

By Senator Aronberg

27-589-04

1                                   A bill to be entitled  
2           An act relating to consumer protection;  
3           creating ss. 501.165 and 501.166, F.S.;  
4           prohibiting the use of deception to obtain  
5           certain personal information for commercial  
6           solicitation purposes; prohibiting the sale or  
7           disclosure of personal customer information by  
8           persons in bankruptcy; providing an exception;  
9           providing penalties; amending s. 501.2075,  
10          F.S.; providing an exception to a civil  
11          penalty; creating s. 501.2076, F.S.;  
12          prohibiting falsely representing oneself as  
13          being affiliated with a law enforcement or  
14          firefighting agency or public utility;  
15          providing a penalty; providing that a violation  
16          of s. 817.568, F.S., is an unfair or deceptive  
17          act or practice or unfair method of competition  
18          in violation of part II of ch. 501, F.S.;  
19          providing penalties; amending ss. 501.203 and  
20          501.204, F.S.; changing obsolete dates;  
21          providing an effective date.

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

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

27           501.165 Obtaining personal information for commercial  
28 solicitation.--Any person who uses deceptive practices or  
29 means to obtain another person's address, telephone number, or  
30 social security number and uses it to engage in commercial  
31 solicitation, or provides it to another person for purposes of

1 commercial solicitation, commits an unfair or deceptive act or  
2 practice or unfair method of competition in violation of part  
3 II of this chapter, and is subject to the penalties and  
4 remedies provided for such violation, in addition to remedies  
5 otherwise available for such conduct.

6 Section 2. Section 501.166, Florida Statutes, is  
7 created to read:

8 501.166 Selling personal customer information.--

9 (1) Unless mandated by the Florida Public Service  
10 Commission, any person organized or incorporated under the  
11 laws of this state who files for bankruptcy or who is  
12 insolvent, including any successor, assignee, trustee,  
13 receiver, or representative of such person, inclusive of those  
14 appointed by any court, may not sell or otherwise transfer to  
15 a third party personal customer information that is protected  
16 from disclosure by contract or a published privacy policy,  
17 unless the person obtains the customer's affirmative consent  
18 to waive the privacy policy or contract.

19 (2) A person who violates or fails to comply with  
20 subsection (1) commits an unfair or deceptive act or practice  
21 or unfair method of competition in violation of part II of  
22 this chapter and is subject to the penalties and remedies  
23 provided for such violation, in addition to remedies otherwise  
24 available for such conduct.

25 Section 3. Section 501.2075, Florida Statutes, is  
26 amended to read:

27 501.2075 Civil penalty.--Except as provided in s.  
28 501.2076 or s. 501.2077, any person, firm, corporation,  
29 association, or entity, or any agent or employee of the  
30 foregoing, who is willfully using, or has willfully used, a  
31 method, act, or practice declared unlawful under s. 501.204,

1 or who is willfully violating any of the rules of the  
2 department adopted under this part, is liable for a civil  
3 penalty of not more than \$10,000 for each such violation.  
4 Willful violations occur when the person knew or should have  
5 known that his or her conduct was unfair or deceptive or  
6 prohibited by rule. This civil penalty may be recovered in  
7 any action brought under this part by the enforcing authority;  
8 or the enforcing authority may terminate any investigation or  
9 action upon agreement by the person, firm, corporation,  
10 association, or entity, or the agent or employee of the  
11 foregoing, to pay a stipulated civil penalty. The department  
12 or the court may waive any such civil penalty if the person,  
13 firm, corporation, association, or entity, or the agent or  
14 employee of the foregoing, has previously made full  
15 restitution or reimbursement or has paid actual damages to the  
16 consumers or governmental entities who have been injured by  
17 the unlawful act or practice or rule violation. If civil  
18 penalties are assessed in any litigation, the enforcing  
19 authority is entitled to reasonable attorney's fees and costs.  
20 A civil penalty so collected shall accrue to the state and  
21 shall be deposited as received into the General Revenue Fund  
22 unallocated.

23 Section 4. Section 501.2076, Florida Statutes, is  
24 created to read:

25 501.2076 Misrepresentations; law enforcement,  
26 firefighters, or public utilities.--Any person who engages in  
27 a deceptive and unfair trade practice with the intent to  
28 deceive another person into believing that he or she is  
29 affiliated with a law enforcement agency, firefighting agency,  
30 or public utility is subject to a civil penalty not to exceed  
31 \$15,000 for each violation.

1           Section 5. A person who violates or fails to comply  
2 with any provision of section 817.568, Florida Statutes,  
3 commits an unfair or deceptive act or practice or unfair  
4 method of competition in violation of part II of chapter 501,  
5 Florida Statutes, and is subject to the penalties and remedies  
6 provided for such violation, in addition to remedies otherwise  
7 available for such conduct.

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

10           501.203 Definitions.--As used in this chapter, unless  
11 the context otherwise requires, the term:

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

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

17           (b) The standards of unfairness and deception set  
18 forth and interpreted by the Federal Trade Commission or the  
19 federal courts;

20           (c) Any law, statute, rule, regulation, or ordinance  
21 which proscribes unfair methods of competition, or unfair,  
22 deceptive, or unconscionable acts or practices.

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

25           501.204 Unlawful acts and practices.--

26           (2) It is the intent of the Legislature that, in  
27 construing subsection (1), due consideration and great weight  
28 shall be given to the interpretations of the Federal Trade  
29 Commission and the federal courts relating to s. 5(a)(1) of  
30 the Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1) as of  
31 July 1, 2004 ~~2001~~.

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

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SENATE SUMMARY

Prohibits the use of deception to obtain certain personal information for commercial solicitation purposes. Prohibits the sale or disclosure of personal customer information by persons in bankruptcy. Prohibits falsely representing oneself as being affiliated with a law enforcement or firefighting agency or public utility. Provides a penalty. Provides that the criminal use of personal identification information is an unfair or deceptive act or practice or unfair method of competition.