

Rockefeller Introduces Legislation to Rein-In Negative Option Internet Offers

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On May 19, 2010, Senator John D. Rockefeller, Chairman of the U.S. Senate Committee on Commerce, Science, and Transportation, introduced [legislation](#) that may have a significant impact on Internet retailers offering negative option programs. Negative option programs generally cover offers in which goods or services are provided automatically and consumers must either pay for the service or specifically decline it in advance of billing.

The proposed legislation was released on the same day that the Committee on Commerce released [the second of two reports](#) regarding companies that allegedly used aggressive sales tactics to enroll online consumers in services without their consent. The proposed bill contains a number of provisions relevant to companies that offer negative options:

- **Requirements for Certain Internet-Based Sales.** The proposed bill would make it unlawful for any post-transaction third-party seller to charge a consumer's credit card for a good or service without providing clear disclosures regarding the terms of the offer and receiving the consumer's express informed consent to billing. Express informed consent requires that the consumer provide all billing information and take an additional affirmative step (such as clicking on a box that indicates the consumer's consent to billing).
- **Prohibition on Data Pass of Billing Information.** Sen. Rockefeller's proposed legislation would prohibit the practice of merchants disclosing and transferring a consumer's billing information to any post-transaction third party seller for use in any Internet-based sale of goods or services from the third-party seller.
- **Limitations on the Use of Negative Options in Internet-Based Sales.** The proposed bill would make it unlawful to charge a consumer through an Internet-based negative option program unless: (1) the seller clearly and conspicuously discloses, prior to the sale, the material terms of the offer and the identity of the entity making the offer; (2) the seller has obtained the express informed consent to bill; (3) the seller provides a simple process to cancel billing that must be available through both the Internet and telephone; and, (4) the seller provides a notice of billing to a purchaser at least 10 days prior to each billing interval.

Companies who offer any type of Internet-based negative option program would be well-served to keep a close eye on how this proposed legislation makes its way through the Senate. As evidenced by the report released with the proposed legislation, Senator Rockefeller has taken on a strong pro-consumer agenda, and he will certainly seek to bring further attention to these types of offers.