

**HOUSE . . . . . No. 389**

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**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:
<i>Steven S. Howitt</i>	<i>4th Bristol</i>	<i>1/14/2025</i>

**HOUSE . . . . . No. 389**

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By Representative Howitt of Seekonk, a petition (accompanied by bill, House, No. 389) of Steven S. Howitt for legislation to prevent the automatic signing up of consumers for products or services. Consumer Protection and Professional Licensure.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 326 OF 2023-2024.]

**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninety-Fourth General Court  
(2025-2026)**  
\_\_\_\_\_

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 Chapter 93 of the General Laws, as appearing in the 2022 Official Edition, is hereby  
2 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 cost, at  
10 a reduced cost, for a rebate, for only incidental costs such as shipping fees or for a time-limited  
11 trial period under which the consumer is required to act affirmatively to avoid incurring a future  
12 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 material  
15 representation being disclosed is of such size, color, contrast or audibility and is so presented as  
16 to be readily noticed and understood by a reasonable person to whom it is being disclosed.

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

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

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

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

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

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

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

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

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

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

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

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

45           b) Cancellation. A seller must inform the consumer, prior to the consumer's acceptance  
46 of the trial offer, of the specific steps by which the consumer may cancel the agreement. The  
47 means for cancellation provided by the seller, shall at a minimum, enable the consumer to cancel  
48 the trial offer by calling a toll-free telephone number and, if the offer was not accepted by  
49 telephone, to cancel in a manner substantially similar to that by which the consumer accepted the

50 trial offer, including but not limited to, electronic email address, website, postal address or  
51 another cost-effective, timely and easy-to-use mechanism for cancellation.

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

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

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

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

69 i) The consumer gives affirmative consent to the seller at the time the consumer accepts  
70 the trial offer allowing the seller to provide the consumer's billing information to a seller other

71 than the seller making the trial offer. Such affirmative consent shall conform to subsection (c) of  
72 this section.

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

## 75 Section 117. Prohibited Disclosures

### 76 (a) Disclosure of financial and personal information prohibited

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

### 81 (b) Exceptions

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

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

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

91 (c) Violations

92 A financial institution who violates this section commits an unfair and deceptive act and a

93 violation of chapter 93A.