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Attorney General Brown Supports FTC's Amendments to Negative Option Rule

Proposed Rule Would Protect Consumers from Deceptive Auto-Renewal Programs and Plans

BALTIMORE, MD (June 28, 2023) – Maryland Attorney General Anthony G. Brown has joined a coalition of 26 Attorneys General supporting the Federal Trade Commission's (FTC) proposed amendments to its Negative Option Rule.

Negative options are marketing methods for companies to enroll consumers in subscriptions, continuity plans and programs, automatic renewals, and other reoccurring actions. These plans and programs do not require consent for each attached reoccurring charge; rather, in some cases, a consumer's silence or failure to take action is deemed acceptance of the offer.

Amendments to the existing Negative Option Rule would provide more protection to consumers, clarifying terms at enrollment, offering easy and immediate cancellation options and reminders of upcoming charges. The proposed Rule will cover all marketing offers made in all media, "including, but not limited to the internet, telephone, in-print, and in-person transactions."

"This is about safeguarding the hard-earned money and trust of Marylanders," said Attorney General Brown. "The FTC's amendments to the Negative Option Rule puts consumers back in the driver's seat, empowers them to decide when and how to make and pay for their purchases, and protects them from being trapped into recurring payment schemes. As marketing practices evolve, I want regulations to keep pace, providing all residents with the strong consumer protections they deserve."

The coalition's [comment letter](#) was filed on June 23 in response to an FTC notice of proposed rulemaking. In the notice, the FTC sought comment on the following proposed amendments:

- Applying the Rule to all forms of negative option marketing;
- Prohibiting misrepresentations of any material fact regarding the entire agreement;
- Requiring clear and conspicuous disclosures of certain information before obtaining consumers' billing information;

- Requiring sellers to obtain express informed consent before charging consumers;
- Requiring sellers to provide a simple mechanism for consumers to cancel a negative option subscription; and
- Requiring sellers to provide reminders concerning the frequency and amount of charges, and the means to cancel.

In its letter, the coalition supports the FTC’s proposed amendments and offers suggestions to further enhance consumer protection. For example, the proposed Rule would require that sellers who sell products or services that do not involve the automatic delivery of physical goods provide consumers reminders, at least annually, identifying the product or service, the frequency and amount of charges, and the means to cancel. The coalition argues that these “annual” reminders may be insufficient in many cases and proposes requiring that these sellers send this important information with each billing cycle.

Joining Attorney General Brown in the letter are the Attorneys General of Alabama, Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Maine, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Vermont, Washington, and Wisconsin.

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