

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.

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## 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

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## 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.

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