

# **How to Get Cancelled: An Overview of New Rules Affecting Businesses Offering Subscription Services to Tennessee Customers**

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Subscription services, initially marketed as a cheaper, more accessible option, have recently been experiencing a price surge. In 2023, top subscription apps like Apple Music, Amazon Music, YouTubeTV, Netflix, Peacock, HBO Max, Paramount+, and Disney+ raised their prices. To combat rising costs, consumers may look to cancel services that they don't use. Tennessee's new amendments to its Consumer Protection Act may help consumers cut these services.

Effective January 2023, businesses offering subscriptions to consumers must follow several requirements to ensure the subscription offer is clear and conspicuous. Additionally, these businesses must obtain the consumers affirmative consent to the subscription offer and provide a detailed acknowledgement including the offer's terms and a cancellation policy. Failure to comply with these amendments may result in penalties and enforcement actions.

## **What do these new rules apply to?**

Notwithstanding exemptions explained below, these restrictions apply to businesses making an automatic renewal offer or continuous service offer, which will be referred to as "subscriptions" in this blog. T.C.A. § 47-18-103. Generally speaking, automatic renewals or continuous services are subscriptions that renew at the end of a term (automatic renewals) or continue until the consumer cancels the subscription (continuous service).<sup>1</sup>

This law generally works to protect consumers, meaning individuals acquiring goods or services for personal, family, or household purposes. T.C.A. § 47-18-133.

## **Compliance Tips**

Generally, the law strives to make subscription offer terms clear and conspicuous. T.C.A. § 47-18-103. Visual terms are clear and conspicuous when they are (1) larger than the surrounding text; (2) in contrasting type, font, or color than the surrounding text of the same size; or (3) set off from surrounding same-sized text by symbols or other marks in a way calling attention to the terms. Audible terms are clear and conspicuous when in a volume and cadence that is sufficiently audible and understandable.

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<sup>1</sup> Automatic renewal: "A plan or arrangement in which a paid subscription or purchasing agreement is automatically renewed at the end of a definite term for a subsequent term."

Continuous service: "A plan or arrangement in which a subscription or purchasing agreement continues until the consumer cancels the service."

According to T.C.A. § 47-18-103 and -133, businesses offering subscriptions must do the following:

- **Generally Clear and Conspicuous:** As defined in the previous section, businesses must, before fulfilling the subscription, provide the subscription's offer terms clearly and conspicuously. The offer terms must be near wherever the consumer consents to the offer (more on that below). These offer terms should include (1) a description of the cancellation policy; (2) an explanation of recurring charges and if those charges will change; (3) the length of the subscription; (4) any minimum purchase obligation; and (5) an explanation that the subscription continues until the consumer cancels it.
- **Obtaining Consent:** Before charging the consumer, obtain the consumer's affirmative consent to the subscription's offer terms, including any terms made at a promotional or discounted price.
- **Free Gift or Trial:** Offers including a free trial or gift must provide a "clear and conspicuous" explanation of the price charged at the end of the trial or how the subscription pricing will change. Businesses offering free gifts or trials must also allow consumers to cancel before having to pay for the subscription.
- **The Acknowledgment:** Provide the consumer with an acknowledgment that the consumer can keep. The acknowledgment should include the subscription offer terms and the cancellation policy. Likewise, the acknowledgment must also have information on how to cancel the subscription. For example, the acknowledgment must provide consumers with a timely and easy-to-use method to cancel the subscription, including by toll-free number, email, postal address, or another method. Also, as referenced above, for free gift or trial offers, acknowledgments must explain how the consumer can cancel the subscription before having to pay for the subscription.
- **Online Requirements:** Businesses allowing consumers to consent to the subscription offer online must also allow consumers to end the subscription online. Businesses can provide the consumer with a pre-formatted email that the consumer can send the business if the consumer wants to end the subscription.
- **Changes in Service:** If the subscription's terms materially change, the business must provide a "clear and conspicuous" notice of the material change and provide the consumer information about how to cancel the subscription in a disclosure that the consumer can retain.

## **Exemptions**

The following either currently do not have to comply with these requirements or will no longer have to comply beginning in 2024:

- State or national bank or trust company, or its subsidiary, that is FDIC-insured or its subsidiary
- State or federal credit union that is NCUA-insured
- An individual or entity licensed by Tennessee's Department of Financial Institutions
- A service provided by a business or its affiliate pursuant to (1) a franchise issued a political division of Tennessee or (2) a license, franchise, certificate, or other authorization issued by the Tennessee Public Utility Commission
- An individual or entity, or its affiliate, regulated by the (1) Tennessee Public Utilities Commission, (2) the Federal Communications Commission, or (3) the Federal Energy Regulatory Commission
- An entity or affiliate licensed under Title 56 (Insurance).

- An individual, entity, or affiliate providing service contracts under T.C.A. § 56-2-126, which generally includes extended service motor vehicle contracts, road hazard related contracts, dent removal contracts, or motor vehicle key or key fob replacement contracts.

### **Enforcement**

Failure to comply with the law is a Class B misdemeanor. T.C.A. § 47-18-104. Further, claimants have a private right of action to recover damages due to a business' violation of these amendments. T.C.A. § 47-18-109. The Tennessee Attorney General's Office may also seek an enforcement action for violating these rules. T.C.A. § 47-18-114. Considering that this law has been in effect since January 1, 2023, entities doing business in Tennessee should act now to avoid penalties.