

# HOUSE BILL 726

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By: **Delegates Hixson, Frick, Cardin, Bartlett, Boteler, Doory, George, Gilchrist, Howard, Ivey, Kaiser, Mizeur, Murphy, Myers, Rice, Ross, Stukes, F. Turner, and Walker**

Introduced and read first time: February 5, 2010

Assigned to: Economic Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Consumer Protection – Negative Option Feature – Restrictions**

3 FOR the purpose of prohibiting a merchant from using a negative option feature in  
4 connection with a sale of consumer goods or consumer services or a free trial  
5 offer for consumer goods or consumer services unless the merchant provides the  
6 consumer with a written disclosure of the terms and conditions of the negative  
7 option feature; providing that a negative option feature used in connection with  
8 a sale of consumer goods or consumer services or a free trial offer for consumer  
9 goods or consumer services is not enforceable unless the consumer has expressly  
10 accepted the terms of the negative option feature in writing, as evidenced by a  
11 written or electronic signature; providing that a violation of certain provisions of  
12 this Act is an unfair or deceptive trade practice within the meaning of the  
13 Maryland Consumer Protection Act; defining certain terms; and generally  
14 relating to the use of negative option features in connection with the sale of  
15 consumer goods or consumer services or a free trial offer for consumer goods or  
16 consumer services.

17 BY adding to

18 Article – Commercial Law

19 Section 14–1322

20 Annotated Code of Maryland

21 (2005 Replacement Volume and 2009 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
23 MARYLAND, That the Laws of Maryland read as follows:

24 **Article – Commercial Law**

25 **14–1322.**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1           **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE**  
2 **MEANINGS INDICATED.**

3                   **(2) “CONSUMER” HAS THE MEANING STATED IN § 13–101 OF THIS**  
4 **ARTICLE.**

5                   **(3) “CONSUMER GOODS” HAS THE MEANING STATED IN § 13–101**  
6 **OF THIS ARTICLE.**

7                   **(4) “CONSUMER SERVICES” HAS THE MEANING STATED IN**  
8 **§ 13–101 OF THIS ARTICLE.**

9                   **(5) “MERCHANT” HAS THE MEANING STATED IN § 13–101 OF THIS**  
10 **ARTICLE.**

11                   **(6) “NEGATIVE OPTION FEATURE” MEANS, IN CONNECTION WITH**  
12 **AN OFFER OR AGREEMENT TO SELL OR PROVIDE CONSUMER GOODS OR**  
13 **CONSUMER SERVICES, A FEATURE UNDER WHICH A CONSUMER’S SILENCE OR**  
14 **FAILURE TO TAKE AN AFFIRMATIVE ACTION TO REJECT CONSUMER GOODS OR**  
15 **CONSUMER SERVICES OR TO CANCEL THE AGREEMENT IS INTERPRETED BY THE**  
16 **MERCHANT AS ACCEPTANCE OF THE CONSUMER GOODS OR CONSUMER**  
17 **SERVICES.**

18           **(B) (1) A MERCHANT MAY NOT USE A NEGATIVE OPTION FEATURE IN**  
19 **CONNECTION WITH A SALE OF CONSUMER GOODS OR CONSUMER SERVICES OR A**  
20 **FREE TRIAL OFFER FOR CONSUMER GOODS OR CONSUMER SERVICES UNLESS**  
21 **THE MERCHANT PROVIDES THE CONSUMER WITH A WRITTEN DESCRIPTION OF**  
22 **THE TERMS AND CONDITIONS OF THE NEGATIVE OPTION FEATURE, INCLUDING:**

23                   **(I) A STATEMENT THAT THE CONSUMER WILL BE CHARGED**  
24 **FOR THE CONSUMER GOODS OR CONSUMER SERVICES UNLESS THE CONSUMER**  
25 **TAKES AFFIRMATIVE ACTION TO REJECT THE CONSUMER GOODS OR CONSUMER**  
26 **SERVICES OR CANCEL THE AGREEMENT; AND**

27                   **(II) THE SPECIFIC STEPS THE CONSUMER MUST TAKE TO**  
28 **REJECT THE CONSUMER GOODS OR CONSUMER SERVICES OR CANCEL THE**  
29 **AGREEMENT.**

30                   **(2) A NEGATIVE OPTION FEATURE USED IN CONNECTION WITH A**  
31 **SALE OF CONSUMER GOODS OR CONSUMER SERVICES OR IN CONNECTION WITH**  
32 **A FREE TRIAL OFFER FOR CONSUMER GOODS OR CONSUMER SERVICES IS NOT**  
33 **ENFORCEABLE UNLESS THE CONSUMER HAS EXPRESSLY ACCEPTED THE TERMS**

1 OF THE NEGATIVE OPTION FEATURE IN WRITING, AS EVIDENCED BY A WRITTEN  
2 OR ELECTRONIC SIGNATURE.

3 (C) A VIOLATION OF SUBSECTION (B)(1) OF THIS SECTION IS:

4 (1) AN UNFAIR OR DECEPTIVE TRADE PRACTICE WITHIN THE  
5 MEANING OF TITLE 13 OF THIS ARTICLE; AND

6 (2) SUBJECT TO THE ENFORCEMENT AND PENALTY PROVISIONS  
7 CONTAINED IN TITLE 13 OF THIS ARTICLE.

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
9 October 1, 2010.