

117TH CONGRESS
1ST SESSION

H. R. 3953

To increase consumer protection with respect to negative option agreements entered in all media, including on and off the internet, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 16, 2021

Mr. TAKANO (for himself, Mr. MCGOVERN, Mr. CASE, Mr. SAN NICOLAS, Ms. NORTON, Ms. JACKSON LEE, Mr. RASKIN, and Mrs. DINGELL) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To increase consumer protection with respect to negative option agreements entered in all media, including on and off the internet, 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 “Unsubscribe Act of
5 2021”.

1 **SEC. 2. INCREASED CONSUMER PROTECTION WITH RE-**
2 **SPECT TO NEGATIVE OPTION AGREEMENTS**
3 **ENTERED INTO ON THE INTERNET.**

4 (a) CANCELLATION OF NEGATIVE OPTION AGREE-
5 MENTS.—No person may enter into a negative option
6 agreement with any consumer, unless the negative option
7 agreement provides the consumer with a mechanism to
8 cancel the agreement in the same manner, and by the
9 same means, into which the agreement was entered.

10 (b) REQUIREMENTS FOR FREE-TO-PAY CONVERSION
11 CONTRACTS.—

12 (1) IN GENERAL.—It shall be unlawful for any
13 person to charge or attempt to charge any con-
14 sumer's credit card, debit card, bank account, or
15 other financial account for any good or service sold
16 in a free-to-pay conversion contract, unless—

17 (A) before obtaining the consumer's billing
18 information, the person has obtained the con-
19 sumer's express informed consent to enter into
20 the contract and has provided the consumer
21 with a notification of the terms of the contract,
22 including the fact that—

23 (i) for an introductory period, the con-
24 sumer will receive the good or service at no
25 charge or for a nominal charge; and

1 (ii) after the introductory period, the
2 consumer will be charged or charged an in-
3 creased amount for the good or service;
4 and

5 (B) before the initial charge or initial in-
6 crease after the introductory period, the person
7 requires the consumer to perform an additional
8 affirmative action, such as clicking on a con-
9 firmation button or checking a box, which indi-
10 cates the consumer's consent to be charged the
11 amount disclosed.

12 (2) MANDATORY NOTIFICATIONS.—After the in-
13 troductory period in a free-to-pay conversion con-
14 tract between any person and any consumer, and on
15 a quarterly basis while the contract remains in ef-
16 fect, the person shall provide the consumer with a
17 copy of the notification of the terms of the contract.

18 (c) MANDATORY NOTIFICATIONS WITH RESPECT TO
19 OTHER NEGATIVE OPTION AGREEMENTS.—

20 (1) AUTOMATIC RENEWAL CONTRACTS.—With
21 respect to an automatic renewal contract between
22 any person and any consumer—

23 (A) between 2 and 7 days before the end
24 of the initial fixed period in the contract, the

1 person shall provide the consumer with a notifi-
2 cation of the terms of the contract; and

3 (B) after the initial fixed period in the con-
4 tract, and on a quarterly basis while the con-
5 tract remains in effect, the person shall provide
6 the consumer with a copy of the notification of
7 the terms of the contract.

8 (2) CONTINUITY PLAN CONTRACTS.—With re-
9 spect to a continuity plan contract entered into be-
10 tween any person and any consumer, the person
11 shall provide the consumer with a copy of the notifi-
12 cation of the terms of the contract on a quarterly
13 basis while the contract remains in effect.

14 (d) MANDATORY NOTIFICATIONS WITH RESPECT TO
15 MATERIAL CHANGES IN TERMS OF NEGATIVE OPTION
16 AGREEMENTS.—In the case of a material change in the
17 terms of a negative option agreement between any person
18 and a consumer, the person shall provide the consumer
19 with a notification of the terms of the agreement as
20 changed before the change takes effect.

21 (e) REGULATIONS.—The Federal Trade Commission
22 may prescribe regulations under section 553 of title 5,
23 United States Code, to carry out this Act.

24 **SEC. 3. ENFORCEMENT.**

25 (a) BY FEDERAL TRADE COMMISSION.—

1 (1) IN GENERAL.—A violation of this Act or
2 any regulation prescribed under this Act shall be
3 treated as a violation of a rule issued under section
4 18(a)(1)(B) of the Federal Trade Commission Act
5 (15 U.S.C. 57a(a)(1)(B)) regarding unfair or decep-
6 tive acts or practices. The Federal Trade Commis-
7 sion shall enforce this Act in the same manner, by
8 the same means, and with the same jurisdiction,
9 powers, and duties as though all applicable terms
10 and provisions of the Federal Trade Commission Act
11 (15 U.S.C. 41 et seq.) were incorporated into and
12 made a part of this Act.

13 (2) PENALTIES.—Any person who violates this
14 Act or any regulation prescribed under this Act shall
15 be subject to the penalties and entitled to the privi-
16 leges and immunities provided in the Federal Trade
17 Commission Act as though all applicable terms and
18 provisions of the Federal Trade Commission Act
19 were incorporated in and made part of this Act.

20 (b) BY STATE ATTORNEYS GENERAL.—

21 (1) IN GENERAL.—Except as provided in para-
22 graph (5), the attorney general of a State or other
23 authorized State officer alleging a violation of this
24 Act or any regulation prescribed under this Act that
25 affects or may affect the State or the residents of

1 the State may bring an action on behalf of the resi-
2 dents of the State in any United States district
3 court for the district in which the defendant is
4 found, resides, or transacts business, or wherever
5 venue is proper under section 1391 of title 28,
6 United States Code, to obtain appropriate injunctive
7 relief.

8 (2) NOTICE TO COMMISSION REQUIRED.—A
9 State shall provide prior written notice to the Fed-
10 eral Trade Commission of any civil action brought
11 under paragraph (1) with a copy of the complaint
12 for the civil action, except that if providing such
13 prior notice is not feasible for the State, the State
14 shall provide notice immediately upon instituting the
15 civil action.

16 (3) INTERVENTION BY THE COMMISSION.—The
17 Federal Trade Commission may intervene in a civil
18 action brought under paragraph (1) and upon inter-
19 vening—

20 (A) may be heard on all matters arising in
21 the civil action; and

22 (B) may file petitions for appeal of a deci-
23 sion in the civil action.

24 (4) CONSTRUCTION.—Nothing in this sub-
25 section shall be construed—

1 (A) to prevent the attorney general of a
2 State or other authorized State officer from ex-
3 ercising the powers conferred on the attorney
4 general or other authorized State officer by the
5 laws of the State; or

6 (B) to prohibit the attorney general of a
7 State or other authorized State officer from
8 proceeding in State or Federal court on the
9 basis of an alleged violation of any civil or
10 criminal statute of that State.

11 (5) LIMITATION.—An action may not be
12 brought under this subsection if, at the time the ac-
13 tion is brought, the same alleged violation is the sub-
14 ject of a pending action by the Federal Trade Com-
15 mission or the United States.

16 **SEC. 4. PREEMPTION OF DIRECTLY CONFLICTING STATE**
17 **LAW.**

18 This Act supersedes any State law to the extent such
19 law directly conflicts with the provisions of this Act, or
20 a standard, rule, or regulation promulgated under this
21 Act, and then only to the extent of such direct conflict.
22 Any State law, rule, or regulation shall not be considered
23 in direct conflict if it affords a greater level of protection
24 to individuals protected under this Act.

1 **SEC. 5. DEFINITIONS.**

2 In this Act:

3 (1) **AUTOMATIC RENEWAL CONTRACT.**—The
4 term “automatic renewal contract” means a contract
5 between any person and any consumer for a good or
6 service that is automatically renewed after an initial
7 fixed period, unless the consumer instructs other-
8 wise.

9 (2) **CONTINUITY PLAN CONTRACT.**—The term
10 “continuity plan contract” means a contract between
11 any person and any consumer under which the con-
12 sumer agrees to incur charges in exchange for peri-
13 odic shipments of goods or the provision of services,
14 unless the consumer instructs otherwise.

15 (3) **FREE-TO-PAY CONVERSION CONTRACT.**—
16 The term “free-to-pay conversion contract” means a
17 contract between any person and any consumer
18 under which—

19 (A) for an introductory period, the con-
20 sumer receives a good or service at no charge
21 or for a nominal charge; and

22 (B) after the introductory period, the con-
23 sumer is charged or charged an increased
24 amount for the good or service.

25 (4) **NEGATIVE OPTION AGREEMENT.**—The term
26 “negative option agreement” means—

1 (A) an automatic renewal contract;
2 (B) a continuity plan contract;
3 (C) a free-to-pay conversion contract;
4 (D) a pre-notification negative option plan
5 contract; or

6 (E) any combination of the contracts de-
7 scribed in subparagraphs (A) through (D).

8 (5) NOTIFICATION.—The term “notification”,
9 when used with respect to the terms of a contract,
10 means a written notification that clearly, conspicu-
11 ously, and concisely states all material terms of the
12 contract, including information regarding the can-
13 cellation process.

14 (6) PRE-NOTIFICATION NEGATIVE OPTION PLAN
15 CONTRACT.—The term “pre-notification negative op-
16 tion plan contract” means a contract between any
17 person and any consumer under which the consumer
18 receives periodic notices offering goods and, unless
19 the consumer specifically rejects the offer, the con-
20 sumer automatically receives the goods and incurs a
21 charge for such goods.

1 **SEC. 6. EFFECTIVE DATE.**

2 This Act shall apply with respect to contracts entered
3 into after the date that is 1 year after the date of the
4 enactment of this Act.

