

SENATE BILL 709

I3
HB 726/10 – ECM

3lr1988
CF 3lr1991

By: **Senators Madaleno, Benson, Forehand, Kelley, King, Manno,
Montgomery, Ramirez, Raskin, and Robey**

Introduced and read first time: February 1, 2013

Assigned to: Finance

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 and is subject to certain enforcement and
14 penalty provisions; defining certain terms; and generally relating to the use of
15 negative option features in connection with the sale of consumer goods or
16 consumer services or a free trial offer for consumer goods or consumer services.

17 BY adding to

18 Article – Commercial Law
19 Section 14–1324
20 Annotated Code of Maryland
21 (2005 Replacement Volume and 2012 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 **14–1324.**

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, 2013.