

By the Committee on Banking and Insurance; and Senators
Aronberg, Fasano and Lawson

311-2181-03

1 A bill to be entitled
2 An act relating to consumer protection;
3 creating ss. 501.165, 501.166, F.S.;
4 prohibiting the use of deception to obtain
5 certain personal information for commercial
6 solicitation purposes; prohibiting the sale or
7 disclosure of personal customer information by
8 persons in bankruptcy; amending s. 501.2075,
9 F.S.; providing an exception to a civil
10 penalty; creating s. 501.2076, F.S.;
11 prohibiting falsely representing oneself as
12 being affiliated with a law enforcement or
13 firefighting agency or public utility;
14 providing a penalty; providing that a violation
15 of s. 817.568, F.S., is an unfair or deceptive
16 act or practice or unfair method of competition
17 in violation of part II of ch. 501, F.S.;
18 providing penalties; providing an effective
19 date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Section 501.2076, Florida Statutes, is
24 created to read:

25 501.2076 Misrepresentations; law enforcement,
26 firefighters, or public utilities.--Any person who engages in
27 a deceptive and unfair trade practice with the intent to
28 deceive another person into believing that he or she is
29 affiliated with a law enforcement agency, firefighting agency,
30 or public utility is subject to a civil penalty not to exceed
31 \$15,000 for each violation.

1 Section 2. Section 501.165, Florida Statutes, is
2 created to read:

3 501.165 Obtaining personal information for commercial
4 solicitation.--Any person who uses deceptive practices or
5 means to obtain another person's address, telephone number, or
6 social security number and uses it to engage in commercial
7 solicitation commits an unfair or deceptive act or practice or
8 unfair method of competition in violation of part II of this
9 chapter, and is subject to the penalties and remedies provided
10 for such violation, in addition to remedies otherwise
11 available for such conduct.

12 Section 3. Section 501.2075, Florida Statutes, is
13 amended to read:

14 501.2075 Civil penalty.--Except as provided in s.
15 501.2076 or s. 501.2077, any person, firm, corporation,
16 association, or entity, or any agent or employee of the
17 foregoing, who is willfully using, or has willfully used, a
18 method, act, or practice declared unlawful under s. 501.204,
19 or who is willfully violating any of the rules of the
20 department adopted under this part, is liable for a civil
21 penalty of not more than \$10,000 for each such violation.
22 Willful violations occur when the person knew or should have
23 known that his or her conduct was unfair or deceptive or
24 prohibited by rule. This civil penalty may be recovered in
25 any action brought under this part by the enforcing authority;
26 or the enforcing authority may terminate any investigation or
27 action upon agreement by the person, firm, corporation,
28 association, or entity, or the agent or employee of the
29 foregoing, to pay a stipulated civil penalty. The department
30 or the court may waive any such civil penalty if the person,
31 firm, corporation, association, or entity, or the agent or

1 employee of the foregoing, has previously made full
2 restitution or reimbursement or has paid actual damages to the
3 consumers or governmental entities who have been injured by
4 the unlawful act or practice or rule violation. If civil
5 penalties are assessed in any litigation, the enforcing
6 authority is entitled to reasonable attorney's fees and costs.
7 A civil penalty so collected shall accrue to the state and
8 shall be deposited as received into the General Revenue Fund
9 unallocated.

10 Section 4. Section 501.166, Florida Statutes, is
11 created to read:

12 501.166 Selling personal customer information.--

13 (1) A person who files for bankruptcy may not sell or
14 otherwise transfer to another any database that contains
15 personal customer information if the bankrupt person, through
16 contract or a published privacy policy, agreed or stated that
17 such personal customer information would not be disclosed.

18 (2) A person who violates or fails to comply with
19 subsection (1) commits an unfair or deceptive act or practice
20 or unfair method of competition in violation of part II of
21 this chapter and is subject to the penalties and remedies
22 provided for such violation, in addition to remedies otherwise
23 available for such conduct.

24 Section 5. A person who violates or fails to comply
25 with any provision of s. 817.568, Florida Statutes, commits an
26 unfair or deceptive act or practice or unfair method of
27 competition in violation of part II of chapter 501, Florida
28 Statutes, and is subject to the penalties and remedies
29 provided for such violation, in addition to remedies otherwise
30 available for such conduct.

31 Section 6. This act shall take effect July 1, 2003.

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 1580

4 The committee substitute provides the following changes:

- 5 1. Amends Florida's Deceptive and Unfair Trade Practices Act
6 (FDUTPA) to provide higher civil penalties for persons
7 who deceive others into believing that they are
8 affiliated with a law enforcement agency, firefighting
9 agency, or public utility. Persons violating this
10 provision would be subject to a civil penalty of up to
11 \$15,000, rather than \$10,000.
- 12 2. Provides that it is a violation of FDUTPA for any person
13 to use deceptive practices to obtain another person's
14 address, phone number, and other information to engage in
15 commercial solicitation.
- 16 3. Prohibits a person in bankruptcy from selling or
17 transferring any database that contains personal customer
18 information, if the bankrupt person had agreed through
19 contract or privacy policy that this information would
20 not be disclosed, and provides a cause of action for such
21 disclosures under the provisions of FDUTPA.
- 22 4. Provides that any person who violates or fails to comply
23 with the identity theft law, s. 817.568, F.S., commits an
24 unfair or deceptive act and is subject to the penalties
25 and remedies of FDUTPA.
- 26
27
28
29
30
31