

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 October 1, 2011.