

118TH CONGRESS
1ST SESSION

S. 1091

To provide for automatic renewal protections, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 30, 2023

Mr. VAN HOLLEN (for himself, Mr. BLUMENTHAL, Mr. LUJÁN, Mr. REED, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To provide for automatic renewal protections, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Consumer Online Pay-
5 ment Transparency and Integrity Act”.

6 **SEC. 2. AUTOMATIC RENEWAL PROTECTIONS.**

7 (a) IN GENERAL.—A person who sells a good or serv-
8 ice to a consumer pursuant to a contract that includes
9 a free-to-pay conversion or negative option feature or any
10 other automatic renewal provision shall disclose such fea-

1 ture or provision and the cancellation procedure clearly
2 and conspicuously in the contract.

3 (b) AUTOMATIC RENEWAL.—A person who sells a
4 good or service to a consumer pursuant to a contract that
5 will automatically renew unless the consumer cancels the
6 contract shall—

7 (1) notify, in the same manner as the consumer
8 entered into the contract, the consumer of—

9 (A) the first automatic renewal (and of
10 each automatic renewal thereafter) not less
11 than 7 days (or a longer time period as deter-
12 mined appropriate by the Commission) before
13 the commencement of the renewal period; and

14 (B) how the consumer may cancel the con-
15 tract, which shall include—

16 (i) an online mechanism for cancella-
17 tion provided by the person; and

18 (ii) a toll-free telephone number, email
19 address, postal mail address, or other cost-
20 effective, timely, and easy-to-use mecha-
21 nism for cancellation provided by the per-
22 son;

23 (2) on an annual basis and notwithstanding the
24 consumer's consent to the initial term (or any subse-
25 quent term), obtain the consumer's express informed

1 consent to renew the contract before charging the
2 consumer for the automatic renewal; and

3 (3) notwithstanding the consumer's consent to
4 the initial term (or any subsequent term), in the
5 event that the person has actual knowledge that the
6 consumer has not used the good or service provided
7 under the contract for a period of 6 consecutive
8 months since the consumer's most recent express in-
9 formed consent—

10 (A) obtain the consumer's express in-
11 formed consent to the automatic renewal before
12 charging the consumer for the automatic re-
13 newal; and

14 (B) notify the consumer that the consumer
15 has a right to terminate the contract and re-
16 ceive a prorated refund for the remaining por-
17 tion of the contract.

18 (c) FREE TRIAL.—A person who sells a good or serv-
19 ice to a consumer pursuant to a contract that includes
20 a free-to-pay conversion feature with a free trial period,
21 shall—

22 (1) notify, in the same manner as the consumer
23 entered into the contract, the consumer—

24 (A) that the consumer will be charged for
25 the good or service not less than 7 days (or a

1 longer time period as determined appropriate by
2 the Commission) before the expiration of the
3 free trial period; and

4 (B) of how the consumer may cancel the
5 contract, which shall include—

6 (i) an online mechanism for cancella-
7 tion provided by the person; and

8 (ii) a toll-free telephone number, email
9 address, postal mail address, or other cost-
10 effective, timely, and easy-to-use mecha-
11 nism for cancellation provided by the per-
12 son; and

13 (2) notwithstanding the consumer's consent to
14 the free trial, obtain the consumer's express in-
15 formed consent to the applicable charge for the good
16 or service not less than 7 days (or a longer time pe-
17 riod as determined appropriate by the Commission)
18 before the expiration of the free trial period and be-
19 fore charging the consumer for the automatic re-
20 newal.

21 (d) AUTOMATIC RENEWAL VOID.—In the case of a
22 violation of subsection (a), (b), or (c)—

23 (1) the applicable automatic renewal provision
24 shall be void, and the contract shall terminate upon
25 the occurrence of such violation; and

1 (2) the person who violated subsection (a), (b),
2 or (c) shall provide the consumer with a refund for
3 all amounts paid by the consumer due to such viola-
4 tion.

5 (e) DARK PATTERNS.—With respect to a contract
6 that includes a free-to-pay conversion or negative option
7 feature or any other automatic renewal provision, a con-
8 sumer’s consent obtained through the use of dark patterns
9 shall not be considered express informed consent.

10 (f) EXEMPTIONS.—The requirements under sub-
11 sections (a), (b), (c), and (d) shall not apply to a service
12 contract or any other person or contract determined ap-
13 propriate by the Commission.

14 (g) EFFECTIVE DATE.—The requirements under this
15 section shall take effect on the date that is 1 year after
16 the date of enactment of this Act.

17 **SEC. 3. ENFORCEMENT BY THE COMMISSION.**

18 (a) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—
19 A violation of section 2 or a rule promulgated under this
20 Act shall be treated as a violation of a rule defining an
21 unfair or a deceptive act or practice under section
22 18(a)(1)(B) of the Federal Trade Commission Act (15
23 U.S.C. 57a(a)(1)(B)).

24 (b) POWERS OF THE COMMISSION.—

1 (1) IN GENERAL.—The Commission shall en-
2 force this Act in the same manner, by the same
3 means, and with the same jurisdiction, powers, and
4 duties as though all applicable terms and provisions
5 of the Federal Trade Commission Act (15 U.S.C. 41
6 et seq.) were incorporated into and made a part of
7 this Act.

8 (2) PRIVILEGES AND IMMUNITIES.—Any person
9 who violates section 2 or a rule promulgated under
10 this Act shall be subject to the penalties and entitled
11 to the privileges and immunities provided in the
12 Federal Trade Commission Act (15 U.S.C. 41 et
13 seq.).

14 (3) AUTHORITY PRESERVED.—Nothing in this
15 Act shall be construed to limit the authority of the
16 Commission under any other provision of law.

17 (4) RULEMAKING.—The Commission shall pro-
18 mulgate in accordance with section 553 of title 5,
19 United States Code, such rules as may be necessary
20 to carry out this Act, or to prevent unfair or decep-
21 tive acts or practices regarding free trials, automatic
22 renewals, or other contracts under which a con-
23 sumer's silence or failure to take an affirmative ac-
24 tion to reject goods or services or to cancel an agree-

1 ment is interpreted by the seller as acceptance of the
2 offer.

3 **SEC. 4. DEFINITIONS.**

4 In this Act:

5 (1) COMMISSION.—The term “Commission”
6 means the Federal Trade Commission.

7 (2) CONSUMER.—The term “consumer” means
8 any person who seeks or acquires, by purchase or
9 lease, any goods or services.

10 (3) DARK PATTERNS.—The term “dark pat-
11 terns” means a user interface that has the substan-
12 tial effect of subverting or impairing user autonomy,
13 decision making, or choice.

14 (4) FREE-TO-PAY CONVERSION.—The term
15 “free-to-pay conversion” has the meaning given that
16 term in section 310.2 of title 16, Code of Federal
17 Regulations.

18 (5) NEGATIVE OPTION FEATURE.—The term
19 “negative option feature” has the meaning given
20 that term in section 310.2 of title 16, Code of Fed-
21 eral Regulations.

22 (6) SERVICE CONTRACT.—The term “service
23 contract” means a contract or agreement for a sepa-
24 rately stated consideration for any duration—

1 (A) to perform the repair, replacement, or
2 maintenance of property or indemnification for
3 service repair, replacement, or maintenance for
4 the operational or structural failure of any
5 motor vehicle or residential or other property
6 due to a defect in materials, workmanship, acci-
7 dental damage from handling, or normal wear
8 and tear; or

9 (B) to indemnify for the same, including
10 towing, rental, or emergency road service or
11 road hazard protection, and which may provide
12 for the service repair, replacement, or mainte-
13 nance of property for damage resulting from
14 power surges or interruption.

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