

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative Vana offered the following:

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3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause, and insert:

5
6 Section 1. Section 501.165, Florida Statutes, is created
7 to read:

8 501.165 Obtaining personal information for commercial
9 solicitation.--Any person who intentionally uses deceptive
10 practices or means to obtain another person's address, telephone
11 number, or social security number and uses it to engage in
12 commercial solicitation, or provides it to another person for
13 purposes of commercial solicitation, commits an unfair or
14 deceptive act or practice or unfair method of competition in
15 violation of part II of this chapter, and is subject to the

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16 penalties and remedies provided for such violation, in addition
17 to remedies otherwise available for such conduct.

18 Section 2. Section 501.166, Florida Statutes, is created
19 to read:

20 501.166 Sale or transfer of personal customer
21 information.--

22 (1) A person or an entity may not sell or otherwise
23 transfer to a third party personal customer information that is
24 protected from disclosure by law, contract, or a published
25 privacy policy unless the purchaser or transferee agrees to
26 abide by the contract or by the seller's or transferor's then-
27 existing privacy policy, if applicable.

28 (2) The prohibition set forth in subsection (1) applies to
29 any customer who resides in this state at the time the personal
30 customer information is sold, transferred, or otherwise
31 obtained.

32 (3) A person who violates or fails to comply with
33 subsection (1) commits an unfair or deceptive act or practice or
34 unfair method of competition in violation of part II of this
35 chapter and is subject to the penalties and remedies provided
36 for such a violation, in addition to remedies otherwise
37 available by law for such conduct.

38 Section 3. Section 501.2075, Florida Statutes, is amended
39 to read:

40 501.2075 Civil penalty.--Except as provided in s. 501.2076
41 or s. 501.2077, any person, firm, corporation, association, or
42 entity, or any agent or employee of the foregoing, who is
43 willfully using, or has willfully used, a method, act, or

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44 practice declared unlawful under s. 501.204, or who is willfully
45 violating any of the rules of the department adopted under this
46 part, is liable for a civil penalty of not more than \$10,000 for
47 each such violation. Willful violations occur when the person
48 knew or should have known that his or her conduct was unfair or
49 deceptive or prohibited by rule. This civil penalty may be
50 recovered in any action brought under this part by the enforcing
51 authority; or the enforcing authority may terminate any
52 investigation or action upon agreement by the person, firm,
53 corporation, association, or entity, or the agent or employee of
54 the foregoing, to pay a stipulated civil penalty. The
55 department or the court may waive any such civil penalty if the
56 person, firm, corporation, association, or entity, or the agent
57 or employee of the foregoing, has previously made full
58 restitution or reimbursement or has paid actual damages to the
59 consumers or governmental entities who have been injured by the
60 unlawful act or practice or rule violation. If civil penalties
61 are assessed in any litigation, the enforcing authority is
62 entitled to reasonable attorney's fees and costs. A civil
63 penalty so collected shall accrue to the state and shall be
64 deposited as received into the General Revenue Fund unallocated.

65 Section 4. Section 501.2076, Florida Statutes, is created
66 to read:

67 501.2076 Misrepresentations; law enforcement,
68 firefighters, or public utilities.--Any person who engages in a
69 deceptive and unfair trade practice with the intent to deceive
70 another person into believing that he or she is affiliated with
71 a law enforcement agency, firefighting agency, or public utility

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72 is subject to a civil penalty not to exceed \$15,000 for each
73 violation.

74 Section 5. A person who violates or fails to comply with
75 any provision of section 817.568, Florida Statutes, commits an
76 unfair or deceptive act or practice or unfair method of
77 competition in violation of part II of chapter 501, Florida
78 Statutes, and is subject to the penalties and remedies provided
79 for such violation, in addition to remedies otherwise available
80 for such conduct.

81 Section 6. Subsection (3) of section 501.203, Florida
82 Statutes, is amended to read:

83 501.203 Definitions.--As used in this chapter, unless the
84 context otherwise requires, the term:

85 (3) "Violation of this part" means any violation of this
86 act or the rules adopted under this act and may be based upon
87 any of the following as of July 1, 2004 ~~2001~~:

88 (a) Any rules promulgated pursuant to the Federal Trade
89 Commission Act, 15 U.S.C. ss. 41 et seq.;

90 (b) The standards of unfairness and deception set forth
91 and interpreted by the Federal Trade Commission or the federal
92 courts;

93 (c) Any law, statute, rule, regulation, or ordinance which
94 proscribes unfair methods of competition, or unfair, deceptive,
95 or unconscionable acts or practices.

96 Section 7. Subsection (2) of section 501.204, Florida
97 Statutes, is amended to read:

98 501.204 Unlawful acts and practices.--

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99 (2) It is the intent of the Legislature that, in
100 construing subsection(1), due consideration and great weight
101 shall be given to the interpretations of the Federal Trade
102 Commission and the federal courts relating to s. 5(a)(1) of the
103 Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1) as of July
104 1, 2004 ~~2001~~.

105 Section 8. If any provision of this act or the application
106 thereof to any person or circumstance is held invalid, the
107 invalidity does not affect other provisions or applications of
108 this act which can be given effect without the invalid provision
109 or application, and to this end the provisions of this act are
110 declared severable.

111 Section 9. Subsection (3) of section 501.207, Florida
112 Statutes, is amended to read:

113 501.207 Remedies of enforcing authority.--

114 (3) Upon motion of the enforcing authority or any
115 interested party in any action brought under subsection (1), the
116 court may make appropriate orders, including, but not limited
117 to, appointment of a master or receiver or sequestration or
118 freezing of assets, to reimburse consumers or governmental
119 entities found to have been damaged; to carry out a transaction
120 in accordance with the reasonable expectations of consumers or
121 governmental entities; to strike or limit the application of
122 clauses of contracts to avoid an unconscionable result; to bring
123 actions in the name of and on behalf of the defendant
124 enterprise; to order any defendant to divest herself or himself
125 of any interest in any enterprise, including real estate; to
126 impose reasonable restrictions upon the future activities of any

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127 defendant to impede her or him from engaging in or establishing
 128 the same type of endeavor; to order the dissolution or
 129 reorganization of any enterprise; or to grant ~~legal, equitable,~~
 130 ~~or~~ other appropriate relief. The court may assess the expenses
 131 of a master or receiver against a person who has violated, is
 132 violating, or is otherwise likely to violate this part. Any
 133 injunctive order, whether temporary or permanent, issued by the
 134 court shall be effective throughout the state unless otherwise
 135 provided in the order.

136 Section 10. This act shall take effect July 1, 2004.

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139 ===== T I T L E A M E N D M E N T =====

140 Remove the entire title, and insert:

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142 A bill to be entitled
 143 An act relating to consumer protection; creating ss.
 144 501.165 and 501.166, F.S.; prohibiting the use of
 145 deception to obtain certain personal information for
 146 commercial solicitation purposes; prohibiting the sale or
 147 other transfer to a third party of personal customer
 148 information that is protected from disclosure; providing
 149 exceptions; providing applicability; providing that
 150 transferring such protected information in violation of
 151 this section is an unfair or deceptive act or practice or
 152 unfair method of competition; providing penalties;
 153 amending s. 501.2075, F.S.; providing an exception to a
 154 civil penalty; creating s. 501.2076, F.S.; prohibiting

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155 | falsely representing oneself as being affiliated with a
156 | law enforcement or firefighting agency or public utility;
157 | providing a penalty; providing that a violation of s.
158 | 817.568, F.S., is an unfair or deceptive act or practice
159 | or unfair method of competition in violation of part II of
160 | ch. 501, F.S.; providing penalties; amending ss. 501.203
161 | and 501.204, F.S.; changing obsolete dates; providing
162 | severability; amending s. 501.207, F.S., relating to
163 | remedies of the enforcing authority under the Florida
164 | Deceptive and Unfair Trade Practices Act; providing that
165 | the court may order actions brought under that act on
166 | behalf of an enterprise; providing an effective date.