

Assembly Bill NO. 5395
(Second Reprint)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 5395 (Second Reprint) with my recommendations for reconsideration.

This bill would revise current law to require subscription service providers to allow consumers to cancel or terminate a subscription using the same method they used to subscribe, or the method they regularly use to interact with the provider, and require providers to provide clear, prominently placed cancellation options on their websites if they make them available online. The bill also would prohibit subscription service providers that use "negative option features" from misrepresenting material facts in marketing, and from failing to disclose material terms before collecting billing information. Subscription service providers would be required to obtain informed consent before initial charges, and to provide a simple cancellation mechanism for the negative option feature. Violations of the bill would constitute unlawful practices under the Consumer Fraud Act and would be enforced exclusively by the Attorney General or the Director of the Division of Consumer Affairs ("DCA").

In addition, the bill would repeal section 1 of P.L.2023, c.241, replacing the existing statutory framework for cancelling health club services subscriptions with the bill's broader cancellation standards. The bill, as amended, also includes a distinct provision that would exempt any service provided by a business or affiliate that is licensed or regulated under State or federal law, including entities overseen by agencies such as the Board of Public Utilities, the Federal Communications Commission, the Federal Energy Regulatory Commission, the Department of Banking and Insurance, or the DCA.

I commend the bill's sponsors for their efforts to strengthen consumer protections and address an issue that consumers too often face: signing up for a subscription is often easy, but cancelling it

is not. The bill's core provisions reflect a clear intent to protect consumers from unfair subscription practices by promoting transparency, informed consent, and simple, accessible cancellation methods. However, subsection f., which creates a broad exemption for any service provided by a business or affiliate licensed or regulated under State or federal law, is so expansive that it would exclude a vast majority of subscription services in which consumers regularly enroll, including, but not limited to, subscriptions related to cell phones and telecommunications, cable and streaming services, utilities, financial services, insurance, landscaping services, credit monitoring, warranties like motor vehicle coverage, and dietary supplement and medication refills.

Further exacerbating this concern is the exclusion from the protections of the bill of subscription services offered by an entity that has an affiliate that is regulated under State or federal law. Thus, even if an entity offering a subscription service is not subject to government regulation, its affiliation with a regulated entity would further expand the scope of this exception and limit the availability of the bill's intended consumer protections. Moreover, the average consumer is unlikely to be able to readily discern whether a given company has any such affiliates, such that they would know with certainty whether the protections of the bill apply to a subscription service they are contemplating. This facet of the exemption would, in my view, essentially render illusory the protections purportedly offered by the bill.

Given the pervasiveness of State and federal regulations across nearly all sectors of the economy, it is difficult to identify many meaningful categories of subscription services that would remain subject to the bill's requirements if this exemption were to be enacted as part of this legislation. Thus, given the expansive nature of the carveout and the absence of clarity as to both which services

or businesses are intended to be excluded from the bill by the exemption and which are still covered by the bill, I am concerned that the exemption would swallow the core components of the bill, nullifying its consumer protection provisions and undermining its purpose.

Therefore, I herewith return Assembly Bill No. 5395 (Second Reprint) and recommend that it be amended as follows:

Page 3, Section 1, Lines 39-45: Delete in their entirety

[seal] Respectfully,

/s/ Philip D. Murphy

Governor

Attest:

/s/ Kate E. McDonnell

Chief Counsel to the Governor