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

Page 40, after line 8, insert the following:

SEC. 9. INCREASED CONSUMER PROTECTION WITH RESPECT TO NEGATIVE OPTION AGREEMENTS ENTERED INTO ON THE INTERNET.

(a) IN GENERAL.—

(1) CANCELLATION OF NEGATIVE OPTION AGREEMENTS.—No person may enter into a negative option agreement on the Internet with any consumer, unless the negative option agreement provides the consumer with a mechanism to cancel the agreement in the same manner, and by the same means, into which the agreement was entered.

(2) REQUIREMENTS FOR FREE-TO-PAY CONVERSION CONTRACTS.—

(A) IN GENERAL.—It shall be unlawful for any person to charge or attempt to charge any consumer’s credit card, debit card, bank account, or other financial account for any good or service sold in a free-to-pay conversion contract entered into on the Internet, unless—
(i) before obtaining the consumer’s billing information, the person has obtained the consumer’s express informed consent to enter into the contract and has provided the consumer with a notification of the terms of the contract, including the fact that—

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

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

(ii) before the initial charge or initial increase after the introductory period, the person requires the consumer to perform an additional affirmative action, such as clicking on a confirmation button or checking a box, which indicates the consumer’s consent to be charged the amount disclosed.

(B) MANDATORY NOTIFICATIONS.—After the introductory period in a free-to-pay conver-
ession contract entered into on the Internet be-
 tween any person and any consumer, and on a
quarterly basis while the contract remains in ef-
fect, the person shall provide the consumer with
a copy of the notification of the terms of the
contract.

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

(A) AUTOMATIC RENEWAL CONTRACTS.—
With respect to an automatic renewal contract
entered into on the Internet between any person
and any consumer—

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

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

(B) CONTINUITY PLAN CONTRACTS.—With
respect to a continuity plan contract entered
into on the Internet between any person and any consumer, the person shall provide the con-
sumer with a copy of the notification of the terms of the contract on a quarterly basis while the contract remains in effect.

(4) **MANDATORY NOTIFICATIONS WITH RESPECT TO MATERIAL CHANGES IN TERMS OF NEGATIVE OPTION AGREEMENTS.**—In the case of a material change in the terms of a negative option agreement entered into on the Internet between any person and a consumer, the person shall provide the consumer with a notification of the terms of the agreement as changed before the change takes effect.

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

(b) **ENFORCEMENT.**—

(1) **BY FEDERAL TRADE COMMISSION.**—

(A) **IN GENERAL.**—A violation of this sec-
tion or any regulation prescribed under this sec-
tion shall be treated as a violation of a rule issued under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)) regarding unfair or deceptive
acts or practices. The Federal Trade Commission shall enforce this section in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this section.

(B) Penalties.—Any person who violates this section or any regulation prescribed under this section shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated in and made part of this section.

(2) By State Attorneys General.—

(A) In General.—Except as provided in subparagraph (E), the attorney general of a State or other authorized State officer alleging a violation of this section or any regulation prescribed under this section that affects or may affect the State or the residents of the State may bring an action on behalf of the residents of the State in any United States district court
for the district in which the defendant is found, resides, or transacts business, or wherever venue is proper under section 1391 of title 28, United States Code, to obtain appropriate injunctive relief.

(B) NOTICE TO COMMISSION REQUIRED.—A State shall provide prior written notice to the Federal Trade Commission of any civil action brought under subparagraph (A) with a copy of the complaint for the civil action, except that if providing such prior notice is not feasible for the State, the State shall provide notice immediately upon instituting the civil action.

(C) INTERVENTION BY THE COMMISSION.—The Federal Trade Commission may intervene in a civil action brought under subparagraph (A) and upon intervening—

(i) may be heard on all matters arising in the civil action; and

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

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

(i) to prevent the attorney general of a State or other authorized State officer
from exercising the powers conferred on
the attorney general or other authorized
State officer by the laws of the State; or
(ii) to prohibit the attorney general of
a State or other authorized State officer
from proceeding in State or Federal court
on the basis of an alleged violation of any
civil or criminal statute of that State.

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

(e) DEFINITIONS.—In this section:

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

(2) CONTINUITY PLAN CONTRACT.—The term
“continuity plan contract” means a contract between
any person and any consumer under which the con-
sumer agrees to incur charges in exchange for peri-
odic shipments of goods or the provision of services,
unless the consumer instructs otherwise.

(3) **Free-to-pay conversion contract.**—
The term “free-to-pay conversion contract” means a contract between any person and any consumer under which—

(A) for an introductory period, the consumer receives a good or service at no charge or for a nominal charge; and

(B) after the introductory period, the consumer is charged or charged an increased amount for the good or service.

(4) **Negative option agreement.**—The term “negative option agreement” means—

(A) an automatic renewal contract;

(B) a continuity plan contract;

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

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

(E) any combination of the contracts described in subparagraphs (A) through (D).

(5) **Notification.**—The term “notification”, when used with respect to the terms of a contract, means a written notification that clearly, conspicuously, and concisely states all material terms of the
contract, including information regarding the cancel-
cellation process.

(6) PRE-NOTIFICATION NEGATIVE OPTION PLAN

CONTRACT.—The term “pre-notification negative op-
tion plan contract” means a contract between any
person and any consumer under which the consumer
receives periodic notices offering goods and, unless
the consumer specifically rejects the offer, the con-
sumer automatically receives the goods and incurs a
charge for such goods.

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

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