

HOUSE No. 1014

The Commonwealth of Massachusetts

PRESENTED BY:

Timothy R. Madden

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to prohibit negative option sales and disclosure of financial and personal information without a consumer’s express agreement.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Timothy R. Madden</i>	<i>Barnstable, Dukes and Nantucket</i>	<i>1/20/2011</i>
<i>Geraldo Alicea</i>	<i>6th Worcester</i>	<i>1/21/2011</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>	<i>1/31/2011</i>
<i>Steven S. Howitt</i>	<i>4th Bristol</i>	<i>2/3/2011</i>
<i>Steven L. Levy</i>	<i>4th Middlesex</i>	<i>2/2/2011</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>	<i>2/4/2011</i>

HOUSE No. 1014

By Mr. Madden of Nantucket, a petition (accompanied by bill, House, No. 1014) of Timothy R. Madden and others for legislation to prohibit negative option sales and disclosure of financial and personal information without the express agreement of consumers. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act to prohibit negative option sales and disclosure of financial and personal information without a consumer’s express agreement.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Section 1. Chapter 93 of the General Laws, as appearing in the 2008 official edition, is
2 hereby amended by inserting after section 114, the following 3 new sections:-

3 “Section 115. Definitions

4 As used in sections 115 to 117, inclusive, the following words shall, unless the context
5 clearly requires otherwise, have the following meanings:—

6 “Financial Institution”, an institution (public or private) that collects funds (from the
7 public or other institutions) and invests them in financial assets

8 “Seller”, any person, firm, corporation, partnership, unincorporated association,
9 franchise, franchisor, or other business enterprise which promotes or exchanges goods or
10 services for money

11 Section 116. Required disclosures

12 (a) Required disclosures to consumers, charges after trial period

13 In a sale agreed to by a voluntary 2-way communication between a seller and a customer,
14 a seller may not charge a customer for a good or service after a trial period unless, prior to the
15 charge, the customer expressly agrees to be charged for the good or service if the consumer does
16 not cancel the sale. At least 15 days prior to any charge, or 10 days prior to any charge if the
17 good or service for which the customer will be charged is physically delivered to the customer on
18 a weekly or more frequent basis, the seller shall provide a customer with a clearly written
19 description of the agreement, the good or service being purchased, the amount being charged and
20 the calendar date the customer will be charged for the good or service if the customer does not
21 cancel the sale. This notice also must provide the specific steps by which the customer can either
22 expressly agree to, or cancel the agreement by mail or telephone. The seller has the burden of
23 proving that the customer expressly agreed to this arrangement and that the required written
24 notices were provided within the time limits set forth in this section.

25 (b) Violations

26 A seller who violates this section commits an unfair and deceptive act and a violation of
27 chapter 93A.

28 Section 117. Prohibited disclosures

29 (a) Disclosure of financial and personal information prohibited

30 Except as otherwise expressly provided in this chapter, a financial institution, its officers,
31 employees, agents and directors shall not disclose any financial or personal information relating

32 to a customer. Financial institutions shall adopt reasonable procedures to assure compliance with
33 this subchapter.

34 (b) Exceptions

35 This section does not prohibit any of the activities listed in this subsection. This
36 subsection shall not be construed to require any financial institution to make any disclosure not
37 otherwise required by law. This subsection shall not be construed to require or encourage any
38 financial institution to alter any procedures or practices not inconsistent with this section. This
39 subsection shall not be construed to expand or create any authority in any person or entity other
40 than a financial institution.

41 (1) Disclosure of information to the customer after proper identification.

42 (2) Disclosure authorized by the customer, provided the disclosure is limited to the
43 scope and purpose that the customer authorizes.

44

45 (c) Violations

46 A financial institution who violates this section commits an unfair and deceptive act and a
47 violation of chapter 93A.