



PRESS RELEASE

Attorney General Frosh Urges FTC to Take Action Against Deceptive Marketing Practices

*State Attorneys General Seek Protection for Consumers from Being Trapped into
Recurring Payments*

BALTIMORE, MD (December 5, 2019) – In a [letter](#) to the Federal Trade Commission (FTC), Maryland Attorney General Brian E. Frosh joined a coalition of 23 attorneys general urging the FTC to adopt much needed regulations to prevent consumers from being deceived by negative option marketing schemes. In this scheme, a marketer presents a consumer with an offer, and the consumer’s silence or failure to take action is deemed acceptance of the offer. The FTC is considering whether to use its rulemaking authority to expand existing negative option regulations.

One especially problematic type of negative option offer involves a so-called “free” trial. Consumers are offered a free trial period for a product or service, but are required to submit their billing information to receive the promotion. However, the free trial has additional terms, which may not be clearly disclosed, stating that unless consumers cancel the goods or services, they will continue to receive and pay for them.

The current regulations, adopted in 1973, regulate only one type of negative option marketing—the delivery of merchandise where consumers receive periodic announcements that merchandise will be delivered unless they decline within a set time frame (e.g., book-of-the-month clubs).

The letter recommends the FTC expand its regulations to achieve the following:

- **Informed Consent** – In addition to consenting to any trial offer, sellers should have to obtain a separate consent to be charged for goods or services after the trial period has ended.
- **Periodic Notices** – Sellers should be required to send regular notifications that consumers are enrolled in a negative option plan; disclose the timing, amount, and method by which the seller bills the consumers for the renewal; and provide a convenient method to cancel the goods or services.
- **Define Simple Cancellation Processes** – Consumers should be allowed to cancel their memberships by the same method as enrollment.
- **Refunds** – Consumers who are unwittingly enrolled in negative option plans should be entitled to a refund from the date of enrollment.

“Marketers are deceiving consumers with these ‘free trial’ schemes. Folks get trapped in subscriptions or memberships that they thought they could sample for just one month. The FTC must update and expand its extremely outdated regulations concerning negative option marketing,” said Attorney General Frosh.

In addition to Maryland, the letter was signed by the attorneys general of Colorado, Delaware, the District of Columbia, Illinois, Iowa, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Dakota, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, and Wisconsin.