

117TH CONGRESS  
1ST SESSION

# S. 2072

To increase consumer protection with respect to negative option offers in all media, including on the internet, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 16, 2021

Mr. SCHATZ (for himself, Mr. THUNE, Mr. WARNOCK, and Mr. KENNEDY) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To increase consumer protection with respect to negative option offers in all media, including on 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”.

6 **SEC. 2. INCREASED CONSUMER PROTECTION WITH RE-**  
7 **SPECT TO NEGATIVE OPTION AGREEMENTS.**

8 (a) DISCLOSURE OF NEGATIVE OPTIONS.—It shall be  
9 unlawful for any person to charge or attempt to charge

1 any consumer's credit card, debit card, bank account, or  
2 other financial account, or otherwise receive payment,  
3 through a negative option, unless the person clearly and  
4 conspicuously discloses all material terms of the trans-  
5 action before obtaining the consumer's billing information  
6 or receiving payment, whichever is earlier.

7 (b) EXPRESS INFORMED CONSENT FOR NEGATIVE  
8 OPTIONS.—It shall be unlawful for any person to charge  
9 or attempt to charge any consumer's credit card, debit  
10 card, bank account, or other financial account, or other-  
11 wise receive payment, through a negative option, unless  
12 the person obtains a consumer's express informed consent  
13 before receiving payment or charging the consumer for  
14 products or services, or otherwise receiving payment,  
15 through such transaction.

16 (c) TERM LIMITATION FOR NEGATIVE OPTION  
17 AGREEMENTS.—After the expiration of an introductory  
18 period, initial fixed period, or other preliminary period, it  
19 shall be unlawful for any person to automatically renew  
20 or otherwise continue a negative option agreement with  
21 any consumer for a period greater than 1 month, unless  
22 such person, at the time of such expiration, obtains a con-  
23 sumer's express informed consent to renew or otherwise  
24 continue such agreement for a period greater than 1  
25 month.

1 (d) CANCELLATION OF NEGATIVE OPTION AGREE-  
2 MENTS.—It shall be unlawful for any person to enter into  
3 a negative option agreement with any consumer, unless  
4 the negative option agreement provides the consumer with  
5 a simple mechanism to stop any recurring payments, in-  
6 cluding the ability to cancel the agreement in the same  
7 manner, and by the same means, into which the agreement  
8 was entered.

9 (e) REQUIREMENTS FOR FREE-TO-PAY CONVERSION  
10 CONTRACTS.—

11 (1) IN GENERAL.—It shall be unlawful for any  
12 person to charge or attempt to charge any con-  
13 sumer’s credit card, debit card, bank account, or  
14 other financial account for any good or service sold  
15 in a free-to-pay conversion contract entered into, un-  
16 less each of the following is met:

17 (A) Before obtaining the consumer’s billing  
18 information, or otherwise receiving payment,  
19 the person has obtained the consumer’s express  
20 informed consent to enter into the negative op-  
21 tion contract and has provided the consumer  
22 with a notification of the terms of the negative  
23 option contract, including, but not limited to,  
24 the following:

1 (i) For an introductory period, the  
2 consumer will receive the good or service at  
3 no cost or for a nominal cost.

4 (ii) After the introductory period, the  
5 amount the consumer will be charged or  
6 otherwise required to pay, including any  
7 cost increase.

8 (iii) The total cost (or range of costs)  
9 the consumer will be charged or otherwise  
10 required to pay.

11 (B) Before the initial charge, payment, or  
12 initial increase after the introductory period,  
13 the person informs the consumer about the up-  
14 coming charge or payment and provides the  
15 consumer with access to information about the  
16 simple mechanisms to cancel the contract.

17 (2) MANDATORY NOTIFICATIONS.—After the in-  
18 troductory period in a free-to-pay conversion con-  
19 tract entered into between any person and any con-  
20 sumer, and at regular intervals, as determined by  
21 the Commission, but no less frequently than annu-  
22 ally, while the contract remains in effect, the person  
23 shall provide the consumer with a notification of the  
24 terms of the contract.

1 (f) MANDATORY NOTIFICATIONS WITH RESPECT TO  
2 OTHER NEGATIVE OPTION AGREEMENTS.—

3 (1) AUTOMATIC RENEWAL CONTRACTS.—With  
4 respect to an automatic renewal contract entered  
5 into between any person and any consumer—

6 (A) not later than 2 days and no more  
7 than 7 days before the end of the initial fixed  
8 period in the contract, the person shall provide  
9 the consumer with a notification of the terms of  
10 the contract; and

11 (B) after the initial fixed period in the con-  
12 tract, and at regular intervals, as determined by  
13 the Commission, but no less frequently than an-  
14 nually, while the contract remains in effect, the  
15 person shall provide the consumer with a notifi-  
16 cation of the terms of the contract and access  
17 to, or information about, the simple mecha-  
18 nisms to cancel the contract.

19 (2) CONTINUITY PLAN CONTRACTS.—With re-  
20 spect to a continuity plan contract entered into be-  
21 tween any person and any consumer, the person  
22 shall provide the consumer with a notification of the  
23 terms of the contract and access to information  
24 about the simple mechanisms to cancel the contract  
25 at regular intervals, as determined by the Commis-

1       sion, but no less frequently than annually while the  
2       contract remains in effect.

3   **SEC. 3. ENFORCEMENT.**

4       (a) BY THE COMMISSION.—

5           (1) IN GENERAL.—A violation of this Act shall  
6       be treated as a violation of a rule issued under sec-  
7       tion 18(a)(1)(B) of the Federal Trade Commission  
8       Act (15 U.S.C. 57a(a)(1)(B)) regarding unfair or  
9       deceptive acts or practices. The Commission shall  
10      enforce this Act in the same manner, by the same  
11      means, and with the same jurisdiction, powers, and  
12      duties as though all applicable terms and provisions  
13      of the Federal Trade Commission Act (15 U.S.C. 41  
14      et seq.) were incorporated into and made a part of  
15      this Act.

16          (2) PENALTIES.—Any person who violates this  
17      Act shall be subject to the penalties and entitled to  
18      the privileges and immunities provided in the Fed-  
19      eral Trade Commission Act as though all applicable  
20      terms and provisions of the Federal Trade Commis-  
21      sion Act were incorporated in and made a part of  
22      this Act.

23          (3) AUTHORITY PRESERVED.—Nothing in this  
24      Act shall be construed to limit the authority of the  
25      Commission under any other provision of law.

1 (b) BY STATE ATTORNEYS GENERAL.—

2 (1) IN GENERAL.—Except as provided in para-  
 3 graph (5), the attorney general of a State or other  
 4 authorized State officer alleging a violation of this  
 5 Act that affects or may affect the State or the resi-  
 6 dents of the State may bring an action on behalf of  
 7 the residents of the State in any United States dis-  
 8 trict court for the district in which the defendant is  
 9 found, resides, or transacts business, or wherever  
 10 venue is proper under section 1391 of title 28,  
 11 United States Code, to obtain appropriate injunctive  
 12 relief.

13 (2) NOTICE TO COMMISSION REQUIRED.—A  
 14 State shall provide prior written notice to the Com-  
 15 mission of any civil action brought under paragraph  
 16 (1) that includes a copy of the complaint for the civil  
 17 action, except that if providing such prior notice is  
 18 not feasible for the State, the State shall provide no-  
 19 tice immediately upon instituting the civil action.

20 (3) INTERVENTION BY THE COMMISSION.—The  
 21 Commission may intervene in a civil action brought  
 22 under paragraph (1) and upon intervening—

23 (A) may be heard on all matters arising in  
 24 the civil action; and

1 (B) may file petitions for appeal of a deci-  
 2 sion in the civil action.

3 (4) CONSTRUCTION.—Nothing in this sub-  
 4 section shall be construed—

5 (A) to prevent the attorney general of a  
 6 State or other authorized State officer from ex-  
 7 ercising the powers conferred on the attorney  
 8 general or other authorized State officer by the  
 9 laws of the State; or

10 (B) to prohibit the attorney general of a  
 11 State or other authorized State officer from  
 12 proceeding in State or Federal court on the  
 13 basis of an alleged violation of any civil or  
 14 criminal statute of that State.

15 (5) LIMITATION.—An action may not be  
 16 brought under this subsection if, at the time the ac-  
 17 tion is brought, the same alleged violation is the sub-  
 18 ject of a pending action by the Commission or the  
 19 United States.

20 **SEC. 4. PREEMPTION OF DIRECTLY CONFLICTING STATE**  
 21 **LAWS.**

22 This Act shall supersede any State law to the extent  
 23 such law directly conflicts with the provisions of this Act,  
 24 or a standard, rule, or regulation promulgated under this  
 25 Act, and then only to the extent of such direct conflict.

1 Any State law, rule, or regulation shall not be considered  
2 in direct conflict if it affords a greater level of protection  
3 to individuals protected under this Act.

4 **SEC. 5. DEFINITIONS.**

5 In this Act:

6 (1) **AUTOMATIC RENEWAL CONTRACT.**—The  
7 term “automatic renewal contract” means a contract  
8 between any person and any consumer for a good or  
9 service that is automatically renewed after an initial  
10 fixed period, unless the consumer instructs other-  
11 wise.

12 (2) **COMMISSION.**—The term “Commission”  
13 means the Federal Trade Commission.

14 (3) **CONTINUITY PLAN CONTRACT.**—The term  
15 “continuity plan contract” means a contract between  
16 any person and any consumer under which the con-  
17 sumer agrees to pay for periodic shipments of goods  
18 or the provision of services, unless the consumer in-  
19 structs otherwise.

20 (4) **FREE-TO-PAY CONVERSION CONTRACT.**—  
21 The term “free-to-pay conversion contract” means a  
22 contract between any person and any consumer  
23 under which—

1 (A) for an introductory period, the con-  
2 sumer receives a good or service at no charge  
3 or for a nominal charge; and

4 (B) after the introductory period, the  
5 amount the consumer will be charged or other-  
6 wise be required to pay is increased for the  
7 good or service.

8 (5) NEGATIVE OPTION.—The term “negative  
9 option” means—

10 (A) an offer or agreement to sell or provide  
11 any goods or services, or a provision under  
12 which the customer’s silence or failure to take  
13 an affirmative action to reject goods or services  
14 or to cancel the agreement is interpreted by the  
15 seller as acceptance of the offer, including but  
16 not limited to—

- 17 (i) an automatic renewal contract;  
18 (ii) a continuity plan contract;  
19 (iii) a free-to-pay conversion contract;  
20 (iv) a pre-notification negative option  
21 plan contract; or  
22 (v) any combination of the contracts  
23 described in clauses (i) through (iv).

24 (6) NOTIFICATION.—The term “notification”,  
25 when used with respect to the terms of a contract,

1 means a written notification that clearly, conspicu-  
2 ously, and concisely states all material terms of the  
3 negative option, including information regarding the  
4 simple mechanisms for cancellation.

5 (7) PRE-NOTIFICATION NEGATIVE OPTION PLAN  
6 CONTRACT.—The term “pre-notification negative op-  
7 tion plan contract” means a contract between any  
8 person and any consumer under which the consumer  
9 receives periodic notices offering goods or services  
10 and, unless the consumer specifically rejects the  
11 offer, the consumer automatically receives the goods  
12 and services and agrees to pay for such goods and  
13 services.

14 **SEC. 6. EFFECTIVE DATE.**

15 This Act shall apply with respect to contracts entered  
16 into after the date that is 1 year after the date of the  
17 enactment of this Act.

