

CHAMBER ACTION

1 The Committee on Commerce recommends the following:

2
3 **Committee Substitute**

4 Remove the entire bill and insert:

5
6 A bill to be entitled

7 An act relating to consumer protection; creating s.
8 501.165, F.S.; prohibiting the use of deception to obtain
9 certain personal information for commercial solicitation
10 purposes; providing penalties; creating s. 501.166, F.S.;
11 prohibiting the sale or transfer to a third party of
12 personal customer information that is protected from
13 disclosure; providing exceptions; providing applicability;
14 providing that the sale or transfer of such protected
15 information is an unfair or deceptive act or practice or
16 unfair method of competition; providing penalties;
17 amending s. 501.2075, F.S.; providing an exception to a
18 civil penalty; creating s. 501.2076, F.S.; prohibiting
19 falsely representing oneself as being affiliated with a
20 law enforcement or firefighting agency or public utility;
21 providing a civil penalty; providing that a violation of
22 s. 817.568, F.S., relating to criminal use of personal
23 identification information, is an unfair or deceptive act

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24 | or practice or unfair method of competition in violation
 25 | of pt. II of ch. 501, F.S.; providing penalties; amending
 26 | ss. 501.203 and 501.204, F.S.; changing obsolete dates;
 27 | providing an effective date.

28 |

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

30 |

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

33 | 501.165 Obtaining personal information for commercial
 34 | solicitation.--Any person who uses deceptive practices or means
 35 | to obtain another person's address, telephone number, or social
 36 | security number and uses it to engage in commercial
 37 | solicitation, or provides it to another person for purposes of
 38 | commercial solicitation, commits an unfair or deceptive act or
 39 | practice or engages in an unfair method of competition in
 40 | violation of part II of this chapter, and is subject to the
 41 | penalties and remedies provided for such violation, in addition
 42 | to remedies otherwise available for such conduct.

43 | Section 2. Section 501.166, Florida Statutes, is created
 44 | to read:

45 | 501.166 Sale or transfer of personal customer
 46 | information.--

47 | (1) A person or an entity may not sell or otherwise
 48 | transfer to a third party personal customer information that is
 49 | protected from disclosure by law, contract, or a published
 50 | privacy policy unless the purchaser or transferee:

51 (a) Agrees to abide by the contract or by the seller's or
 52 transferor's then-existing privacy policy, if applicable; and

53 (b) Is in the same or substantially similar business as
 54 the business that last owned the personal customer information
 55 and uses the personal customer information only to solicit a
 56 transaction for that business or to effect, administer, or
 57 enforce a transaction as requested or authorized by that
 58 customer.

59 (2) The prohibition set forth in subsection (1) applies to
 60 any customer who resides in this state at the time the personal
 61 customer information is sold, transferred, or otherwise
 62 obtained.

63 (3) A person who violates or fails to comply with
 64 subsection (1) commits an unfair or deceptive act or practice or
 65 unfair method of competition in violation of part II of this
 66 chapter and is subject to the penalties and remedies provided
 67 for such a violation, in addition to remedies otherwise
 68 available by law for such conduct.

69 Section 3. Section 501.2075, Florida Statutes, is amended
 70 to read:

71 501.2075 Civil penalty.--Except as provided in s. 501.2076
 72 or s. 501.2077, any person, firm, corporation, association, or
 73 entity, or any agent or employee of the foregoing, who is
 74 willfully using, or has willfully used, a method, act, or
 75 practice declared unlawful under s. 501.204, or who is willfully
 76 violating any of the rules of the department adopted under this
 77 part, is liable for a civil penalty of not more than \$10,000 for
 78 each such violation. Willful violations occur when the person

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79 | knew or should have known that his or her conduct was unfair or
 80 | deceptive or prohibited by rule. This civil penalty may be
 81 | recovered in any action brought under this part by the enforcing
 82 | authority; or the enforcing authority may terminate any
 83 | investigation or action upon agreement by the person, firm,
 84 | corporation, association, or entity, or the agent or employee of
 85 | the foregoing, to pay a stipulated civil penalty. The
 86 | department or the court may waive any such civil penalty if the
 87 | person, firm, corporation, association, or entity, or the agent
 88 | or employee of the foregoing, has previously made full
 89 | restitution or reimbursement or has paid actual damages to the
 90 | consumers or governmental entities who have been injured by the
 91 | unlawful act or practice or rule violation. If civil penalties
 92 | are assessed in any litigation, the enforcing authority is
 93 | entitled to reasonable attorney's fees and costs. A civil
 94 | penalty so collected shall accrue to the state and shall be
 95 | deposited as received into the General Revenue Fund unallocated.

96 | Section 4. Section 501.2076, Florida Statutes, is created
 97 | to read:

98 | 501.2076 Misrepresentations; law enforcement,
 99 | firefighters, or public utilities.--Any person who engages in a
 100 | deceptive and unfair trade practice with the intent to deceive
 101 | another person into believing that he or she is affiliated with
 102 | a law enforcement agency, firefighting agency, or public utility
 103 | is subject to a civil penalty not to exceed \$15,000 for each
 104 | violation.

105 | Section 5. A person who violates or fails to comply with
 106 | any provision of s. 817.568, Florida Statutes, commits an unfair

107 | or deceptive act or practice or engages in an unfair method of
 108 | competition in violation of part II of chapter 501, Florida
 109 | Statutes, and is subject to the penalties and remedies provided
 110 | for such violation, in addition to remedies otherwise available
 111 | for such conduct.

112 | Section 6. Subsection (3) of section 501.203, Florida
 113 | Statutes, is amended to read:

114 | 501.203 Definitions.--As used in this chapter, unless the
 115 | context otherwise requires, the term:

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

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

121 | (b) The standards of unfairness and deception set forth
 122 | and interpreted by the Federal Trade Commission or the federal
 123 | courts;

124 | (c) Any law, statute, rule, regulation, or ordinance which
 125 | proscribes unfair methods of competition, or unfair, deceptive,
 126 | or unconscionable acts or practices.

127 | Section 7. Subsection (2) of section 501.204, Florida
 128 | Statutes, is amended to read:

129 | 501.204 Unlawful acts and practices.--

130 | (2) It is the intent of the Legislature that, in
 131 | construing subsection(1), due consideration and great weight
 132 | shall be given to the interpretations of the Federal Trade
 133 | Commission and the federal courts relating to s. 5(a)(1) of the

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134 Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1) as of July
135 1, 2004 ~~2001~~.

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