

**AMENDMENT TO  
RULES COMMITTEE PRINT 116-15  
OFFERED BY MR. TAKANO OF CALIFORNIA**

Page 40, after line 8, insert the following:

1 **SEC. 9. INCREASED CONSUMER PROTECTION WITH RE-**  
2 **SPECT TO NEGATIVE OPTION AGREEMENTS**  
3 **ENTERED INTO ON THE INTERNET.**

4 (a) IN GENERAL.—

5 (1) CANCELLATION OF NEGATIVE OPTION  
6 AGREEMENTS.—No person may enter into a negative  
7 option agreement on the Internet with any con-  
8 sumer, unless the negative option agreement pro-  
9 vides the consumer with a mechanism to cancel the  
10 agreement in the same manner, and by the same  
11 means, into which the agreement was entered.

12 (2) REQUIREMENTS FOR FREE-TO-PAY CONVER-  
13 SION CONTRACTS.—

14 (A) IN GENERAL.—It shall be unlawful for  
15 any person to charge or attempt to charge any  
16 consumer's credit card, debit card, bank ac-  
17 count, or other financial account for any good  
18 or service sold in a free-to-pay conversion con-  
19 tract entered into on the Internet, unless—

1 (i) before obtaining the consumer's  
2 billing information, the person has ob-  
3 tained the consumer's express informed  
4 consent to enter into the contract and has  
5 provided the consumer with a notification  
6 of the terms of the contract, including the  
7 fact that—

8 (I) for an introductory period,  
9 the consumer will receive the good or  
10 service at no charge or for a nominal  
11 charge; and

12 (II) after the introductory period,  
13 the consumer will be charged or  
14 charged an increased amount for the  
15 good or service; and

16 (ii) before the initial charge or initial  
17 increase after the introductory period, the  
18 person requires the consumer to perform  
19 an additional affirmative action, such as  
20 clicking on a confirmation button or check-  
21 ing a box, which indicates the consumer's  
22 consent to be charged the amount dis-  
23 closed.

24 (B) MANDATORY NOTIFICATIONS.—After  
25 the introductory period in a free-to-pay conver-

1           sion contract entered into on the Internet be-  
2           tween any person and any consumer, and on a  
3           quarterly basis while the contract remains in ef-  
4           fect, the person shall provide the consumer with  
5           a copy of the notification of the terms of the  
6           contract.

7           (3) MANDATORY NOTIFICATIONS WITH RESPECT  
8           TO OTHER NEGATIVE OPTION AGREEMENTS.—

9           (A) AUTOMATIC RENEWAL CONTRACTS.—

10          With respect to an automatic renewal contract  
11          entered into on the Internet between any person  
12          and any consumer—

13                 (i) not later than 30 days before the  
14                 end of the initial fixed period in the con-  
15                 tract, the person shall provide the con-  
16                 sumer with a notification of the terms of  
17                 the contract; and

18                 (ii) after the initial fixed period in the  
19                 contract, and on a quarterly basis while  
20                 the contract remains in effect, the person  
21                 shall provide the consumer with a copy of  
22                 the notification of the terms of the con-  
23                 tract.

24           (B) CONTINUITY PLAN CONTRACTS.—With  
25          respect to a continuity plan contract entered

1           into on the Internet between any person and  
2           any consumer, the person shall provide the con-  
3           sumer with a copy of the notification of the  
4           terms of the contract on a quarterly basis while  
5           the contract remains in effect.

6           (4) MANDATORY NOTIFICATIONS WITH RESPECT  
7           TO MATERIAL CHANGES IN TERMS OF NEGATIVE OP-  
8           TION AGREEMENTS.—In the case of a material  
9           change in the terms of a negative option agreement  
10          entered into on the Internet between any person and  
11          a consumer, the person shall provide the consumer  
12          with a notification of the terms of the agreement as  
13          changed before the change takes effect.

14          (5) REGULATIONS.—The Federal Trade Com-  
15          mission may prescribe regulations under section 553  
16          of title 5, United States Code, to carry out this sec-  
17          tion.

18          (b) ENFORCEMENT.—

19                 (1) BY FEDERAL TRADE COMMISSION.—

20                         (A) IN GENERAL.—A violation of this sec-  
21                         tion or any regulation prescribed under this sec-  
22                         tion shall be treated as a violation of a rule  
23                         issued under section 18(a)(1)(B) of the Federal  
24                         Trade Commission Act (15 U.S.C.  
25                         57a(a)(1)(B)) regarding unfair or deceptive

1 acts or practices. The Federal Trade Commis-  
2 sion shall enforce this section in the same man-  
3 ner, by the same means, and with the same ju-  
4 risdiction, powers, and duties as though all ap-  
5 plicable terms and provisions of the Federal  
6 Trade Commission Act (15 U.S.C. 41 et seq.)  
7 were incorporated into and made a part of this  
8 section.

9 (B) PENALTIES.—Any person who violates  
10 this section or any regulation prescribed under  
11 this section shall be subject to the penalties and  
12 entitled to the privileges and immunities pro-  
13 vided in the Federal Trade Commission Act as  
14 though all applicable terms and provisions of  
15 the Federal Trade Commission Act were incor-  
16 porated in and made part of this section.

17 (2) BY STATE ATTORNEYS GENERAL.—

18 (A) IN GENERAL.—Except as provided in  
19 subparagraph (E), the attorney general of a  
20 State or other authorized State officer alleging  
21 a violation of this section or any regulation pre-  
22 scribed under this section that affects or may  
23 affect the State or the residents of the State  
24 may bring an action on behalf of the residents  
25 of the State in any United States district court

1 for the district in which the defendant is found,  
2 resides, or transacts business, or wherever  
3 venue is proper under section 1391 of title 28,  
4 United States Code, to obtain appropriate in-  
5 junctive relief.

6 (B) NOTICE TO COMMISSION REQUIRED.—  
7 A State shall provide prior written notice to the  
8 Federal Trade Commission of any civil action  
9 brought under subparagraph (A) with a copy of  
10 the complaint for the civil action, except that if  
11 providing such prior notice is not feasible for  
12 the State, the State shall provide notice imme-  
13 diately upon instituting the civil action.

14 (C) INTERVENTION BY THE COMMISS-  
15 SION.—The Federal Trade Commission may in-  
16 tervene in a civil action brought under subpara-  
17 graph (A) and upon intervening—

18 (i) may be heard on all matters aris-  
19 ing in the civil action; and

20 (ii) may file petitions for appeal of a  
21 decision in the civil action.

22 (D) CONSTRUCTION.—Nothing in this  
23 paragraph shall be construed—

24 (i) to prevent the attorney general of  
25 a State or other authorized State officer

1 from exercising the powers conferred on  
2 the attorney general or other authorized  
3 State officer by the laws of the State; or  
4 (ii) to prohibit the attorney general of  
5 a State or other authorized State officer  
6 from proceeding in State or Federal court  
7 on the basis of an alleged violation of any  
8 civil or criminal statute of that State.

9 (E) LIMITATION.—An action may not be  
10 brought under this paragraph if, at the time  
11 the action is brought, the same alleged violation  
12 is the subject of a pending action by the Fed-  
13 eral Trade Commission or the United States.

14 (c) DEFINITIONS.—In this section:

15 (1) AUTOMATIC RENEWAL CONTRACT.—The  
16 term “automatic renewal contract” means a contract  
17 between any person and any consumer for a good or  
18 service that is automatically renewed after an initial  
19 fixed period, unless the consumer instructs other-  
20 wise.

21 (2) CONTINUITY PLAN CONTRACT.—The term  
22 “continuity plan contract” means a contract between  
23 any person and any consumer under which the con-  
24 sumer agrees to incur charges in exchange for peri-

1        odic shipments of goods or the provision of services,  
2        unless the consumer instructs otherwise.

3            (3) FREE-TO-PAY CONVERSION CONTRACT.—

4        The term “free-to-pay conversion contract” means a  
5        contract between any person and any consumer  
6        under which—

7            (A) for an introductory period, the con-  
8            sumer receives a good or service at no charge  
9            or for a nominal charge; and

10          (B) after the introductory period, the con-  
11          sumer is charged or charged an increased  
12          amount for the good or service.

13          (4) NEGATIVE OPTION AGREEMENT.—The term  
14          “negative option agreement” means—

15            (A) an automatic renewal contract;

16            (B) a continuity plan contract;

17            (C) a free-to-pay conversion contract;

18            (D) a pre-notification negative option plan  
19          contract; or

20            (E) any combination of the contracts de-  
21          scribed in subparagraphs (A) through (D).

22          (5) NOTIFICATION.—The term “notification”,  
23          when used with respect to the terms of a contract,  
24          means a written notification that clearly, conspicu-  
25          ously, and concisely states all material terms of the

1 contract, including information regarding the can-  
2 cellation process.

3 (6) PRE-NOTIFICATION NEGATIVE OPTION PLAN  
4 CONTRACT.—The term “pre-notification negative op-  
5 tion plan contract” means a contract between any  
6 person and any consumer under which the consumer  
7 receives periodic notices offering goods and, unless  
8 the consumer specifically rejects the offer, the con-  
9 sumer automatically receives the goods and incurs a  
10 charge for such goods.

11 (d) EFFECTIVE DATE.—Notwithstanding section 10,  
12 this section shall apply with respect to contracts entered  
13 into after the date that is 1 year after the date of the  
14 enactment of this Act.

Page 40, line 9, strike “**SEC. 9.**” and insert “**SEC.**  
**10.**”.

