregarded the Rule as a consumer-focused law must also be aware of all the cancellation and disclosure requirements under the Rule. Given that the penalty for **each violation** of the Rule is a civil fine of up to $53,088, it is worth understanding this Rule and its state law counterparts before launching a B2B or B2C subscription service (or if you already operate one).

Current Status of the Rule and Enforcement

While the Rule has faced industry challenges – most notably a challenge in the 8th Circuit – it appears that enforcing the Rule will still be a priority for the FTC. Somewhat surprisingly given Commissioner Holyoak's scathing dissent criticizing the Rule as overreaching when it was finalized, the current FTC has filed a brief in support of the Rule in the 8th Circuit noting that it is backed by evidence of prevalent deceptive practices in the marketplace.

The FTC has also reversed course from the previous pause of its litigation against Amazon (citing budget cuts) and has resumed its expected schedule, stating that it is a priority for the FTC to take action against big technology companies. The current FTC is making good on this promise, as evidenced by the recent $17 million settlement between the FTC and Cleo AI over deceptive subscription practices.

Let's break down what you need to know under both the federal and the wave of state laws.

Disclosures

What Am I Supposed To Disclose?

Broadly, companies must disclose all material terms of the subscription program before a consumer provides their billing information and consents to the overall purchase. There are four key disclosures specifically required under the Rule:

1. whether a consumer will be charged, whether those charges are recurring and any increases in cost after a trial period;
2. deadlines to avoid charges;
3. the amount and frequency of charges; and
4. how to find the simple cancellation method.

The Rule prohibits **any** misrepresentations related to a subscription program (and fines could apply to any misleading claim made about a subscription-based product). So, don't forget about general truth-in-advertising principles when determining what disclosures to make, and where.

How Am I Supposed To Make These Disclosures?

The FTC and most states require "clear and conspicuous" disclosure of all material terms prior to obtaining a consumer's billing information in connection with a negative option feature. Disclosures must be virtually unavoidable by the consumer and must be presented before the consumer consents to the overall purchase.

For visual disclosures on websites, for example, the disclosure must stand out from any accompanying text or visual elements, whether by size, location, or length of time it appears. Further, regardless of media type, the automatic renewal disclosures must not contain any other information or elements that interfere with or otherwise undermine a consumer's ability to understand the disclosures. That means they shouldn't be combined with information unrelated to the subscription feature.

Some states define the parameters of "clear and conspicuous" disclosures with greater specificity. For example, California, Colorado, and Connecticut all require disclosures of material terms to call attention to the language with one of the following:

- Larger type than the surrounding text;
- Contrasting type, font, or color to the surrounding text of the same size;
- Set off from the surrounding text of the same size by symbols or other marks.

Note that the FTC does not expressly prohibit making these disclosures via a hyperlink or mouse-over (as it had initially proposed), **as long as** it is impossible for the consumer to proceed with and complete the transaction without seeing them. For example, a button or link to proceed with a transaction could be grayed out and non-actionable until a consumer has read the disclosures.

What Is Affirmative Consent and How Do I Obtain It?

Merely showing consumers the automatic renewal disclosures in a clear and conspicuous fashion is not enough to get you off the hook with the FTC. The Rule requires that all consumers affirmatively consent to the material terms of the automatic renewal agreement specifically – and not bundled with the overall consent to purchase. This means that businesses must obtain consumers' express informed consent to the negative option feature separately from any other part of the transaction.

The FTC's gold standard for affirmative consent continues to be a standard unchecked check box. Note that the FTC has declined to **prescribe** a check box, noting that other forms of agreement may be similarly enforceable – for example, toggling a button or populating a pop-up and making it impossible for a consumer to proceed with the transaction without agreeing to the automatic renewal disclosures.

The FTC also requires that businesses maintain evidence of verification of each consumer's affirmative consent for at least three years, unless a business can demonstrate by a preponderance of the evidence that consumers cannot complete the negative option transaction without providing affirmative consent. California's new law (effective July 1, 2025) takes this requirement even further, adding the stipulation that businesses must keep these records for one year after the negative option contract is terminated, if this period is longer than three years.

Once a consumer has enrolled in the subscription program, businesses must send them an acknowledgment in retainable form (e.g., an email) that recaps what they have signed up for and how to cancel (ideally with a link or other reasonable electronic direction to the cancellation process as required by certain states including California and Illinois).

What Are the Reminder Notice Requirements? Every State Seems Different!

Generally, companies must issue a reminder notice in advance of a subscription program renewal with an initial term of a year or longer, with states setting various windows for this notice.

The reminder notice must recap the terms of the upcoming renewal and, like the acknowledgment, should provide a link or other reasonable electronic means for the consumer to access the cancellation process.

While the FTC does not currently mandate reminder notices for month-to-month plans, many states including Colorado, Minnesota, California and most recently Massachusetts require additional reminder notices for these types of plans, most commonly in the 12th month of a subscription that will continue into the following month.

For example, as of January 1, 2025, businesses in Minnesota offering subscriptions of any length must send a written notice at least once per calendar year to all subscribers with the terms of service and instructions on how to cancel or manage the service.

Under its new law going into effect on July 1, 2025, California now requires a similar annual reminder, as well as additional notices of any fee changes or changes to other material terms of the negative option agreement.

Massachusetts has even stricter legislation on the topic going into effect on September 2, 2025. The state will require businesses to provide advanced written notice between five and thirty days before each renewal of any subscription with a period of more than 31 days, giving consumers adequate opportunity to cancel their subscriptions before they renew automatically. For subscription periods that are 31 days or shorter, businesses must provide reminder notices with the same information at least as frequently as the consumer is charged. This essentially requires **monthly notices for monthly plans**, something not currently required by any other state.

What If I Offer a Free Trial?

Many states have specific provisions relating to free trials. If your business offers free or discounted trials that convert to paid plans, make sure the terms are clearly disclosed alongside your automatic renewal disclosures — not buried elsewhere. And, as above, the acknowledgment email consumers receive after signing up should recap this information.

Terms and disclosures may include:

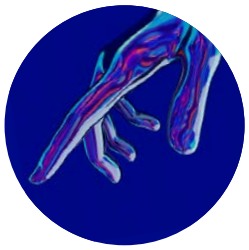
- When the trial ends and converts to a paid renewal;
- Deadlines to cancel before being charged (or charged a non-discounted price); and
- Any other material provisions related to the promotional/discounted period or free trial.

Many states also require that businesses send additional reminder notices to consumers before a free trial converts to a paid subscription. For example, California, businesses offering trial periods of longer than 31 days must send a reminder notice to consumers between 3 and 21 days before the trial period expires, providing consumers a recap of the material terms and how to cancel before the billing deadline.

Cancellation

What Are the New Requirements for Cancellation?

The focal point of the FTC's Rule is the requirement that cancellation be as simple and easy as enrollment, and achievable through the same medium (e.g., online for an offer accepted online). That said, the FTC does not require that businesses offer the exact same cancellation mechanism as its enrollment mechanism.



The FTC's Rule is instead more focused on symmetry – consumers should be able to cancel subscriptions as easily as they signed up for them (though that doesn't mean providing a difficult cancellation process if signing up was difficult)!

Certain states go even further. In California, the law requires that cancellation be "immediate," and offered exclusively online if the offer was accepted online (although "online" would permit a preformatted email cancellation mechanism as long as no other information or action is required of the consumer). As of September, Massachusetts will take an even further step, requiring that the cancellation mechanism be available through the **exact same** app or website as sign-up. And as of January 2025, Minnesota requires that any business with a website offering consumers profiles or accounts also have a simple click to cancel option on that website, regardless of whether the consumer signed up for the subscription through the website.

Can I Try To Save My Customers From Canceling?

While the FTC dropped its proposed prohibition on "saves" – or attempts to entice consumers to keep their subscriptions through incentives or discounts – the agency has reserved the right to issue an advanced notice of proposed rulemaking on that subject in the future.

Some states have their own restrictions on saves. California allows businesses to offer consumers discounts or incentives to stay during cancellation, but a new law requires businesses to simultaneously and prominently offer cancellation while offering these incentives.

Conversely, in a nearly full ban on this practice and in line with what the FTC had initially proposed to do, Minnesota specifically prohibits these offers outright unless the consumer has already affirmatively consented to receive them – for example, by asking "Would you like to consider a different price or plan that could save you money?" – and immediately canceling the consumer's subscription if they decline.

What's Ahead

Which Other States Should I Keep an Eye On?

While the FTC's Rule sets a national floor, it does not preempt stricter state laws. We're seeing a wave of state legislation that imposes additional requirements – especially around cancellation mechanisms, reminder notices, and affirmative consent. While California continues to be one of the nation's strictest laws, it's no longer the only state to worry about, especially as blue state AGs and consumer plaintiffs poise to take action.

Several states have either proposed legislation or have new laws taking effect this year. Keep an eye on pending legislation as the landscape could continue to shift over the coming year.

A "one-size-fits-all" approach won't cut it. To achieve compliance across the U.S., businesses need a 50-state strategy and a clear understanding of how their subscription terms stack up against evolving local laws.

For More Information

For more information about FTC requirements, your state's current laws or pending legislation, or general automatic renewal compliance questions, please contact the attorneys listed below or the Davis+Gilbert attorney with whom you have regular contact.

Paavana Kumar

Partner
212 468 4988
pkumar@dglaw.com

Amy Marcus

Associate
212 974 6957
amarcus@dglaw.com