

Amendment No.

CHAMBER ACTION

Senate

House

.

1 Representative Eisnaugle offered the following:

2
3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause and insert:
5 Section 1. Part XII of chapter 559, Florida Statutes,
6 consisting of section 559.951, is created to read:

7 PART XII

8 MISCELLANEOUS PROVISIONS

9 559.951 Internet sales; prohibited practices.-

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

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

14 (b) "Posttransaction third-party seller" means a person
15 who:

826643

Approved For Filing: 5/3/2011 4:36:13 PM

Amendment No.

16 1. Sells or offers for sale any good or service over the
17 Internet; and

18 2. Solicits the purchase of such good or service over the
19 Internet through an initial merchant after the consumer has
20 initiated a transaction with the initial merchant.

21
22 The term does not include the initial merchant, a subsidiary or
23 corporate affiliate of the initial merchant, or a successor of
24 the initial merchant.

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

29 (a) Before obtaining the consumer's billing information,
30 the posttransaction third-party seller clearly and conspicuously
31 discloses to the consumer all material terms of the transaction,
32 including:

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

34 2. A statement that the posttransaction third-party seller
35 is not affiliated with the initial merchant. Such statement must
36 include the disclosure of the posttransaction third-party
37 seller's name in a manner that clearly differentiates the
38 posttransaction third-party seller from the initial merchant.

39 3. The cost of such goods or services.

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

42 (b) The posttransaction third-party seller receives the
43 express informed consent for the charge from the consumer whose

826643

Approved For Filing: 5/3/2011 4:36:13 PM

Amendment No.

44 credit card, debit card, bank account, or other account will be
45 charged by:

46 1. Obtaining from the consumer:

47 a. The full account number of the account to be charged or
48 other account information necessary to complete the transaction.

49 b. The consumer's name and address.

50 c. A means to contact the consumer.

51 2. Requiring the consumer to perform an additional
52 affirmative action, such as selecting a confirmation button or
53 checking a box, which clearly and conspicuously indicates the
54 consumer's consent to be charged the amount disclosed.

55 (c) Before processing the consumer's credit card or
56 otherwise charging the consumer or soon thereafter, the
57 posttransaction third-party seller sends written notice
58 confirming the transaction to the consumer by first class United
59 States mail or e-mail. Such notice must clearly and
60 conspicuously disclose the following:

61 1. The good or service purchased.

62 2. The amount that the consumer will be charged.

63 3. The timing and frequency of charges.

64 4. A short and plain statement disclosing the
65 posttransaction third-party seller's cancellation and refund
66 policy.

67 5. A telephone number, mailing address, Internet website
68 address, and e-mail address where the posttransaction third-
69 party seller may be contacted.

70 6. The name of the initial merchant or fictitious name
71 under which the initial merchant is doing business, if known.

826643

Approved For Filing: 5/3/2011 4:36:13 PM

Amendment No.

72 7. The name of the posttransaction third-party seller or
73 fictitious name under which the posttransaction third-party
74 seller is doing business.

75 8. A statement that the posttransaction third-party seller
76 is an unaffiliated and separate entity from the initial
77 merchant.

78 9. A statement that the consumer is being charged by the
79 posttransaction third-party seller for a transaction that is
80 separate from the consumer's transaction with the initial
81 merchant.

82
83 If the posttransaction third-party seller sends the notice
84 required under this paragraph by e-mail, the only words
85 appearing in the e-mail's subject line shall be "Notice that
86 (...name or fictitious name of the posttransaction third-party
87 seller...) is charging your (...type of account...) account."

88 (3) An initial merchant may not disclose a consumer's
89 credit card number, debit card number, bank account number, or
90 other account number, or disclose other consumer billing
91 information, to a posttransaction third-party seller.

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

93 (a) Charge a consumer without providing a simple mechanism
94 for the consumer to cancel the good or service and stop charges
95 within a reasonable time after delivery of the written notice
96 confirming the transaction; or

97 (b) Change its vendor code, or otherwise materially change
98 the way the posttransaction third-party seller is identified on
99 the consumer's account, more than once per year, unless the

826643

Approved For Filing: 5/3/2011 4:36:13 PM

Amendment No.

100 posttransaction third-party seller provides the consumer with
101 written notice of the change.

102 (5) A violation of this section is deemed an unfair or
103 deceptive trade practice within the meaning of part II of
104 chapter 501. A person who violates this section is subject to
105 the penalties and remedies provided therein.

106 Section 2. This act shall take effect October 1, 2011.

108 -----
109 **T I T L E A M E N D M E N T**

110 Remove the entire title and insert:

111 A bill to be entitled
112 An act relating to consumer protection; creating part XII
113 of chapter 559, F.S.; prohibiting certain third-party
114 sellers from engaging in certain transactions over the
115 Internet with consumers engaged in transactions with
116 certain merchants except under certain circumstances;
117 requiring certain disclosures to consumers; requiring a
118 consumer's express informed consent for charges;
119 authorizing consumers to cancel goods and services and
120 avoid charges; providing that violations are unfair or
121 deceptive trade practices; providing penalties and
122 remedies for violations; providing an effective date.