

Editorial Notes

REFERENCES IN TEXT

This subtitle, referred to in text, is subtitle B (§§761-774) of title VII of Pub. L. 111-203, July 21, 2010, 124 Stat. 1754, which enacted this subchapter and sections 78c-3 to 78c-5, 78j-2, 78m-1, and 78o-10 of this title, amended sections 77b, 77b-1, 77e, 77q, 78c, 78c-1, 78f, 78i, 78j, 78m, 78o, 78p, 78q-1, 78t, 78u-1, 78u-2, 78bb, 78dd, 78mm, 80a-2, and 80b-2 of this title, enacted provisions set out as a note under section 77b of this title, and amended provisions set out as a note under section 78c of this title. For complete classification of subtitle B to the Code, see Tables.

Statutory Notes and Related Subsidiaries

DEFINITIONS

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

CHAPTER 110—ONLINE SHOPPER PROTECTION

Sec.

8401.	Findings; declaration of policy.
8402.	Prohibitions against certain unfair and deceptive Internet sales practices.
8403.	Negative option marketing on the Internet.
8404.	Enforcement by Federal Trade Commission.
8405.	Enforcement by State attorneys general.

§ 8401. Findings; declaration of policy

The Congress finds the following:

(1) The Internet has become an important channel of commerce in the United States, accounting for billions of dollars in retail sales every year. Over half of all American adults have now either made an online purchase or an online travel reservation.

(2) Consumer confidence is essential to the growth of online commerce. To continue its development as a marketplace, the Internet must provide consumers with clear, accurate information and give sellers an opportunity to fairly compete with one another for consumers' business.

(3) An investigation by the Senate Committee on Commerce, Science, and Transportation found abundant evidence that the aggressive sales tactics many companies use against their online customers have undermined consumer confidence in the Internet and thereby harmed the American economy.

(4) The Committee showed that, in exchange for "bounties" and other payments, hundreds of reputable online retailers and websites shared their customers' billing information, including credit card and debit card numbers, with third party sellers through a process known as "data pass". These third party sellers in turn used aggressive, misleading sales tactics to charge millions of American consumers for membership clubs the consumers did not want.

(5) Third party sellers offered membership clubs to consumers as they were in the process of completing their initial transactions on hundreds of websites. These third party "post-transaction" offers were designed to make consumers think the offers were part of the initial purchase, rather than a new transaction with a new seller.

(6) Third party sellers charged millions of consumers for membership clubs without ever

obtaining consumers' billing information, including their credit or debit card information, directly from the consumers. Because third party sellers acquired consumers' billing information from the initial merchant through "data pass", millions of consumers were unaware they had been enrolled in membership clubs.

(7) The use of a "data pass" process defied consumers' expectations that they could only be charged for a good or a service if they submitted their billing information, including their complete credit or debit card numbers.

(8) Third party sellers used a free trial period to enroll members, after which they periodically charged consumers until consumers affirmatively canceled the memberships. This use of "free-to-pay conversion" and "negative option" sales took advantage of consumers' expectations that they would have an opportunity to accept or reject the membership club offer at the end of the trial period.

(Pub. L. 111-345, §2, Dec. 29, 2010, 124 Stat. 3618.)

Statutory Notes and Related Subsidiaries

SHORT TITLE

Pub. L. 111-345, §1, Dec. 29, 2010, 124 Stat. 3618, provided that: "This Act [enacting this chapter] may be cited as the 'Restore Online Shoppers' Confidence Act'."

§ 8402. Prohibitions against certain unfair and deceptive Internet sales practices**(a) Requirements for certain Internet-based sales**

It shall be unlawful for any post-transaction third party seller to charge or attempt to charge any consumer's credit card, debit card, bank account, or other financial account for any good or service sold in a transaction effected on the Internet, unless—

(1) before obtaining the consumer's billing information, the post-transaction third party seller has clearly and conspicuously disclosed to the consumer all material terms of the transaction, including—

(A) a description of the goods or services being offered;

(B) the fact that the post-transaction third party seller is not affiliated with the initial merchant, which may include disclosure of the name of the post-transaction third party in a manner that clearly differentiates the post-transaction third party seller from the initial merchant; and

(C) the cost of such goods or services; and

(2) the post-transaction third party seller has received the express informed consent for the charge from the consumer whose credit card, debit card, bank account, or other financial account will be charged by—

(A) obtaining from the consumer—

(i) the full account number of the account to be charged; and

(ii) the consumer's name and address and a means to contact the consumer; and

(B) requiring the consumer to perform an additional affirmative action, such as clicking on a confirmation button or check-

ing a box that indicates the consumer's consent to be charged the amount disclosed.

(b) Prohibition on data-pass used to facilitate certain deceptive Internet sales transactions

It shall be unlawful for an initial merchant to disclose a credit card, debit card, bank account, or other financial account number, or to disclose other billing information that is used to charge a customer of the initial merchant, to any post-transaction third party seller for use in an Internet-based sale of any goods or services from that post-transaction third party seller.

(c) Application with other law

Nothing in this chapter shall be construed to supersede, modify, or otherwise affect the requirements of the Electronic Funds¹ Transfer Act (15 U.S.C. 1693 et seq.) or any regulation promulgated thereunder.

(d) Definitions

In this section:

(1) Initial merchant

The term "initial merchant" means a person that has obtained a consumer's billing information directly from the consumer through an Internet transaction initiated by the consumer.

(2) Post-transaction third party seller

The term "post-transaction third party seller" means a person that—

(A) sells, or offers for sale, any good or service on the Internet;

(B) solicits the purchase of such goods or services on the Internet through an initial merchant after the consumer has initiated a transaction with the initial merchant; and

(C) is not—

(i) the initial merchant;

(ii) a subsidiary or corporate affiliate of the initial merchant; or

(iii) a successor of an entity described in clause (i) or (ii).

(Pub. L. 111-345, § 3, Dec. 29, 2010, 124 Stat. 3619.)

Editorial Notes

REFERENCES IN TEXT

The Electronic Fund Transfer Act, referred to in subsec. (c), is title IX of Pub. L. 90-321, as added by Pub. L. 95-630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3728, which is classified generally to subchapter VI (§1693 et seq.) of chapter 41 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

§ 8403. Negative option marketing on the Internet

It shall be unlawful for any person to charge or attempt to charge any consumer for any goods or services sold in a transaction effected on the Internet through a negative option feature (as defined in the Federal Trade Commission's Telemarketing Sales Rule in part 310 of title 16, Code of Federal Regulations), unless the person—

(1) provides text that clearly and conspicuously discloses all material terms of the trans-

action before obtaining the consumer's billing information;

(2) obtains a consumer's express informed consent before charging the consumer's credit card, debit card, bank account, or other financial account for products or services through such transaction; and

(3) provides simple mechanisms for a consumer to stop recurring charges from being placed on the consumer's credit card, debit card, bank account, or other financial account.

(Pub. L. 111-345, § 4, Dec. 29, 2010, 124 Stat. 3620.)

§ 8404. Enforcement by Federal Trade Commission

(a) In general

Violation of this chapter or any regulation prescribed under this chapter shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices. The Federal Trade Commission shall enforce this chapter in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this chapter.

(b) Penalties

Any person who violates this chapter or any regulation prescribed under this chapter shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated in and made part of this chapter.

(c) Authority preserved

Nothing in this section shall be construed to limit the authority of the Commission under any other provision of law.

(Pub. L. 111-345, § 5, Dec. 29, 2010, 124 Stat. 3620.)

Editorial Notes

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsecs. (a) and (b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

§ 8405. Enforcement by State attorneys general

(a) Right of action

Except as provided in subsection (e), the attorney general of a State, or other authorized State officer, alleging a violation of this chapter or any regulation issued under this chapter that affects or may affect such State or its residents may bring an action on behalf of the residents of the State in any United States district court for the district in which the defendant is found, resides, or transacts business, or wherever venue is proper under section 1391 of title 28, to obtain appropriate injunctive relief.

(b) Notice to Commission required

A State shall provide prior written notice to the Federal Trade Commission of any civil ac-

¹ So in original. Probably should be "Fund".