

HOUSE BILL 652

I3

4lr2350

By: **Delegates Frick, Barkley, Barnes, Cardin, Cullison, DeBoy, Gutierrez, Guzzone, Kipke, McComas, McDonough, Morhaim, Niemann, Rudolph, Simmons, Stocksedale, Stukes, F. Turner, and Valderrama**

Introduced and read first time: January 30, 2014

Assigned to: Economic Matters

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

18 BY adding to

19 Article – Commercial Law

20 Section 14–1324

21 Annotated Code of Maryland

22 (2013 Replacement Volume)

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

25 **Article – Commercial Law**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 14-1324.

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

4 (2) "CONSUMER" HAS THE MEANING STATED IN § 13-101 OF THIS
5 ARTICLE.

6 (3) "CONSUMER GOODS" HAS THE MEANING STATED IN § 13-101
7 OF THIS ARTICLE.

8 (4) "CONSUMER SERVICES" HAS THE MEANING STATED IN
9 § 13-101 OF THIS ARTICLE.

10 (5) "MERCHANT" HAS THE MEANING STATED IN § 13-101 OF THIS
11 ARTICLE.

12 (6) "NEGATIVE OPTION FEATURE" MEANS, IN CONNECTION WITH
13 AN OFFER OR AGREEMENT TO SELL OR PROVIDE CONSUMER GOODS OR
14 CONSUMER SERVICES, OTHER THAN TELEPHONE, INTERNET, OR OTHER
15 COMMUNICATION SERVICES OR EQUIPMENT, A FEATURE UNDER WHICH A
16 CONSUMER'S SILENCE OR FAILURE TO TAKE AN AFFIRMATIVE ACTION TO
17 REJECT CONSUMER GOODS OR CONSUMER SERVICES OR TO CANCEL THE
18 AGREEMENT IS INTERPRETED BY THE MERCHANT AS ACCEPTANCE OF THE
19 CONSUMER GOODS OR CONSUMER SERVICES.

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

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

29 (II) THE SPECIFIC STEPS THE CONSUMER MUST TAKE TO
30 REJECT THE CONSUMER GOODS OR CONSUMER SERVICES OR CANCEL THE
31 AGREEMENT.

1 **(2) A NEGATIVE OPTION FEATURE USED IN CONNECTION WITH A**
2 **SALE OF CONSUMER GOODS OR CONSUMER SERVICES OR IN CONNECTION WITH**
3 **A FREE TRIAL OFFER FOR CONSUMER GOODS OR CONSUMER SERVICES IS NOT**
4 **ENFORCEABLE UNLESS THE CONSUMER HAS EXPRESSLY ACCEPTED THE TERMS**
5 **OF THE NEGATIVE OPTION FEATURE IN WRITING, AS EVIDENCED BY A WRITTEN**
6 **OR ELECTRONIC SIGNATURE.**

7 **(c) A VIOLATION OF SUBSECTION (B)(1) OF THIS SECTION IS:**

8 **(1) AN UNFAIR OR DECEPTIVE TRADE PRACTICE WITHIN THE**
9 **MEANING OF TITLE 13 OF THIS ARTICLE; AND**

10 **(2) SUBJECT TO THE ENFORCEMENT AND PENALTY PROVISIONS**
11 **CONTAINED IN TITLE 13 OF THIS ARTICLE.**

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 October 1, 2014.