

HOUSE No. 04130

The committee on Consumer Protection and Professional Licensure, reports, on Senate, No. 100 and House, No. 1014, a Bill to prohibit negative option sales (House, No. 4130). May 30, 2012. Theodore C. Speliotis, for the committee.

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act to prohibit negative option sales.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 Section 1. Chapter 93 of the General Laws, as appearing in the 2007 official edition is hereby
- 2 amended by inserting after Section 114, the following 3 new sections:-
- 3 “Section 115. Definitions
- 4 As used in sections 115 to 117, inclusive, the following words shall, unless the context clearly
- 5 requires otherwise, have the following meanings:-
- 6 a) ‘Seller,’ any person, firm, corporation, partnership, unincorporated association, franchise,
- 7 franchisor, or other business enterprise which promotes or exchanges goods or services for
- 8 money
- 9 b) ‘Trial offer,’ an offer to a consumer by a seller for products or services without cost, at a
- 10 reduced cost, for a rebate, for only incidental costs such as shipping fees or for a time-limited

11 trial period under which the consumer is required to act affirmatively to avoid incurring a future
12 financial obligation as a result of accepting the offer

13 c) 'Consumer,' any person who seeks to accept or accepts a trial offer

14 d) 'Clear and conspicuous,' (including the terms clearly and conspicuously), the material
15 representation being disclosed is of such size, color, contrast or audibility and is so presented as
16 to be readily noticed and understood by a reasonable person to whom it is being disclosed

17 e) 'Affirmative Consent,' a consumer's express agreement to incur a clearly and
18 conspicuously disclosed financial obligation as a result of accepting a trial offer; such agreement
19 shall be made in a manner specifically identified for the consumer to indicate the consumer's
20 express agreement to incur the clearly and conspicuously disclosed financial obligation

21 f) 'Financial Institution,' an institution (public or private) that collects funds (from the
22 public or other institutions) and invests them in financial assets

23 Section 116. Charges after a trial offer, required disclosures

24 a) Trial offer disclosures. A seller may not make a trial offer to a consumer, or impose a
25 financial obligation on the consumer as a result of the consumer's acceptance of a trial offer,
26 unless:

27 i) The seller provides the consumer with clear and conspicuous information regarding the
28 terms of the trial offer prior to the consumer's acceptance of the offer, including, at a minimum:

29 1) Any additional financial obligations that may be incurred as a result of accepting the trial
30 offer;

31 2) Identification of all goods or services, or enrollments in a membership, subscription or
32 service contract that the consumer will receive or for which the consumer will incur a financial
33 obligation as a result of accepting the trial offer;

34 3) The cost to the consumer of any financial obligation the consumer will incur if the
35 consumer accepts the trial offer, including any fees or charges;

36 4) A statement, if applicable, that by accepting the trial offer, the consumer will become
37 obligated for additional goods or services, or enrollment in a membership, subscription or service
38 contract unless the consumer takes affirmative action to cancel the trial offer;

39 5) Instructions as to the means by which the consumer is to indicate the consumer's
40 rejection or cancellation of the offer;

41 6) The time period during which the consumer must cancel in order to avoid incurring a
42 financial obligation as a result of accepting the trial offer; and

43 7) The calendar date on which the consumer will incur any additional financial obligation if
44 the consumer fails to cancel the trial offer within the relevant time period.

45 b) Cancellation. A seller must inform the consumer, prior to the consumer's acceptance of
46 the trial offer, of the specific steps by which the consumer may cancel the agreement. The
47 means for cancellation provided by the seller, shall at a minimum, enable the consumer to cancel
48 the trial offer by calling a toll-free telephone number and, if the offer was not accepted by
49 telephone, to cancel in a manner substantially similar to that by which the consumer accepted the
50 trial offer, including but not limited to, electronic email address, website, postal address or
51 another cost-effective, timely and easy-to-use mechanism for cancellation.

52 c) Affirmative consent. A seller may not impose a financial obligation on a consumer as a
53 result of the consumer's acceptance of a trial offer unless the seller has obtained the consumer's
54 affirmative consent to the terms of the trial offer set forth in subsection (a)(i) of this section.

55 d) Additional notice to consumer. A seller whose trial offer exceeds thirty (30) calendar
56 days must provide additional notice to the consumer within no more than ten (10) and no fewer
57 than five (5) calendar days prior to the date upon which the consumer will incur an additional
58 financial obligation as a result of accepting the offer. The notification shall include the calendar
59 date on which the consumer will be charged for additional goods or services or for automatic
60 renewal. The notification shall be provided in a manner substantially similar to that by which the
61 consumer accepted the trial offer and shall clearly and conspicuously disclose the means by
62 which the consumer may cancel the offer. The means of cancellation must conform to
63 subsection (b) of this section.

64 e) Burden on seller. The seller has the burden of proving that the consumer expressly
65 agreed to this arrangement and that the required notices were provided within the time limits set
66 forth.

67 f) "Data pass" prohibition. A seller may not cause a consumer to incur a financial
68 obligation to another seller as a result of accepting a trial offer unless:

69 i) The consumer gives affirmative consent to the seller at the time the consumer accepts the
70 trial offer allowing the seller to provide the consumer's billing information to a seller other than
71 the seller making the trial offer. Such affirmative consent shall conform to subsection (c) of this
72 section.

73 g) Violation. Any violation of this section shall constitute an unfair or deceptive act or
74 practice in violation of Chapter 93A.