HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 393 Consumer Protection
SPONSOR(S): Vana
TIED BILLS: **IDEN./SIM. BILLS:** SB 482

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Commerce		Sheheane	Billmeier
2) Public Safety & Crime Prevention			
3) Public Safety Appropriations (Sub)			
4) Appropriations			
5)			

SUMMARY ANALYSIS

HB 393 creates civil penalties and remedies for certain deceptive or unfair trade acts under the Florida Deceptive and Unfair Trade Practices Act. The bill provides that the following activities are violations under the act:

- Engaging in a deceptive and unfair trade practice with the intent to deceive others in believing that they are affiliated with a law enforcement agency, firefighting agency, or public utility;
- Using deceptive practices to obtain personal information to engage in commercial solicitation;
- Selling or transferring any database that contains personal customer information of a bankrupt person if the bankrupt person, through contract or published privacy policy, agreed or stated that such information would not be disclosed; and
- Violating or failing to comply with the identity theft provisions under s. 817.568, F.S.

The bill provides greater protections for consumers relating to the privacy of personal customer information and deceptive solicitation practices and provides penalties for persons engaging in committing unfair or deceptive acts. There is no expected fiscal impact for local governments. Please see “fiscal analysis and economic impact statement” for state government impact discussion.

This bill will take effect July 1, 2004.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[X]	N/A[]
2. Lower taxes?	Yes[]	No[]	N/A[X]
3. Expand individual freedom?	Yes[]	No[]	N/A[X]
4. Increase personal responsibility?	Yes[]	No[]	N/A[X]
5. Empower families?	Yes[]	No[]	N/A[X]

For any principle that received a "no" above, please explain:

The bill provides civil penalties for conduct which is currently unregulated.

B. EFFECT OF PROPOSED CHANGES:

Part II of ch. 501, F.S., is the Florida Deceptive and Unfair Trade Practices Act.[1] One of the purposes of the Act is to protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce. The act is also intended to make state consumer protection and enforcement consistent with established policies of federal law relating to consumer protection. The state attorneys and the Department of Legal Affairs are the enforcing authorities. Section 501.207, F.S., specifies the actions that the enforcing authority may bring.

Section 1

Federal law provides some privacy protections to individuals. The Gramm-Leach-Bliley Financial Services Act[2] covers privacy considerations for customers' personal financial information applicable to all financial companies. These laws balance the right to privacy with a financial company's need to provide information for normal business purposes. Companies involved in financial activities must send their customers privacy notices.

The act requires financial institutions to provide clear disclosure at the beginning of a customer relationship and not less than annually thereafter, of their privacy policy regarding sharing of nonpublic personal information with affiliates and third parties. The company must disclose how or whether it intends to share personal financial information. The act also gives a person the right to stop (opt out of) some sharing of nonpublic personal information. The act prohibits disclosures of account numbers or credit card account information to third parties for use in telemarketing, direct mail marketing or other marketing through electronic mail and provides criminal penalties. A person has the right to opt out of some information sharing with companies that are part of the same corporate group as the person's financial company (or affiliates), or not part of the same corporate group as the person's financial company (or non-affiliates).

The bill creates s. 501.165, F.S., to provide that any person who uses deceptive practices or means to obtain another person's address, telephone number, or social security number and uses it to engage in commercial solicitation commits an unfair or deceptive act or practice or unfair method of competition in violation of part II of ch. 501, F.S., and is subject to the penalties and remedies provided for such violation, in addition to remedies otherwise available for such conduct.

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[1] See s. 501.201, F.S

[2] See 15 U.S.C ss. 6821-6827

Section 2

The enforcement of privacy policies in a bankruptcy proceeding is a growing concern with federal and state regulators. Companies that promise confidentiality may decide to sell or transfer personal information they have collected. Toysmart, a failed Internet retailer of children toys, collected detailed personal information about its visitors, including name, address, billing information, shopping preference, and family profiles. Toysmart posted a privacy policy at its website which stated that information collected from customers would never be shared with third parties. In May 2000, Toysmart announced it was closing its operations and selling its assets. The Federal Trade Commission discovered that Toysmart was offering its customer list for sale in violation of its own privacy policy. The FTC alleged that Toysmart engaged in deceptive acts or practices in violation of Section 5 of the Federal Trade Commission Act by disclosing, selling, or offering for sale personal customer information, contrary to the terms of its privacy policy that personal information would never be disclosed to third parties.

This bill creates s. 501.166, F.S., which prohibits a person who files for bankruptcy from selling or otherwise transferring to another any database that contains personal customer information if the bankrupt person, through contract or written privacy policy, agreed or stated that such personal customer information would not be disclosed. This bill permits the sharing of private information if mandated by the Public Service Commission. Any person found to be in violation of this section commits an unfair or deceptive act or practice or unfair method of competition in violation of part II of ch. 501, F.S., and is subject to the penalties and remedies provided for such violation, in addition to remedies otherwise available for such conduct.

Sections 3 & 4

Section 501.204, F.S., declares unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce unlawful. Willful violations occur when the person knew or should have known that his or her conduct was unfair or deceptive.[3] A person willfully violating the provisions of this act is liable for a civil penalty of not more than $10,000 per violation. This penalty is increased to $15,000 for each violation if the willful violation victimizes or attempts to victimize senior citizens or handicapped persons. Individuals aggrieved by a violation of this act may seek to obtain a declaratory judgment that an act or practice violates this act and to enjoin a person from continuing the deceptive or unfair act. An individual harmed by a person who has violated this act may also seek actual damages from that person, plus attorney's fees and court costs.[4]

The bill amends s. 501.2075, F.S., to provide an exception to the maximum penalty of $10,000 allowable per violation under part II of ch. 501, F.S., and permits a $15,000 penalty per violation for violations of s. 501.2076, F.S. The bill creates s. 501.2076, F.S., which provides a $15,000 civil penalty per violation for engaging in a deceptive and unfair trade practice with the intent to deceive another person into believing that he or she is affiliated with a law enforcement agency, firefighting agency, or public utility.

Section 5

In recent years, the Internet marketplace has been growing at a phenomenal rate. Advances in technology have enhanced the capacity of online companies to collect, store, transfer, and analyze vast amounts of data from and about the consumers who visit their web sites. This increase in the collection and use of data has raised public awareness and consumer concerns about online privacy. Consumer concerns about privacy include the misuse of information, including the risk of identity theft, fraud, and unwanted intrusions in their daily lives. The Internet has become an appealing place for criminals to

[3] See s. 501.2075, F.S.
[4] See s. 501.211(1) and (2), F.S.

obtain personal identifying data, such as passwords, or even banking or other financial information for consumers, since many consumers conduct business transactions via the Internet.

The Federal Trade Commission reports national and state-specific data on the crime of identity theft, compiled from the Consumer Sentinel and Identity Theft Clearinghouse databases.[5] The number one complaint received was identity theft (43 percent). Florida had 83 identity theft victims per 100,000 population (number of victims: 14,119), which ranked it fifth in the nation.

The U.S. Department of Justice prosecutes cases of identity theft and fraud under a variety of federal statutes, including the Identity Theft and Assumption Deterrence Act of 1998.[6] This act provides that it is a federal crime to knowingly transfer or use, without lawful authority, a means of identification of another person with the intent to commit any unlawful activity that constitutes a violation of federal law or any applicable state law. Schemes to commit identity theft or fraud may also involve violations of other statutes, such as identification fraud, credit card fraud, computer fraud, mail fraud, wire fraud, or financial institution fraud.

According to the National Conference of State Legislators, 45 states, including Florida, have enacted laws to address identity theft. Section 817.568, F.S., provides that a person using personal identification numbers, such as social security numbers, driver's license numbers, passport numbers, and credit card numbers, for fraudulent purposes will be subject to a minimum of five years in prison.

The bill creates a new and unnumbered section providing that a person who violates or fails to comply with any provision of s. 817.568, F.S., commits an unfair or deceptive act or practice or unfair method of competition in violation of part II of ch. 501, F.S., and is subject to the penalties and remedies provided for such violation, in addition to remedies otherwise available for such conduct.

Sections 6 & 7

The bill updates obsolete date references to various federal and state laws in s. 501.203, F.S., (definitions) relevant to the Florida Deceptive and Unfair Trade Practices Act.

The bill updates obsolete date references to various federal and state laws in s. 501.204, F.S., (unlawful acts and practices) relevant to the Florida Deceptive and Unfair Trade Practices Act. Federal and State Privacy Laws.

Section 8

This bill takes effect on July 1, 2004.

C. SECTION DIRECTORY:

Section 1. creates s. 501.165, F.S., to provide that any person who uses deceptive practices or means to obtain another person's address, telephone number, or social security number and uses it to engage in commercial solicitation commits an unfair or deceptive act or practice or unfair method of competition in violation of part II of ch. 501, F.S., and is subject to the penalties and remedies provided for such violation, in addition to remedies otherwise available for such conduct.

Section 2. creates s. 501.166, F.S., which, unless mandated by the Florida Public Service Commission, prohibits a person who files for bankruptcy from selling or otherwise transferring to another any database that contains personal customer information if the bankrupt person, through contract or written privacy policy, agreed or stated that such personal customer information would not be disclosed. Any person

[5] *National and State Trends in Fraud and Identity Theft/January-December 2003*
[6] 18 U.S.C 1028.

found to be in violation of this section commits an unfair or deceptive act or practice or unfair method of competition in violation of part II of ch. 501, F.S., and is subject to the penalties and remedies provided for such violation, in addition to remedies otherwise available for such conduct.

Section 3. amends s. 501.2075, F.S., to provide an exception to the maximum penalty of $10,000 allowable per violation under part II of ch. 501, F.S.; violations of s. 501.2076, F.S., are not subject to this limitation, and are subject to a penalty of up to $15,000 per violation.

Section 4. creates s. 501.2076, F.S., relating to misrepresentation. The section would subject a person who engages in a deceptive and unfair trade practice with the intent to deceive another person into believing that he or she is affiliated with a law enforcement agency, firefighter agency, or public utility is subject to a civil penalty not to exceed $15,000 for each violation.

Section 5. creates a new and unnumbered section providing that a person who violates or fails to comply with any provision of s. 817.568, F.S., commits an unfair or deceptive act or practice or unfair method of competition in violation of part II of ch. 501, F.S., and is subject to the penalties and remedies provided for such violation, in addition to remedies otherwise available for such conduct.

Section 6. updates obsolete date references to various federal and state laws in s. 501.203, F.S., (definitions) relevant to the Florida Deceptive and Unfair Trade Practices Act.

Section 7. updates obsolete date references to various federal and state laws in s. 501.204, F.S., (unlawful acts and practices) relevant to the Florida Deceptive and Unfair Trade Practices Act.

Section 8. This bill will take effect on July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill is not expected to impact state government revenue.

2. Expenditures:

   The bill specifies violations relating to the Florida Deceptive and Unfair Trade Practices Act which will require the enforcement by the Attorney General. The cost is indeterminate because the number of cases that may arise is not known.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill is not expected to fiscally impact local governments.

2. Expenditures:

   This bill is not expected to fiscally impact local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides greater protections for consumers relating to the privacy of personal customer information and deceptive solicitation practices and provides penalties for persons engaging in committing unfair or deceptive acts.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The legislation does not require expenditure of funds by local governments, does not reduce the authority to raise revenue, nor reduce the percentage of state tax shared with local governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

N/A