

By Senator Gaetz

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1 A bill to be entitled
2 An act relating to consumer protection; providing
3 definitions; prohibiting a post-transaction third-
4 party seller from charging a consumer for a good or
5 service sold over the Internet unless certain
6 disclosures are made and the seller receives the
7 informed consent of the consumer; requiring a post-
8 transaction third-party seller to provide a simple
9 mechanism for a consumer to cancel a purchase of a
10 good or service and stop any recurring charges;
11 prohibiting an initial merchant from disclosing
12 certain account numbers of a consumer to a post-
13 transaction third-party seller under certain
14 circumstances; providing that a person who violates
15 the act commits an unfair and deceptive trade practice
16 under the Florida Deceptive and Unfair Trade Practices
17 Act; providing an effective date.

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

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21 Section 1. Prohibition against certain unfair and deceptive
22 Internet sales practices.-

23 (1) DEFINITIONS.-As used in this section, the term:

24 (a) "Initial merchant" means a person who has obtained a
25 consumer's billing information directly from the consumer
26 through an Internet transaction initiated by the consumer.

27 (b) "Post-transaction third-party seller" means a person
28 who:

29 1. Sells, or offers for sale, any good or service on the

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30 Internet;

31 2. Solicits the purchase of such good or service on the
32 Internet through an initial merchant after the consumer has
33 initiated a transaction with the initial merchant; and

34 3. Is not:

35 a. The initial merchant;

36 b. A subsidiary or corporate affiliate of the initial
37 merchant; or

38 c. A successor of the initial merchant.

39 (2) REQUIREMENTS FOR CERTAIN INTERNET-BASED SALES.—A post-
40 transaction third-party seller may not charge or attempt to
41 charge any consumer's credit card, debit card, bank account, or
42 other account for any good or service sold in a transaction
43 effected on the Internet, unless:

44 (a) Before obtaining the consumer's billing information,
45 the post-transaction third-party seller has clearly and
46 conspicuously disclosed to the consumer all material terms of
47 the transaction, including:

48 1. A description of the good or service being offered;

49 2. The fact that the post-transaction third-party seller is
50 not affiliated with the initial merchant, which must include
51 disclosure of the name of the post-transaction third-party
52 seller in a manner that clearly differentiates the post-
53 transaction third-party seller from the initial merchant;

54 3. The cost of the good or service; and

55 4. How and when charges will be imposed by the post-
56 transaction third-party seller; and

57 (b) The post-transaction third-party seller has received
58 the express informed consent for the charges from the consumer

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59 whose credit card, debit card, bank account, or other account
60 will be charged by:

61 1. Obtaining from the consumer:

62 a. The full account number of the account to be charged, or
63 other account information necessary to complete the transaction;
64 and

65 b. The consumer's name and address and a means to contact
66 the consumer; and

67 2. Requiring the consumer to perform an additional
68 affirmative action, such as clicking on a confirmation button or
69 checking a box that clearly and conspicuously indicates the
70 consumer's consent to be charged the amount disclosed; and

71 3. Sending a written notice to the consumer by first-class
72 United States mail or electronic mail at least 20 days before
73 charging the consumer, which notice clearly and conspicuously
74 confirms the transaction and discloses the following:

75 a. The good or service purchased;

76 b. The amount to be charged to the consumer;

77 c. When the consumer will be charged and whether the
78 charges are recurring;

79 d. That the consumer may cancel at any time by calling a
80 telephone number provided in the notice or may cancel in a
81 writing sent to an address or electronic address provided in the
82 notice;

83 e. The name of the initial merchant and that the post-
84 transaction third-party seller is a separate entity from the
85 initial merchant; and

86 f. That the consumer is being charged by the post-
87 transaction third-party seller for a transaction that is

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88 separate from the transaction the consumer made with the initial
89 merchant.

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91 The notice must include a simple mechanism for the consumer to
92 cancel the good or service and stop recurring charges by
93 telephone, electronic mail, or United States mail. If the notice
94 is sent by electronic mail, the only words appearing in the
95 subject line shall be "notice that we are charging your [insert
96 type of account] account."

97 (3) PROHIBITION ON DISCLOSING DATA USED TO FACILITATE
98 CERTAIN DECEPTIVE INTERNET SALES TRANSACTIONS.-An initial
99 merchant may not disclose a credit card, debit card, bank
100 account, or other account number or other billing information to
101 a post-transaction third-party seller for use in an Internet-
102 based sale of any good or service from that post-transaction
103 third-party seller.

104 (4) MECHANISM TO STOP RECURRING CHARGES REQUIRED.-A post-
105 transaction third-party seller may not charge a consumer unless
106 it provides a simple mechanism for the consumer to stop
107 recurring charges via telephone, electronic mail, and United
108 States mail.

109 (5) UNFAIR TRADE PRACTICES.-A person who violates this
110 section commits an unfair and deceptive trade practice under
111 part II of chapter 501, Florida Statutes, and is subject to any
112 remedies or penalties available for a violation of that part.

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