

HB 0393

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A bill to be entitled

An act relating to consumer protection; creating s. 501.165, F.S.; prohibiting the use of deception to obtain certain personal information for commercial solicitation purposes; providing penalties; creating s. 501.166, F.S.; prohibiting the sale or disclosure of personal customer information by persons in bankruptcy; providing an exception; providing penalties; amending s. 501.2075, F.S.; providing an exception to a civil penalty; creating s. 501.2076, F.S.; prohibiting falsely representing oneself as being affiliated with a law enforcement or firefighting agency or public utility; providing a civil penalty; providing that a violation of s. 817.568, F.S., relating to criminal use of personal identification information, is an unfair or deceptive act or practice or unfair method of competition in violation of pt. II of ch. 501, F.S.; providing penalties; amending ss. 501.203 and 501.204, F.S.; changing obsolete dates; providing an effective date.

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

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

501.165 Obtaining personal information for commercial solicitation.--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, or provides it to another person for purposes of

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30 commercial solicitation, commits an unfair or deceptive act or
 31 practice or engages in an unfair method of competition in
 32 violation of part II of this chapter, and is subject to the
 33 penalties and remedies provided for such violation, in addition
 34 to remedies otherwise available for such conduct.

35 Section 2. Section 501.166, Florida Statutes, is created
 36 to read:

37 501.166 Selling personal customer information.--

38 (1) Unless mandated by the Florida Public Service
 39 Commission, any person organized or incorporated under the laws
 40 of this state who files for bankruptcy or who is insolvent,
 41 including any successor, assignee, trustee, receiver, or
 42 representative of such person, inclusive of those appointed by
 43 any court, may not sell or otherwise transfer to a third party
 44 personal customer information that is protected from disclosure
 45 by contract or a published privacy policy, unless the person
 46 obtains the customer's affirmative consent to waive the privacy
 47 policy or contract.

48 (2) A person who violates or fails to comply with
 49 subsection (1) commits an unfair or deceptive act or practice or
 50 engages in an unfair method of competition in violation of part
 51 II of this chapter and is subject to the penalties and remedies
 52 provided for such violation, in addition to remedies otherwise
 53 available for such conduct.

54 Section 3. Section 501.2075, Florida Statutes, is amended
 55 to read:

56 501.2075 Civil penalty.--Except as provided in s. 501.2076
 57 or s. 501.2077, any person, firm, corporation, association, or
 58 entity, or any agent or employee of the foregoing, who is

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59 willfully using, or has willfully used, a method, act, or
 60 practice declared unlawful under s. 501.204, or who is willfully
 61 violating any of the rules of the department adopted under this
 62 part, is liable for a civil penalty of not more than \$10,000 for
 63 each such violation. Willful violations occur when the person
 64 knew or should have known that his or her conduct was unfair or
 65 deceptive or prohibited by rule. This civil penalty may be
 66 recovered in any action brought under this part by the enforcing
 67 authority; or the enforcing authority may terminate any
 68 investigation or action upon agreement by the person, firm,
 69 corporation, association, or entity, or the agent or employee of
 70 the foregoing, to pay a stipulated civil penalty. The
 71 department or the court may waive any such civil penalty if the
 72 person, firm, corporation, association, or entity, or the agent
 73 or employee of the foregoing, has previously made full
 74 restitution or reimbursement or has paid actual damages to the
 75 consumers or governmental entities who have been injured by the
 76 unlawful act or practice or rule violation. If civil penalties
 77 are assessed in any litigation, the enforcing authority is
 78 entitled to reasonable attorney's fees and costs. A civil
 79 penalty so collected shall accrue to the state and shall be
 80 deposited as received into the General Revenue Fund unallocated.

81 Section 4. Section 501.2076, Florida Statutes, is created
 82 to read:

83 501.2076 Misrepresentations; law enforcement,
 84 firefighters, or public utilities.--Any person who engages in a
 85 deceptive and unfair trade practice with the intent to deceive
 86 another person into believing that he or she is affiliated with
 87 a law enforcement agency, firefighting agency, or public utility

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

90 Section 5. A person who violates or fails to comply with
 91 any provision of s. 817.568, Florida Statutes, commits an unfair
 92 or deceptive act or practice or engages in an unfair method of
 93 competition in violation of part II of chapter 501, Florida
 94 Statutes, and is subject to the penalties and remedies provided
 95 for such violation, in addition to remedies otherwise available
 96 for such conduct.

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

99 501.203 Definitions.--As used in this chapter, unless the
 100 context otherwise requires, the term:

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

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

106 (b) The standards of unfairness and deception set forth
 107 and interpreted by the Federal Trade Commission or the federal
 108 courts;

109 (c) Any law, statute, rule, regulation, or ordinance which
 110 proscribes unfair methods of competition, or unfair, deceptive,
 111 or unconscionable acts or practices.

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

114 501.204 Unlawful acts and practices.--

115 (2) It is the intent of the Legislature that, in
 116 construing subsection(1), due consideration and great weight

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117 shall be given to the interpretations of the Federal Trade
118 Commission and the federal courts relating to s. 5(a)(1) of the
119 Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1) as of July
120 1, 2004 ~~2001~~.

121 Section 8. This act shall take effect July 1, 2004.