

HOUSE No. 4130

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act to prohibit negative option sales.

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 2007 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 a) ‘Seller,’ any person, firm, corporation, partnership, unincorporated association,
7 franchise, franchisor, or other business enterprise which promotes or exchanges goods or
8 services for money

9 b) ‘Trial offer,’ an offer to a consumer by a seller for products or services without
10 cost, at a reduced cost, for a rebate, for only incidental costs such as shipping fees or for a time-
11 limited trial period under which the consumer is required to act affirmatively to avoid incurring a
12 future financial obligation as a result of accepting the offer

13 c) ‘Consumer,’ any person who seeks to accept or accepts a trial offer

14 d) 'Clear and conspicuous,' (including the terms clearly and conspicuously), the
15 material representation being disclosed is of such size, color, contrast or audibility and is so
16 presented as to be readily noticed and understood by a reasonable person to whom it is being
17 disclosed

18 e) 'Affirmative Consent,' a consumer's express agreement to incur a clearly and
19 conspicuously disclosed financial obligation as a result of accepting a trial offer; such agreement
20 shall be made in a manner specifically identified for the consumer to indicate the consumer's
21 express agreement to incur the clearly and conspicuously disclosed financial obligation

22 f) 'Financial Institution,' an institution (public or private) that collects funds (from
23 the public or other institutions) and invests them in financial assets

24 Section 116. Charges after a trial offer, required disclosures

25 a) Trial offer disclosures. A seller may not make a trial offer to a consumer, or
26 impose a financial obligation on the consumer as a result of the consumer's acceptance of a trial
27 offer, unless:

28 i) The seller provides the consumer with clear and conspicuous information
29 regarding the terms of the trial offer prior to the consumer's acceptance of the offer, including, at
30 a minimum:

31 1) Any additional financial obligations that may be incurred as a result of accepting
32 the trial offer;

- 33 2) Identification of all goods or services, or enrollments in a membership,
34 subscription or service contract that the consumer will receive or for which the consumer will
35 incur a financial obligation as a result of accepting the trial offer;
- 36 3) The cost to the consumer of any financial obligation the consumer will incur if the
37 consumer accepts the trial offer, including any fees or charges;
- 38 4) A statement, if applicable, that by accepting the trial offer, the consumer will
39 become obligated for additional goods or services, or enrollment in a membership, subscription
40 or service contract unless the consumer takes affirmative action to cancel the trial offer;
- 41 5) Instructions as to the means by which the consumer is to indicate the consumer's
42 rejection or cancellation of the offer;
- 43 6) The time period during which the consumer must cancel in order to avoid
44 incurring a financial obligation as a result of accepting the trial offer; and
- 45 7) The calendar date on which the consumer will incur any additional financial
46 obligation if the consumer fails to cancel the trial offer within the relevant time period.
- 47 b) Cancellation. A seller must inform the consumer, prior to the consumer's
48 acceptance of the trial offer, of the specific steps by which the consumer may cancel the
49 agreement. The means for cancellation provided by the seller, shall at a minimum, enable the
50 consumer to cancel the trial offer by calling a toll-free telephone number and, if the offer was not
51 accepted by telephone, to cancel in a manner substantially similar to that by which the consumer
52 accepted the trial offer, including but not limited to, electronic email address, website, postal
53 address or another cost-effective, timely and easy-to-use mechanism for cancellation.

54 c) Affirmative consent. A seller may not impose a financial obligation on a
55 consumer as a result of the consumer’s acceptance of a trial offer unless the seller has obtained
56 the consumer’s affirmative consent to the terms of the trial offer set forth in subsection (a)(i) of
57 this section.

58 d) Additional notice to consumer. A seller whose trial offer exceeds thirty (30)
59 calendar days must provide additional notice to the consumer within no more than ten (10) and
60 no fewer than five (5) calendar days prior to the date upon which the consumer will incur an
61 additional financial obligation as a result of accepting the offer. The notification shall include
62 the calendar date on which the consumer will be charged for additional goods or services or for
63 automatic renewal. The notification shall be provided in a manner substantially similar to that by
64 which the consumer accepted the trial offer and shall clearly and conspicuously disclose the
65 means by which the consumer may cancel the offer. The means of cancellation must conform to
66 subsection (b) of this section.

67 e) Burden on seller. The seller has the burden of proving that the consumer
68 expressly agreed to this arrangement and that the required notices were provided within the time
69 limits set forth.

70 f) “Data pass” prohibition. A seller may not cause a consumer to incur a financial
71 obligation to another seller as a result of accepting a trial offer unless:

72 i) The consumer gives affirmative consent to the seller at the time the consumer
73 accepts the trial offer allowing the seller to provide the consumer’s billing information to a seller
74 other than the seller making the trial offer. Such affirmative consent shall conform to subsection
75 (c) of this section.

76 g) Violation. Any violation of this section shall constitute an unfair or deceptive act
77 or practice in violation of Chapter 93A.