

By the Committee on Commerce, Economic Opportunities, and
Consumer Services; and Senators Aronberg and Fasano

310-2179-04

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 other transfer to a third party of personal
8 customer information that is protected from
9 disclosure; providing exceptions; providing
10 applicability; providing that transferring such
11 protected information in violation of this
12 section is an unfair or deceptive act or
13 practice or unfair method of competition;
14 providing penalties; amending s. 501.2075,
15 F.S.; providing an exception to a civil
16 penalty; creating s. 501.2076, F.S.;
17 prohibiting falsely representing oneself as
18 being affiliated with a law enforcement or
19 firefighting agency or public utility;
20 providing a penalty; providing that a violation
21 of s. 817.568, F.S., is an unfair or deceptive
22 act or practice or unfair method of competition
23 in violation of part II of ch. 501, F.S.;
24 providing penalties; amending ss. 501.203 and
25 501.204, F.S.; changing obsolete dates;
26 providing an effective date.
27
28 Be It Enacted by the Legislature of the State of Florida:
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30 Section 1. Section 501.165, Florida Statutes, is
31 created to read:

1 501.165 Obtaining personal information for commercial
2 solicitation.--Any person who uses deceptive practices or
3 means to obtain another person's address, telephone number, or
4 social security number and uses it to engage in commercial
5 solicitation, or provides it to another person for purposes of
6 commercial solicitation, commits an unfair or deceptive act or
7 practice or unfair method of competition in violation of part
8 II of this chapter, and is subject to the penalties and
9 remedies provided for such violation, in addition to remedies
10 otherwise available for such conduct.

11 Section 2. Section 501.166, Florida Statutes, is
12 created to read:

13 501.166 Sale or transfer of personal customer
14 information.--

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

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

22 (b) Is in the same or substantially similar business
23 as the business that last owned the personal customer
24 information and uses the personal customer information only to
25 solicit a transaction for that business or to effect,
26 administer, or enforce a transaction as requested or
27 authorized by that customer.

28 (2) The prohibition set forth in subsection (1)
29 applies to any customer who resides in this state at the time
30 the personal customer information is sold, transferred, or
31 otherwise obtained.

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

7 Section 3. Section 501.2075, Florida Statutes, is
8 amended to read:

9 501.2075 Civil penalty.--Except as provided in s.
10 501.2076 or s. 501.2077, any person, firm, corporation,
11 association, or entity, or any agent or employee of the
12 foregoing, who is willfully using, or has willfully used, a
13 method, act, or practice declared unlawful under s. 501.204,
14 or who is willfully violating any of the rules of the
15 department adopted under this part, is liable for a civil
16 penalty of not more than \$10,000 for each such violation.
17 Willful violations occur when the person knew or should have
18 known that his or her conduct was unfair or deceptive or
19 prohibited by rule. This civil penalty may be recovered in
20 any action brought under this part by the enforcing authority;
21 or the enforcing authority may terminate any investigation or
22 action upon agreement by the person, firm, corporation,
23 association, or entity, or the agent or employee of the
24 foregoing, to pay a stipulated civil penalty. The department
25 or the court may waive any such civil penalty if the person,
26 firm, corporation, association, or entity, or the agent or
27 employee of the foregoing, has previously made full
28 restitution or reimbursement or has paid actual damages to the
29 consumers or governmental entities who have been injured by
30 the unlawful act or practice or rule violation. If civil
31 penalties are assessed in any litigation, the enforcing

1 authority is entitled to reasonable attorney's fees and costs.
2 A civil penalty so collected shall accrue to the state and
3 shall be deposited as received into the General Revenue Fund
4 unallocated.

5 Section 4. Section 501.2076, Florida Statutes, is
6 created to read:

7 501.2076 Misrepresentations; law enforcement,
8 firefighters, or public utilities.--Any person who engages in
9 a deceptive and unfair trade practice with the intent to
10 deceive another person into believing that he or she is
11 affiliated with a law enforcement agency, firefighting agency,
12 or public utility is subject to a civil penalty not to exceed
13 \$15,000 for each violation.

14 Section 5. A person who violates or fails to comply
15 with any provision of section 817.568, Florida Statutes,
16 commits an unfair or deceptive act or practice or unfair
17 method of competition in violation of part II of chapter 501,
18 Florida Statutes, and is subject to the penalties and remedies
19 provided for such violation, in addition to remedies otherwise
20 available for such conduct.

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

23 501.203 Definitions.--As used in this chapter, unless
24 the context otherwise requires, the term:

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

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

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1 (b) The standards of unfairness and deception set
2 forth and interpreted by the Federal Trade Commission or the
3 federal courts;

4 (c) Any law, statute, rule, regulation, or ordinance
5 which proscribes unfair methods of competition, or unfair,
6 deceptive, or unconscionable acts or practices.

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

9 501.204 Unlawful acts and practices.--

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

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

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18 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
19 COMMITTEE SUBSTITUTE FOR
20 Senate Bill 482

21 The committee substitute differs from the original bill by:
22 (1) providing that personal customer information may not be
23 sold or transferred unless the purchaser or transferee agrees
24 to abide by the seller's or transferor's contract or privacy
25 policy related to the personal customer information, and the
26 purchaser or transferee is in the same or substantially
27 similar business as the business that last owned the personal
28 customer information and uses the personal customer
29 information only to solicit a transaction for that business or
30 to effect, administer, or enforce a transaction as requested
31 or authorized by that customer; (2) providing that this
prohibition applies to any customer who resides in this state
at the time the personal customer information is sold or
transferred; (3) providing that a person who violates these
provisions commits a violation of the Florida Deceptive and
Unfair Trade Practices Act; and (4) removing the provisions in
the bill that restricted a bankruptcy sale of such personal
customer information.