

Podcasts | June 18, 2026

Point-of-Sale Finance Series: Regulation of Subscription and Auto-Renewal Plans

SPEAKERS

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In this episode of *The Consumer Finance Podcast*, [Chris Willis](#) sits down with [Jason Cover](#) and [Colin Wilson](#) to discuss the evolving world of auto-renewal and subscription compliance, including the FTC's click-to-cancel rule, its Eighth Circuit setback, and the states racing to fill the gap. They also spotlight a first-of-its-kind municipal rule proposed by New York City and explain why, even in a deregulatory environment, UDAP authority and ROSCA mean the compliance pressure hasn't gone anywhere. If your business involves subscriptions, recurring billing, or point-of-sale financing, this is a conversation you can't afford to miss.

Transcript

The Consumer Finance Podcast – Point-of-Sale Finance Series: Regulation of Subscription and Auto-Renewal Plans

Host: Chris Willis

Guests: Jason Cover and Colin Wilson

Air Date: June 18, 2026

Chris Willis (00:05):

Welcome to *The Consumer Finance Podcast*. I'm Chris Willis, the co-leader of Troutman Pepper Locke's Consumer Financial Services Regulatory Practice. And today we're gonna be talking about another episode in our ongoing point-of-sale series. And here we're gonna be discussing the impact of auto renewal and subscription laws, both federal and state, on point-of-sale finance. But before we jump into that topic, let me remind you to visit and subscribe to our blogs, [TroutmanFinancialServices.com](#) and [ConsumerFinancialServicesLawMonitor.com](#). And of course, don't forget about all of our other great podcasts, the *FCRA Focus*, *The Crypto Exchange*, *Payments Pros*, and *Moving the Metal*. Those are available on all popular podcast platforms, and speaking of those platforms, if you like this podcast, let us know. Leave us a review on your platform of choice and tell us how we're doing. Now, as I said, we're doing another in our very long and extremely informative point-of-sale finance series here, and we're gonna be talking about the impact of auto-renewal or subscription laws, both state and federal, on point-of-sale finance. So joining me to do that are my two colleagues, Jason Cover and Colin Wilson. Gentlemen, thanks for being on the podcast today.

Jason Cover (01:12):

Thanks, Chris.

Colin Wilson (01:13):

Thanks so much, Chris.

Chris Willis (01:15):

Well, let's just jump straight in and tell the audience why they're wanting to listen to this podcast episode. Why do we care about auto-renewal and subscription laws, of which the FTC click-to-cancel rule is a great example, in the point-of-sale context?

Jason Cover (01:30):

I guess, Chris, maybe these aren't technically finance transactions, but subscription model is an ever-increasingly popular way to sell both goods and services, right? So I think we're all familiar with a music service or a service that provides movies and TV services, right? And you sign up for a month and you can access as many songs or as many movies or TV shows as you want during that month, and then it automatically renews. But there's nothing stopping you from providing any type of service that way or any type of good, right? There's shave clubs and, I don't know, fruit of the month clubs or whatever it is, and all of those can be set up as subscription services. So they could deliver goods or services, and then I think they could implicate consumer financial service laws depending on how they're set up. So there's some reason to be observant there, but more importantly, I think, has been the recent trend in both federal and state legislation and litigation over the way the subscription plans themselves operate.

Chris Willis (02:24):

Right, and let's go ahead and start with the outline of what's happened at the federal level, because we've had a little bit of back and forth with the FTC's click-to-cancel rule, which I would really love for you to tell the audience about now.

Jason Cover (02:40):

That's right, Chris. And technically speaking, there is already a negative option rule that was promulgated by the FTC all the way back in 1973. It only covers pre-notification plans. So these are like a book of the month style club where a periodic notice is sent and you're billed for merchandise unless declined within a set period. But it doesn't cover things like continuity programs, automatic renewals, and free-to-pay trial conversions, right, where they say you sign up, first month is free, and then automatically starts the normal plan at the normal price thereafter. So all of those kind of got wrapped into this new negative option rule that was promulgated in 2024. And when I say negative option, we mean that, right, it's at your option, you can terminate, but you have to terminate. And it's negative consent, essentially, if you don't, it renews you into the next month or the next week or whatever it might be on a rolling basis. So this 2024 plan sort of rewrote the 1973 version of the rule, and I think it did three or four primary things. So there were a bunch of required disclosures about the nature of the plan, the cost, blah, blah, blah, blah, blah. And a part of that included disclosures about free trials that convert to pay plans

as well. Then there was another section about affirmative consent, so making it very clear that you consented to that plan and knew that it continued on a rolling basis.

Jason Cover (04:04):

And then I think one of the most important and maybe the most intuitive parts of it was the “click-to-cancel” portion. So this basically said that if you enroll someone in this, they need to be able to cancel in a reasonable method. And if you’ve called any of us in the last 10 years, we’ve long said this, right? If you enroll in something, you should be able to unenroll in that same manner or in some other reasonable manner. I think on some level, this is common sense, and I think it’s somewhat unfortunate that the rule didn’t kind of just focus on that. In my view at least, the way their required disclosures and informative consents work together, which is kind of an unruly mess. This seems something ripe for simplicity in my mind because it’s so intuitive, I think, for the most of us in our day-to-day life. But in any event, this version of the rule was ultimately vacated by the Eighth Circuit in 2025. Largely on allegations that the FTC just didn’t put in the work to get it done. Interestingly enough, even in our deregulatory environment, this seems to be something that’s still on the radar for the FTC. So in March, the FTC provided a notice of proposed rulemaking to reconsider the rule. So I think my guess would be that it’s in comment period right now, but I think that something very similar would come out of this. Maybe not exactly the same. I hope that it’s more streamlined, but that basic core concept of click-to-cancel I would think would be a big part of any future rulemaking the FTC provides.

Chris Willis (05:29):

Yeah, it’ll be interesting to see what they come out with, and I think on the subject of disclosures, Jason, in addition to the sort of upfront disclosures of, “Hey, this is going to auto-renew and this is when it’ll happen and how much will be charged,” and all that, my recollection is there were also disclosures required sort of keyed to the renewal periods to sort of then facilitate someone then being able to opt out before it renews. Am I right about that?

Jason Cover (05:50):

Yes, that’s correct. And I think a lot of states mirror that as well.

Chris Willis (05:54):

Speaking of states, that’s a perfect segue to what I wanted to ask you about next, because with the federal sort of click-to-cancel rule kind of in and out because of the Eighth Circuit decision that you mentioned, states have jumped into the fray, sometimes with both feet on this issue. So can you tell us what states have jumped in and then what do their laws look like in comparison to what you described with the FTC’s click-to-cancel rule?

Jason Cover (06:15):

I’d say, Chris, over half of the states at this point have some sort of automatic renewal law. The FTC’s implementation was very broadly applying to goods and services, so it really caught just about everything under the sun. I think one big differentiator at a lot of states is that they may apply to just a specific industry, right? So,

some of them do have that broad coverage of goods and services. While some may just be limited as cellular plan, gym memberships or other sort of things that we tend to think of as that kind of old-school renewing plans of that nature. That's kind of first and foremost when you're looking at these laws, is like okay, well, what am I selling and does this statute actually apply to it? So from there, I think you'd get down to maybe half of those states that have that broad coverage, but there's always legislation popping up on this.

Jason Cover (07:04):

It doesn't always get enacted, but if you track this from a legislative perspective, it's a very hard topic for the state legislatures because I think there is, frankly, just a lot of consumer frustration with how some of these plans work and particularly how hard they can be to cancel. Your state representatives are definitely caring about this. And then I think some of the amendments more recently, and California is a good example, I think, as we're seeing in a lot of spheres, right? The states are reacting to the federal regulators, whether they're pushing the perceived ball forward or backwards, the states are kind of falling in line. So some states have gone so far as to amend their statutes even when they have them on the books, to look more like the FTC's 2024 rule. And I guess, broadly speaking, once you're subject to one of these states, there's kind of five or six things they do.

Jason Cover (07:49):

They're very similar in some ways to the FTC's rule, just generally speaking. So, and they might not be as intrusive, but there's usually some sort of consent requirement. There's usually some kind of disclosure about the terms that's required. Sometimes there's mandatory acknowledgments that the provider would need to send afterwards about the nature of the transaction. And then I think one of the key differentiators, I think, at the state level is that a lot of states set timelines about the notices of renewals. So you have to provide the notice no sooner than or no later than X dates, and it's not deemed effective to get that negative consent unless you provide the notices in that window. A lot of states also have cancellation requirements, and then I think you'll just find a hodgepodge of other things, like change in term requirements and things like that. So there's some outliers there, but I think those core concepts are still in play: the consent, disclosures, acknowledgment, and then things about renewal and cancellation.

Chris Willis (08:45):

Yeah, and again, as you said with respect to the FTC rule, a lot of that is just common UDAP sense in the sense of the way you accurately portray a product to a customer and how you disclose it and how you allow them to get in and get out of it.

Jason Cover (08:58):

Absolutely.

Chris Willis (08:59):

So, Colin, let me turn to you, because it's not enough fun to just have states involved in the click-to-cancel or auto-renewal area. We've got a city involved, too, and it's one of our favorite cities. So would you tell us what our

favorite city has done?

Colin Wilson (09:14):

Yeah, as you indicated, another recent significant development in the space has actually been at the municipal level. So back in April of this year, the New York City Department of Consumer and Worker Protection proposed the nation's first municipal click-to-cancel rule, also aimed at reining in what the department framed as subscription traps, so things that might keep consumers paying for services they might not want. And while this is an intriguing development, it's not terribly surprising, again, given the general trends that Jason was discussing at the state level and also current leadership at the department being led by Samuel Levine, who came over from his position at the FTC as the director of the Bureau of Consumer Protection in the prior administration, where he was also involved in the FTC's latest iteration on the click-to-cancel rule. So not terribly surprising that he brought his focus over from Washington, D.C. to New York City in his current role. Generally, what this rule does is aligning with requirements that we see in other states that we've just discussed.

Colin Wilson (10:25):

So it focuses primarily on disclosure requirements and then again, these streamlined cancellation procedures. Specifically, businesses making these automatic renewal service offers are required to disclose various things like a description of the product and services, the costs of those services, frequency of charges, items related to free trial offers, and of course, the available cancellation mechanisms that consumers can take advantage of. These cancellation methods, the idea behind this proposed rule is to make it as easy for consumers to cancel a subscription as it is for them to sign up for one. So it would require businesses to do things like provide the same method of cancellation as they make available to consumers to consent to one of these offers. For listeners that are really familiar with New York state law on this issue, a lot of the requirements in the proposed rule are gonna sound really familiar. And there's a good reason for that, and it's because the substantive requirements of the proposed rule really mirror almost exactly, not quite, but definitely substantively, the current requirements under New York's state law.

Colin Wilson (11:34):

So imposing the same disclosure requirements essentially, essentially the same cancellation requirements. And this reflects an intention by the department to really, well, as they put it, make it as easy as possible for businesses to comply. And based on that, it doesn't really seem like their goal in proposing this rule was to impose new requirements on businesses, but rather to jump into the fray and be able to enforce these kinds of provisions at the municipal level. Really, I think what it signals overall is that at the municipal level, New York City is paying attention. And if you're a business operating in New York City and you violate one of these rules, you might not just have the state AG to deal with, but you might have the city knocking on your door as well. So the comment period for this rule closed on May 8th, actually, and the department is considering those public comments, but we would anticipate it to be generally finalized as is without any major changes, given that it tracks with the current state law so closely, but you never know. I know we'll be sure to keep a close eye on that going forward.

Chris Willis (12:39):

That makes sense, Colin. And it'll be interesting, given your point that the whole idea behind having it is to give them enforcement authority, not to impose new obligations on industry, it'll be interesting to see how much enforcement they actually do and in what area, if they finalize the rule as proposed, as you predicted they will.

Colin Wilson (12:56):

That's right. Yeah, it'll certainly be interesting to see what they do with it going forward.

Chris Willis (12:59):

But regardless, we have to keep ourselves, whenever we think about compliance with these laws, in a proper Empire State of mind, and we'll do that going forward. Jason, do you have any closing thoughts for finance companies who offer financing at the point of sale about these laws and their impact?

Jason Cover (13:16):

Two big comments, I guess, Chris. I want to just reiterate what you said about this being common sense and basically a UDAP issue on some level. The FTC has, in the absence of their new rule, having it been vacated, has actually pursued multiple, and we can all quibble about the regulatory environment, but they've pursued two enforcement actions, I think at least two consent orders, on their UDAP authority and another law called the Restore Online Shopping Confidence Act, or ROSCA. So even if you think that the negative option rule is completely gone away, I think you need to at least incorporate these core concepts into your practice because of both ROSCA and UDAP, assuming most of us are doing business online. And then I think the other big point that I sort of led with and never elaborated on was I do think you need to be careful to make sure that a subscription plan doesn't inadvertently turn into something that gets into consumer financial services world. And that concept of being able to cancel really is key. Sometimes we see things where it's like, "Hey, you can pay today, or you can pay tomorrow over time." That's not a subscription plan. That's a loan or a credit sale or a lease. So be careful when you're exploring implementing these things, and it could be prudent to involve your in-house counsel or outside counsel to make sure you haven't tripped over consumer financial services laws in addition to these negative option and auto-renewal laws.

Chris Willis (14:43):

Well, thanks very much, Jason, for those comments. And Colin, thanks for being on the show today as well. And of course, thanks to our audience for listening. Don't forget to visit and subscribe to our blogs, [TroutmanFinancialServices.com](https://www.TroutmanFinancialServices.com) and [ConsumerFinancialServicesLawMonitor.com](https://www.ConsumerFinancialServicesLawMonitor.com). And while you're at it, we would really appreciate it if you'd visit us on the web at [troutman.com](https://www.troutman.com). You can add yourself to our Consumer Financial Services email list and get copies of the occasional alerts and advisories that we send out, as well as invitations to our industry-only webinars. And of course, stay tuned for a great new episode of this show hitting your podcast feed every Thursday afternoon. Thank you all for listening.

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