

1                   A bill to be entitled  
 2           An act relating to consumer protection; creating part XII  
 3           of chapter 559, F.S.; prohibiting certain third-party  
 4           sellers from engaging in certain transactions over the  
 5           Internet with consumers engaged in transactions with  
 6           certain merchants except under certain circumstances;  
 7           requiring certain disclosures to consumers; requiring a  
 8           consumer's express informed consent for charges;  
 9           authorizing consumers to cancel goods and services and  
 10          avoid charges; providing that violations are unfair or  
 11          deceptive trade practices; providing penalties and  
 12          remedies for violations; providing an effective date.

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 14 Be It Enacted by the Legislature of the State of Florida:

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 16           Section 1. Part XII of chapter 559, Florida Statutes,  
 17           consisting of section 559.951, is created to read:

18                                   PART XII

19   MISCELLANEOUS PROVISIONS

20           559.951 Internet sales; prohibited practices.—

21           (1) As used in this section, the term:

22           (a) "Initial merchant" means a person who obtains a  
 23           consumer's billing information directly from the consumer  
 24           through an Internet transaction initiated by the consumer.

25           (b) "Posttransaction third-party seller" means a person  
 26           who:

27           1. Sells or offers for sale any good or service over the  
 28           Internet; and

29        2. Solicits the purchase of such good or service over the  
30 Internet through an initial merchant after the consumer has  
31 initiated a transaction with the initial merchant.

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33 The term does not include the initial merchant, a subsidiary or  
34 corporate affiliate of the initial merchant, or a successor of  
35 the initial merchant.

36        (2) A posttransaction third-party seller may not charge or  
37 attempt to charge a consumer's credit card, debit card, bank  
38 account, or other account for any good or service sold in a  
39 transaction conducted over the Internet, unless:

40        (a) Before obtaining the consumer's billing information,  
41 the posttransaction third-party seller clearly and conspicuously  
42 discloses to the consumer all material terms of the transaction,  
43 including:

44            1. A description of the goods or services being offered.

45            2. A statement that the posttransaction third-party seller  
46 is not affiliated with the initial merchant. Such statement must  
47 include the disclosure of the posttransaction third-party  
48 seller's name in a manner that clearly differentiates the  
49 posttransaction third-party seller from the initial merchant.

50            3. The cost of such goods or services.

51            4. How and when the charges will be processed by the  
52 posttransaction third-party seller.

53        (b) The posttransaction third-party seller receives the  
54 express informed consent for the charge from the consumer whose  
55 credit card, debit card, bank account, or other account will be  
56 charged by:

- 57        1. Obtaining from the consumer:
- 58        a. The full account number of the account to be charged or
- 59 other account information necessary to complete the transaction.
- 60        b. The consumer's name and address.
- 61        c. A means to contact the consumer.
- 62        2. Requiring the consumer to perform an additional
- 63 affirmative action, such as selecting a confirmation button or
- 64 checking a box, which clearly and conspicuously indicates the
- 65 consumer's consent to be charged the amount disclosed.
- 66        (c) Before processing the consumer's credit card or
- 67 otherwise charging the consumer or soon thereafter, the
- 68 posttransaction third-party seller sends written notice
- 69 confirming the transaction to the consumer by first class United
- 70 States mail or e-mail. Such notice must clearly and
- 71 conspicuously disclose the following:
- 72        1. The good or service purchased.
- 73        2. The amount that the consumer will be charged.
- 74        3. The timing and frequency of charges.
- 75        4. A short and plain statement disclosing the
- 76 posttransaction third-party seller's cancellation and refund
- 77 policy.
- 78        5. A telephone number, mailing address, Internet website
- 79 address, and e-mail address where the posttransaction third-
- 80 party seller may be contacted.
- 81        6. The name of the initial merchant or fictitious name
- 82 under which the initial merchant is doing business, if known.
- 83        7. The name of the posttransaction third-party seller or
- 84 fictitious name under which the posttransaction third-party

85 seller is doing business.

86 8. A statement that the posttransaction third-party seller  
87 is an unaffiliated and separate entity from the initial  
88 merchant.

89 9. A statement that the consumer is being charged by the  
90 posttransaction third-party seller for a transaction that is  
91 separate from the consumer's transaction with the initial  
92 merchant.

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94 If the posttransaction third-party seller sends the notice  
95 required under this paragraph by e-mail, the only words  
96 appearing in the e-mail's subject line shall be "Notice that  
97 (...name or fictitious name of the posttransaction third-party  
98 seller...) is charging your (...type of account...) account."

99 (3) An initial merchant may not disclose a consumer's  
100 credit card number, debit card number, bank account number, or  
101 other account number, or disclose other consumer billing  
102 information, to a posttransaction third-party seller.

103 (4) A posttransaction third-party seller may not:

104 (a) Charge a consumer without providing a simple mechanism  
105 for the consumer to cancel the good or service and stop charges  
106 within a reasonable time after delivery of the written notice  
107 confirming the transaction; or

108 (b) Change its vendor code, or otherwise materially change  
109 the way the posttransaction third-party seller is identified on  
110 the consumer's account, more than once per year, unless the  
111 posttransaction third-party seller provides the consumer with  
112 written notice of the change.

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113 |       (5) A violation of this section is deemed an unfair or  
114 | deceptive trade practice within the meaning of part II of  
115 | chapter 501. A person who violates this section is subject to  
116 | the penalties and remedies provided therein.

117 |       Section 2. This act shall take effect July 1, 2011.