

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

308-2393-04

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

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

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

16 (1) A person or an entity may not sell or otherwise
17 transfer to a third party personal customer information that
18 is protected from disclosure by law, contract, or a published
19 privacy policy unless the purchaser or transferee agrees to
20 abide by the contract or by the seller's or transferor's
21 then-existing privacy policy, if applicable.

22 (2) The prohibition set forth in subsection (1)
23 applies to any customer who resides in this state at the time
24 the personal customer information is sold, transferred, or
25 otherwise obtained.

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

1 Section 3. Section 501.2075, Florida Statutes, is
2 amended to read:

3 501.2075 Civil penalty.--Except as provided in s.
4 501.2076 or s. 501.2077, any person, firm, corporation,
5 association, or entity, or any agent or employee of the
6 foregoing, who is willfully using, or has willfully used, a
7 method, act, or practice declared unlawful under s. 501.204,
8 or who is willfully violating any of the rules of the
9 department adopted under this part, is liable for a civil
10 penalty of not more than \$10,000 for each such violation.
11 Willful violations occur when the person knew or should have
12 known that his or her conduct was unfair or deceptive or
13 prohibited by rule. This civil penalty may be recovered in
14 any action brought under this part by the enforcing authority;
15 or the enforcing authority may terminate any investigation or
16 action upon agreement by the person, firm, corporation,
17 association, or entity, or the agent or employee of the
18 foregoing, to pay a stipulated civil penalty. The department
19 or the court may waive any such civil penalty if the person,
20 firm, corporation, association, or entity, or the agent or
21 employee of the foregoing, has previously made full
22 restitution or reimbursement or has paid actual damages to the
23 consumers or governmental entities who have been injured by
24 the unlawful act or practice or rule violation. If civil
25 penalties are assessed in any litigation, the enforcing
26 authority is entitled to reasonable attorney's fees and costs.
27 A civil penalty so collected shall accrue to the state and
28 shall be deposited as received into the General Revenue Fund
29 unallocated.

30 Section 4. Section 501.2076, Florida Statutes, is
31 created to read:

1 501.2076 Misrepresentations; law enforcement,
2 firefighters, or public utilities.--Any person who engages in
3 a deceptive and unfair trade practice with the intent to
4 deceive another person into believing that he or she is
5 affiliated with a law enforcement agency, firefighting agency,
6 or public utility is subject to a civil penalty not to exceed
7 \$15,000 for each violation.

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

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

17 501.203 Definitions.--As used in this chapter, unless
18 the context otherwise requires, the term:

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

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

24 (b) The standards of unfairness and deception set
25 forth and interpreted by the Federal Trade Commission or the
26 federal courts;

27 (c) Any law, statute, rule, regulation, or ordinance
28 which proscribes unfair methods of competition, or unfair,
29 deceptive, or unconscionable acts or practices.

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

1 501.204 Unlawful acts and practices.--

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

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

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10 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
11 COMMITTEE SUBSTITUTE FOR
12 CS Senate Bill 482

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13 The committee substitute:

- 14 - Requires an intentional use of a deceptive practice or
15 means to obtain a person's address, telephone number, or
16 social security number for making commercial
17 solicitations for a person to be in violation of the
18 Florida Deceptive and Unfair Trade Practices Act; and
19 - Deletes a provision that prohibited the transfer of
20 personal customer information unless the transferee is a
21 business that is substantially similar to that of the
22 transferor and uses the information only to solicit a
23 transaction or to administer a transaction authorized by
24 a customer.

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