

111TH CONGRESS
2D SESSION

H. R. 5707

To protect consumers from certain aggressive sales tactics on the Internet.

IN THE HOUSE OF REPRESENTATIVES

JULY 1, 2010

Mr. SPACE introduced the following bill; which was referred to the Committee
on Energy and Commerce

A BILL

To protect consumers from certain aggressive sales tactics
on the Internet.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Restore Online Shop-
5 pers’ Confidence Act”.

6 **SEC. 2. FINDINGS; DECLARATION OF POLICY.**

7 The Congress finds the following:

8 (1) The Internet has become an important
9 channel of commerce in the United States, account-
10 ing for billions of dollars in retail sales every year.
11 Over half of all American adults have now either

1 made an online purchase or an online travel reserva-
2 tion.

3 (2) Consumer confidence is essential to the
4 growth of online commerce. To continue its develop-
5 ment as a marketplace, the Internet must provide
6 consumers with clear, accurate information and give
7 sellers an opportunity to fairly compete with one an-
8 other for consumers' business.

9 (3) An investigation by the Senate Committee
10 on Commerce, Science, and Transportation found
11 abundant evidence that the aggressive sales tactics
12 many companies use against their online customers
13 have undermined consumer confidence in the Inter-
14 net and thereby harmed the American economy.

15 (4) The Committee showed that, in exchange
16 for "bounties" and other payments, hundreds of rep-
17 utable online retailers and Web sites shared their
18 customers' billing information, including credit card
19 and debit card numbers, with third party sellers
20 through a process known as "data pass". These
21 third party sellers in turn used aggressive, mis-
22 leading sales tactics to charge millions of American
23 consumers for membership clubs the consumers did
24 not want.

1 (5) Third party sellers offered membership
2 clubs to consumers as they were in the process of
3 completing their initial transactions on hundreds of
4 Web sites. These third party “post-transaction” of-
5 fers were designed to make consumers think the of-
6 fers were part of the initial purchase, rather than a
7 new transaction with a new seller.

8 (6) Third party sellers charged millions of con-
9 sumers for membership clubs without ever obtaining
10 consumers’ billing information, including their credit
11 or debit card information, directly from the con-
12 sumers. Because third party sellers acquired con-
13 sumers’ billing information from the initial merchant
14 through “data pass”, millions of consumers were un-
15 aware they had been enrolled in membership clubs.

16 (7) The use of a “data pass” process defied
17 consumers’ expectations that they could only be
18 charged for a good or a service if they submitted
19 their billing information, including their complete
20 credit or debit card numbers.

21 (8) Third party sellers used a free trial period
22 to enroll members, after which they periodically
23 charged consumers until consumers affirmatively
24 canceled the memberships. This use of “free-to-pay
25 conversion” and “negative option” sales took advan-

1 tage of consumers' expectations that they would
2 have an opportunity to accept or reject the member-
3 ship club offer at the end of the trial period.

4 **SEC. 3. PROHIBITIONS AGAINST CERTAIN UNFAIR AND DE-**
5 **CEPTIVE INTERNET SALES PRACTICES.**

6 (a) REQUIREMENTS FOR CERTAIN INTERNET-BASED
7 SALES.—It shall be unlawful for any post-transaction
8 third party seller to charge or attempt to charge any con-
9 sumer's credit card, debit card, bank account, or other fi-
10 nancial account for any good or service sold in a trans-
11 action effected on the Internet, unless—

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

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

18 (B) the fact that the post-transaction third
19 party seller is not affiliated with the initial mer-
20 chant, which may include disclosure of the
21 name of the post-transaction third party in a
22 manner that clearly differentiates the post-
23 transaction third party seller from the initial
24 merchant; and

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

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

6 (A) obtaining from the consumer—

7 (i) the full account number of the ac-
8 count to be charged; and

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

11 (B) requiring the consumer to perform an
12 additional affirmative action, such as clicking
13 on a confirmation button or checking a box that
14 indicates the consumer's consent to be charged
15 the amount disclosed.

16 (b) PROHIBITION ON DATA-PASS USED TO FACILI-
17 TATE CERTAIN DECEPTIVE INTERNET SALES TRANS-
18 ACTIONS.—It shall be unlawful for an initial merchant to
19 disclose a credit card, debit card, bank account, or other
20 financial account number, or to disclose other billing infor-
21 mation that is used to charge a customer of the initial
22 merchant, to any post-transaction third party seller for
23 use in an Internet-based sale of any goods or services from
24 that post-transaction third party seller.

1 (c) LIMITATIONS ON USE OF NEGATIVE OPTION
2 FEATURE IN INTERNET-BASED SALES TRANSACTIONS.—

3 It shall be unlawful for any person to charge or attempt
4 to charge any consumer for any goods or services sold in
5 a transaction effected on the Internet through a negative
6 option feature, unless—

7 (1) before obtaining the consumer's initial
8 agreement to participate, the seller has clearly and
9 conspicuously disclosed all material terms of the
10 transaction, including—

11 (A) the name of the entity offering the
12 goods or services;

13 (B) a description of the goods or services
14 being offered;

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

16 (D) notice of when billing will begin and at
17 what intervals the charges will occur;

18 (E) the length of any trial period;

19 (F) a statement that the consumer's ac-
20 count will be charged unless the consumer takes
21 affirmative action and the steps the consumer
22 must take to the avoid the charge; and

23 (G) instructions for stopping the recurring
24 charges in accordance with the requirements of
25 paragraph (3);

1 (2) the seller has obtained the express informed
2 consent described in subsection (a)(2) from the con-
3 sumer before charging or attempting to charge the
4 consumer’s credit card, debit card, bank account, or
5 other financial account on a recurring basis; and

6 (3) the seller enables the consumer to stop re-
7 curring charges from being made to the consumer’s
8 credit card, debit card, bank account, or other finan-
9 cial account through a simple process that is avail-
10 able via the Internet and email.

11 (d) APPLICATION WITH OTHER LAW.—Nothing in
12 this Act shall be construed to supersede, modify, or other-
13 wise affect the requirements of the Electronic Fund
14 Transfer Act (15 U.S.C. 1693 et seq.) or any regulation
15 promulgated thereunder.

16 (e) DEFINITIONS.—In this section:

17 (1) INITIAL MERCHANT.—The term “initial
18 merchant” means a person that has obtained a con-
19 sumer’s billing information directly from the con-
20 sumer through an Internet transaction initiated by
21 the consumer.

22 (2) NEGATIVE OPTION FEATURE.—The term
23 “negative option feature” has the meaning given
24 that term in section 310.2(t) of the Federal Trade

1 Commission's Telemarketing Sales Rule regulations
2 (16 C.F.R. 310.2(t)).

3 (3) POST-TRANSACTION THIRD PARTY SELL-
4 ER.—The term “post-transaction third party seller”
5 means a person that—

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

8 (B) solicits the purchase of such goods or
9 services on the Internet through an initial mer-
10 chant after the consumer has initiated a trans-
11 action with the initial merchant; and

12 (C) is not a subsidiary or corporate affil-
13 iate of the initial merchant.

14 **SEC. 4. ENFORCEMENT BY FEDERAL TRADE COMMISSION.**

15 (a) IN GENERAL.—Violation of this Act or any regu-
16 lation prescribed under this Act shall be treated as a viola-
17 tion of a rule under section 18 of the Federal Trade Com-
18 mission Act (15 U.S.C. 57a) regarding unfair or deceptive
19 acts or practices. The Federal Trade Commission shall en-
20 force this Act in the same manner, by the same means,
21 and with the same jurisdiction, powers, and duties as
22 though all applicable terms and provisions of the Federal
23 Trade Commission Act (15 U.S.C. 41 et seq.) were incor-
24 porated into and made a part of this Act.

1 (b) REGULATIONS.—Notwithstanding any other pro-
2 vision of law, the Commission may promulgate such regu-
3 lations as it finds necessary or appropriate to carry out
4 this Act under section 553 of title 5, United States Code.

5 (c) PENALTIES.—Any person who violates this Act or
6 any regulation prescribed under this Act shall be subject
7 to the penalties and entitled to the privileges and immuni-
8 ties provided in the Federal Trade Commission Act as
9 though all applicable terms and provisions of the Federal
10 Trade Commission Act were incorporated in and made
11 part of this Act.

12 (d) AUTHORITY PRESERVED.—Nothing in this sec-
13 tion shall be construed to limit the authority of the Com-
14 mission under any other provision of law.

15 **SEC. 5. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

16 (a) RIGHT OF ACTION.—Except as provided in sub-
17 section (e), the attorney general of a State, or other au-
18 thorized State officer, alleging a violation of this Act or
19 any regulation issued under this Act that affects or may
20 affect such State or its residents may bring an action, as
21 parens patriae, on behalf of the residents of the State in
22 any United States district court for the district in which
23 the defendant is found, resides, or transacts business, or
24 wherever venue is proper under section 1391 of title 28,
25 United States Code, to enjoin further violation, to compel

1 compliance with this Act and any regulation issued under
2 this Act, to obtain damages, restitution, or other com-
3 pensation on behalf of residents of such State, or to obtain
4 such further and other relief as the court may deem appro-
5 priate.

6 (b) NOTICE TO COMMISSION REQUIRED.—A State
7 shall provide prior written notice to the Federal Trade
8 Commission of any civil action under subsection (a) to-
9 gether with a copy of its complaint, except that if it is
10 not feasible for the State to provide such prior notice, the
11 State shall provide such notice immediately upon insti-
12 tuting such action.

13 (c) INTERVENTION BY THE COMMISSION.—The Com-
14 mission may intervene in such civil action and upon inter-
15 vening may—

16 (1) be heard on all matters arising in such civil
17 action; and

18 (2) file petitions for appeal of a decision in such
19 civil action.

20 (d) CONSTRUCTION.—Nothing in this section shall be
21 construed—

22 (1) to prevent the attorney general of a State,
23 or other authorized State officer, from exercising the
24 powers conferred on the attorney general, or other

1 authorized State officer, by the laws of such State;
2 or

3 (2) to prohibit the attorney general of a State,
4 or other authorized State officer, from proceeding in
5 State or Federal court on the basis of an alleged vio-
6 lation of any civil or criminal statute of that State.

7 (e) LIMITATION.—Whenever a civil action has been
8 instituted by or on behalf of the Federal Trade Commis-
9 sion for violation of this Act or any regulation prescribed
10 under this Act, no State may, during the pendency of such
11 action instituted by or on behalf of the Commission, insti-
12 tute a civil action under subsection (a) of this section
13 against any defendant named in the complaint in such ac-
14 tion for violation of this Act or any regulation prescribed
15 under this Act as alleged in such complaint.

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