

By the Committee on Commerce and Tourism; and Senator Gaetz

577-04378-11

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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.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
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

577-04378-11

20111884c1

30 Internet; and

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

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

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

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

- 47 1. A description of the good or service being offered;
48 2. The fact that the post-transaction third-party seller is
49 not affiliated with the initial merchant, which must include
50 disclosure of the name of the post-transaction third-party
51 seller in a manner that clearly differentiates the post-
52 transaction third-party seller from the initial merchant;
53 3. The cost of the good or service; and
54 4. How and when charges will be imposed by the post-
55 transaction third-party seller; and

56 (b) The post-transaction third-party seller has received
57 the express informed consent for the charges from the consumer
58 whose credit card, debit card, bank account, or other account

577-04378-11

20111884c1

59 will be charged by:

60 1. Obtaining from the consumer:

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

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

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

70 3. Sending a written notice to the consumer confirming a
71 transaction by first-class United States mail or e-mail before
72 processing the consumer's credit card, or otherwise charging the
73 consumer, or shortly thereafter. Such notice must clearly and
74 conspicuously disclose the following:

75 a. The good or service purchased.

76 b. The amount that the consumer will be charged.

77 c. The timing and frequency of charges.

78 d. A short and plain statement disclosing the post-
79 transaction third-party seller's cancellation and refund policy.

80 e. A telephone number, mailing address, Internet address,
81 and e-mail address where the post-transaction third-party seller
82 can be contacted.

83 f. The name or brand name of the initial merchant, if
84 known.

85 g. The name or brand name of the post-transaction third-
86 party seller.

87 h. That the post-transaction third-party seller is an

577-04378-11

20111884c1

88 unaffiliated and separate entity from the initial merchant.

89 i. That the consumer is being charged by the post-
90 transaction 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 notice described in subparagraph 3. is sent by e-mail,
95 the only words appearing in the subject line shall be "Notice
96 that ...(name or brand name of post-transaction third-party
97 seller... is charging your ...(type of account)...."

98 (3) PROHIBITION ON DISCLOSING DATA.—An initial merchant may
99 not disclose a consumer's credit card number, debit card number,
100 bank account number, or other account number, or disclose other
101 consumer billing information, to a post-transaction third-party
102 seller.

103 (4) MECHANISM TO STOP RECURRING CHARGES REQUIRED.—A post-
104 transaction third-party seller may not:

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

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

114 (5) UNFAIR TRADE PRACTICES.—A person who violates this
115 section commits an unfair and deceptive trade practice under
116 part II of chapter 501, Florida Statutes, and is subject to any

577-04378-11

20111884c1

117 remedies or penalties available for a violation of that part.

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