SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 3877

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 12, 2024

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 3877.

As amended, this bill requires a cancellation option for any subscription service and establishes certain standards pertaining to the use of negative option features. Under current law, subscription service providers of health club services are required to provide consumers with an online cancellation option. This bill repeals and replaces current law and expands the term "subscription service" to apply to any subscription service provider. In addition, the bill requires subscription service providers to make available to consumers the option to cancel or terminate a subscription service using the same medium through which the subscription service was activated or the same medium in which the consumer is accustomed to interacting with the subscription service provider, including, but not limited to, in person, by telephone, by mail, by email, or online, in accordance with the established billing terms and conditions of the subscription service. Under the provisions of the bill, a subscription service provider that makes available the option to cancel or terminate a subscription service online, is to provide to any consumer, in an easily accessible location, a direct link or button on the subscription service provider's Internet website through which a consumer can initiate termination of the automatic renewal of the subscription service.

Under the bill, a "negative option feature" is defined as a provision within a subscription service offer or agreement in which a consumer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the subscription service provider as acceptance of the subscription service. A subscription service provider that utilizes a negative option feature as part of the offer or agreement of a subscription service is not to: misrepresent any material fact made while marketing; fail to clearly and conspicuously disclose material terms prior to obtaining a consumer's billing information; fail to obtain a consumer's express informed consent before charging the consumer; and fail to provide a simple mechanism to cancel and immediately halt charges.

The committee amended the bill to stipulate that its provisions do not apply to any service provided by a business or its affiliate where

either the business or its affiliate is licensed or regulated pursuant to State or federal law, including, but not by the Board of Public Utilities, Federal Communications Commission, Federal Energy Regulatory Commission, Department of Banking and Insurance or Division of Consumer Affairs in the Department of Law and Public Safety.

It is an unlawful practice for a subscription service provider to violate the provisions of this bill. An unlawful practice under the consumer fraud act is punishable by a monetary penalty of not more than $10,000 for a first offense and not more than $20,000 for any subsequent offense. In addition, violations may result in cease and desist orders issued by the Attorney General, the assessment of punitive damages, and the awarding of treble damages and costs to the injured party. It is the intent of the sponsor to make it easier for consumers to cancel their subscription services.

COMMITTEE AMENDMENTS

The committee amended the bill to stipulate that its provisions do not apply to any service provided by a business or its affiliate where either the business or its affiliate is licensed or regulated pursuant to State or federal law, including, but not by the Board of Public Utilities, Federal Communications Commission, Federal Energy Regulatory Commission, Department of Banking and Insurance or Division of Consumer Affairs in the Department of Law and Public Safety.