HOUSE DOCKET, NO. 298 FILED ON: 1/11/2017

HOUSE . . . . . No. 165

The Commonwealth of Massachusetts

PRESENTED BY:

Steven S. Howitt

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:
Steven S. Howitt	*4th Bristol*	*1/11/2017*
John H. Rogers	*12th Norfolk*	*1/11/2017*

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HOUSE . . . . . No. 165

By Mr. Howitt of Seekonk, a petition (accompanied by bill, House, No. 165) of Steven S. Howitt and John H. Rogers for legislation to prevent the automatic signing up of consumers for products or services. Consumer Protection and Professional Licensure.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *223* OF 2015-2016.]

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

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:

Section 1. Chapter 93 of the General Laws, as appearing in the 2007 official edition is hereby amended by inserting after Section 114, the following 3 new sections:-

"Section 115. Definitions

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

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

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

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

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

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

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

Section 116. Charges after a trial offer, required disclosures

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

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

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

2) Identification of all goods or services, or enrollments in a membership, subscription or service contract that the consumer will receive or for which the consumer will incur a financial obligation as a result of accepting the trial offer;

3) The cost to the consumer of any financial obligation the consumer will incur if the consumer accepts the trial offer, including any fees or charges;

4) A statement, if applicable, that by accepting the trial offer, the consumer will become obligated for additional goods or services, or enrollment in a membership, subscription or service contract unless the consumer takes affirmative action to cancel the trial offer;

5) Instructions as to the means by which the consumer is to indicate the consumer's rejection or cancellation of the offer;

6) The time period during which the consumer must cancel in order to avoid incurring a financial obligation as a result of accepting the trial offer; and

7) The calendar date on which the consumer will incur any additional financial obligation if the consumer fails to cancel the trial offer within the relevant time period.

b) Cancellation. A seller must inform the consumer, prior to the consumer's acceptance of the trial offer, of the specific steps by which the consumer may cancel the

agreement. The means for cancellation provided by the seller, shall at a minimum, enable the consumer to cancel the trial offer by calling a toll-free telephone number and, if the offer was not accepted by telephone, to cancel in a manner substantially similar to that by which the consumer accepted the trial offer, including but not limited to, electronic email address, website, postal address or another cost-effective, timely and easy-to-use mechanism for cancellation.

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

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

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

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

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

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

Section 117. Prohibited Disclosures

(a) Disclosure of financial and personal information prohibited

Except as otherwise expressly provided in this chapter, a financial institution, its officers, employees, agents and directors shall not disclose any financial or personal information relating to a customer. Financial institutions shall adopt reasonable procedures to assure compliance with this subchapter.

(b) Exceptions

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

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

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

(c) Violations

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