

115TH CONGRESS  
1ST SESSION

# H. R. 1097

To increase consumer protection with respect to negative option agreements entered into on the Internet, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 15, 2017

Mr. TAKANO (for himself and Mr. BISHOP of Georgia) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To increase consumer protection with respect to negative option agreements entered into on 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 2017”.

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

9 (a) CANCELLATION OF NEGATIVE OPTION AGREE-  
10 MENTS.—No person may enter into a negative option

1 agreement on the Internet with any consumer, unless the  
2 negative option agreement provides the consumer with a  
3 mechanism to cancel the agreement in the same manner,  
4 and by the same means, into which the agreement was  
5 entered.

6 (b) REQUIREMENTS FOR FREE-TO-PAY CONVERSION  
7 CONTRACTS.—

8 (1) IN GENERAL.—It shall be unlawful for any  
9 person to charge or attempt to charge any con-  
10 sumer’s credit card, debit card, bank account, or  
11 other financial account for any good or service sold  
12 in a free-to-pay conversion contract entered into on  
13 the Internet, unless—

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

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

23 (ii) after the introductory period, the  
24 consumer will be charged or charged an in-

1           creased amount for the good or service;  
2           and

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

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

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

19               (1) AUTOMATIC RENEWAL CONTRACTS.—With  
20          respect to an automatic renewal contract entered  
21          into on the Internet between any person and any  
22          consumer—

23                       (A) not later than 30 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 on  
10 the Internet between any person and any consumer,  
11 the person shall provide the consumer with a copy  
12 of the notification of the terms of the contract on a  
13 quarterly basis while the contract remains in effect.

14 (d) REGULATIONS.—The Federal Trade Commission  
15 may prescribe regulations under section 553 of title 5,  
16 United States Code, to carry out this Act.

17 **SEC. 3. ENFORCEMENT.**

18 (a) BY FEDERAL TRADE COMMISSION.—

19 (1) IN GENERAL.—A violation of this Act or  
20 any regulation prescribed under this Act shall be  
21 treated as a violation of a rule issued under section  
22 18(a)(1)(B) of the Federal Trade Commission Act  
23 (15 U.S.C. 57a(a)(1)(B)) regarding unfair or decep-  
24 tive acts or practices. The Federal Trade Commis-  
25 sion shall enforce this Act in the same manner, by

1 the same means, and with the same jurisdiction,  
2 powers, and duties as though all applicable terms  
3 and provisions of the Federal Trade Commission Act  
4 (15 U.S.C. 41 et seq.) were incorporated into and  
5 made a part of this Act.

6 (2) PENALTIES.—Any person who violates this  
7 Act or any regulation prescribed under this Act shall  
8 be subject to the penalties and entitled to the privi-  
9 leges and immunities provided in the Federal Trade  
10 Commission Act as though all applicable terms and  
11 provisions of the Federal Trade Commission Act  
12 were incorporated in and made part of this Act.

13 (b) BY STATE ATTORNEYS GENERAL.—

14 (1) IN GENERAL.—Except as provided in para-  
15 graph (5), the attorney general of a State or other  
16 authorized State officer alleging a violation of this  
17 Act or any regulation prescribed under this Act that  
18 affects or may affect the State or the residents of  
19 the State may bring an action on behalf of the resi-  
20 dents of the State in any United States district  
21 court for the district in which the defendant is  
22 found, resides, or transacts business, or wherever  
23 venue is proper under section 1391 of title 28,  
24 United States Code, to obtain appropriate injunctive  
25 relief.

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

9           (3) INTERVENTION BY THE COMMISSION.—The  
10      Federal Trade Commission may intervene in a civil  
11      action brought under paragraph (1) and upon inter-  
12      vening—

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

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

17           (4) CONSTRUCTION.—Nothing in this sub-  
18      section shall be construed—

19                (A) to prevent the attorney general of a  
20      State or other authorized State officer from ex-  
21      ercising the powers conferred on the attorney  
22      general or other authorized State officer by the  
23      laws of the State; or

24                (B) to prohibit the attorney general of a  
25      State or other authorized State officer from

1 proceeding in State or Federal court on the  
2 basis of an alleged violation of any civil or  
3 criminal statute of that State.

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

9 **SEC. 4. DEFINITIONS.**

10 In this Act:

11 (1) AUTOMATIC RENEWAL CONTRACT.—The  
12 term “automatic renewal contract” means a contract  
13 between any person and any consumer for a good or  
14 service that is automatically renewed after an initial  
15 fixed period, unless the consumer instructs other-  
16 wise.

17 (2) CONTINUITY PLAN CONTRACT.—The term  
18 “continuity plan contract” means a contract between  
19 any person and any consumer under which the con-  
20 sumer agrees to incur charges in exchange for peri-  
21 odic shipments of goods or the provision of services,  
22 unless the consumer instructs otherwise.

23 (3) FREE-TO-PAY CONVERSION CONTRACT.—  
24 The term “free-to-pay conversion contract” means a

1 contract between any person and any consumer  
2 under which—

3 (A) for an introductory period, the con-  
4 sumer receives a good or service at no charge  
5 or for a nominal charge; and

6 (B) after the introductory period, the con-  
7 sumer is charged or charged an increased  
8 amount for the good or service.

9 (4) NEGATIVE OPTION AGREEMENT.—The term  
10 “negative option agreement” means—

11 (A) an automatic renewal contract;

12 (B) a continuity plan contract;

13 (C) a free-to-pay conversion contract;

14 (D) a pre-notification negative option plan  
15 contract; or

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

18 (5) NOTIFICATION.—The term “notification”,  
19 when used with respect to the terms of a contract,  
20 means a written notification that clearly, conspicu-  
21 ously, and concisely states all material terms of the  
22 contract, including information regarding the can-  
23 cellation process.

24 (6) PRE-NOTIFICATION NEGATIVE OPTION PLAN  
25 CONTRACT.—The term “pre-notification negative op-



1       tion plan contract” means a contract between any  
2       person and any consumer under which the consumer  
3       receives periodic notices offering goods and, unless  
4       the consumer specifically rejects the offer, the con-  
5       sumer automatically receives the goods and incurs a  
6       charge for such goods.

7       **SEC. 5. EFFECTIVE DATE.**

8       This Act shall apply with respect to contracts entered  
9       into after the date that is 1 year after the date of the  
10      enactment of this Act.

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