

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 482

SPONSOR: Judiciary Committee, Commerce, Economic Opportunities, and Consumer Services Committee and Judiciary Committee and Senators Aronberg and Fasano

SUBJECT: Consumer Protection

DATE: March 31, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kruse	Maclure	CM	Favorable/CS
2.	Cibula	Lang	JU	Favorable/CS
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Committee Substitute for Senate Bill 482 provides that any person who intentionally uses a deceptive practice 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 to use for commercial solicitation, commits an unfair or deceptive act, and the committee substitute provides penalties for a violation.

The committee substitute prohibits the sale or transfer of personal customer information to a third party if the information is protected from disclosure by law, contract, or a published privacy policy, unless the purchaser or transferee agrees to abide by the contract or published privacy policy. The prohibition applies to any customer who resides in this state at the time of the sale or transfer. A violation of this provision is a violation of the Florida Deceptive and Unfair Trade Practices Act.

The committee substitute also provides a civil penalty for anyone misrepresenting to another that the person is affiliated with a law enforcement agency, firefighting agency, or public utility. The committee substitute also provides that any violation of s. 817.568, F.S., criminal use of personal identification information (identity theft), is also a violation of the Florida Deceptive and Unfair Trade Practices Act.

Additionally, the committee substitute updates the year to “2004” in a provision of the Florida Deceptive and Unfair Trade Practices Act (FDUTPA) to capture within the act any changes made between 2001 and 2004 in any Federal Trade Commission (FTC) rules, any court or FTC interpretations regarding the standards of unfairness and deception, or any changes in law, statute, rule, regulation, or ordinance which proscribe unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices. The committee substitute also updates the year to

“2004” elsewhere in FDUTPA to capture any federal court or FTC interpretations made between 2001 and 2004 relating to a specific section of the Federal Trade Commission Act.

This committee substitute creates an unnumbered section of the Florida Statutes; amends the following sections of the Florida Statutes: 501.2075, 501.203, and 501.204; and creates the following sections of the Florida Statutes: 501.165, 501.166, and 501.2076.

II. Present Situation:

Consumer Protection

Part I of ch. 501, F.S., prohibits certain acts that may bring harm to Florida consumers, such as tampering with consumer goods,¹ and regulates various industries that directly interact with consumers, such as telemarketers² and health studios.³ Part II of ch. 501, F.S., the Florida Deceptive and Unfair Trade Practices Act (FDUTPA), provides remedies and penalties for “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.”⁴ Remedies for acts that fall within FDUTPA may include an action to enjoin a person from committing such acts⁵ to the imposition of a civil penalty of not more than \$10,000.⁶ Actions may be brought by a state attorney or the Department of Legal Affairs⁷ or by a consumer.⁸

Additionally, it is the public policy of this state to protect the public from those impersonating certain public officers. It is a third-degree felony if any person “deliberately impersonates or falsely acts as a public officer or tribunal, public employee or utility employee, including, but not limited to, marshals, judges, prosecutors, sheriffs, deputies, court personnel, or any law enforcement authority in connection with or relating to any legal process affecting persons and property, or otherwise takes any action under color of law against persons or property.”⁹ It is also a third-degree felony if any person “falsely assumes or pretends to be the State Fire Marshal, an agent of the Division of State Fire Marshal, a firefighter as defined in s. 112.81, F.S., or a firesafety inspector and ... acts as such to require a person to aid or assist him or her in any matter relating to the duties of the State Fire Marshal, an agent of the division, a firefighter, or a firesafety inspector.”¹⁰

Criminal sanctions also exist for the criminal use of personal identification information, usually called identity theft. Section 817.568, F.S., states that “[a]ny person who willfully and without authorization fraudulently uses, or possesses with intent to fraudulently use, personal identification information concerning an individual without first obtaining that individual’s consent, commits the offense of fraudulent use of personal identification information, which is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.”

¹ Section 501.001, F.S.

² Section 501.059, F.S.

³ Section 501.015, F.S.

⁴ Section 501.204, F.S.

⁵ Section 501.207(1)(b), F.S.

⁶ Section 501.2075, F.S. Violations against a senior citizen or handicapped person may result in a penalty of not more than \$15,000 (s. 501.2077, F.S.).

⁷ Section 501.207, F.S.

⁸ Section 501.211, F.S.

⁹ Section 843.0855(2), F.S.

¹⁰ Section 633.151, F.S.

Although civil remedies are not available under this section, in sentencing a defendant, a court may require a defendant to make restitution to a victim, which may include a victim's out-of-pocket costs, "including attorney's fees incurred by the victim in clearing the victim's credit history or credit rating, or any costs incurred in connection with any civil or administrative proceeding to satisfy any debt, lien, or other obligation of the victim arising as the result of the actions of the defendant."¹¹

Consumer Protection and Privacy Laws

Federal law provides some privacy protections to individuals. The Gramm-Leach-Bliley Act covers privacy considerations for customers' personal financial information. Companies involved in financial activities must send their customers privacy notices, including:¹²

- Banks, savings and loans, and credit unions;
- Insurance companies;
- Securities and commodities brokerage firms;
- Retailers that directly issue their own credit cards (such as department stores or gas stations);
- Mortgage brokers;
- Automobile dealerships that extend or arrange financing or leasing;
- Check cashers and payday lenders;
- Financial advisors and credit counseling services; and
- Sellers of money orders or travelers checks.

The company must disclose how or whether it intends to share personal financial information. Federal privacy laws also give a person the right to stop (opt-out of) some sharing of personal financial information. These laws balance the right to privacy with a financial company's need to provide information for normal business purposes. A person has the right to opt-out of some information sharing with companies that are:

- Part of the same corporate group as your financial company (or affiliates); or
- Not part of the same corporate group as your financial company (or non-affiliates).

A person, however, cannot opt-out and completely stop the flow of all personal financial information. The law permits financial companies to share certain information without giving the person the right to opt out. Among other things, the financial company can provide to non-affiliates:

- Information about you to firms that help promote and market the company's own products or products offered under a joint agreement between two financial companies;
- Records of your transactions – such as your loan payments, credit card or debit card purchases, and checking and savings account statements – to firms that provide data processing and mailing services for your company;
- Information about you in response to a court order; and

¹¹ Section 817.568(9)(a), F.S.

¹² Federal Trade Commission, *Privacy Choices for Your Personal Financial Information*, available at <http://www.ftc.gov/bcp/conline/pubs/credit/privchoices.htm> (last visited February 18, 2004).

- Your payment history on loans and credit cards to credit bureaus.¹³

The Florida Constitution provides a right to privacy solely from governmental intrusion.¹⁴ One statute found during research on the subject of protecting database-like information is s. 626.9651, F.S. Under this statute, the privacy of an insurance consumer's nonpublic personal financial and health information is protected by rules based on the Privacy of Consumer Financial and Health Information Regulation, adopted September 26, 2000, by the National Association of Insurance Commissioners and adopted by the Florida Department of Insurance, now the Florida Department of Financial Services. These rules must be consistent with, and not more restrictive than, the standards contained in Title V of the Gramm-Leach-Bliley Act of 1999. The rule adopted by the department describes an insurance company's privacy obligation to the consumer and how the consumer may opt-out of certain disclosures by an insurance company to affiliated and non-affiliated third parties, but it does not address the sale or transfer of the nonpublic personal financial and health information.¹⁵

III. Effect of Proposed Changes:

The committee substitute provides that any person who intentionally uses a deceptive practice 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 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., which is the Florida Deceptive and Unfair Trade Practices Act.

The committee substitute prohibits the sale or transfer of personal customer information to a third party if the information is protected from disclosure by law, contract, or a published privacy policy, unless the purchaser or transferee agrees to abide by the contract or published privacy policy. The prohibition applies to any customer who resides in this state at the time of the sale or transfer. A violation of this prohibition is a violation of part II of ch. 501, F.S., the Florida Deceptive and Unfair Trade Practices Act, and is subject to the penalties and remedies of that act, in addition to remedies otherwise available by law.

The committee substitute provides a civil penalty of up to \$15,000 for using deceptive practices to deceive another into believing that the person is affiliated with a law enforcement agency, firefighting agency, or a public utility. The term "affiliated with" is not defined.

The committee substitute provides that any violation of s. 817.568, F.S., relating to criminal use of personal identification information, is also a violation of the Florida Deceptive and Unfair Trade Practices Act. This change would allow a victim of identity theft or a state attorney or the Department of Legal Affairs, on behalf of a victim, to bring a civil case against a defendant.

The committee substitute also updates the year to "2004" in a provision of the Florida Deceptive and Unfair Trade Practices Act (FDUTPA) to capture within the act any changes made between 2001 and 2004 in any Federal Trade Commission (FTC) rules, any court or FTC interpretations regarding the standards of unfairness and deception, or any changes in law, statute, rule,

¹³ *Id.*

¹⁴ Section 23, Art. I, State Constitution.

¹⁵ Chapter 4-128, F.A.C., Privacy of Consumer Financial and Health Information.

regulation, or ordinance which proscribe unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices. The committee substitute also updates the year to "2004" elsewhere in FDUTPA to capture any federal court or FTC interpretations made between 2001 and 2004 relating to a specific section of the Federal Trade Commission Act.

The committee substitute takes effect July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The committee substitute will prevent Florida citizens' personal customer information from being sold or transferred to a third party unless: the purchaser or transferee agrees to abide by the contract or privacy policy of the seller or transferor.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
