

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 severability; amending s. 501.207,  
27          F.S., relating to remedies of the enforcing  
28          authority under the Florida Deceptive and  
29          Unfair Trade Practices Act; providing that the  
30          court may order actions brought under that act  
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1           on behalf of an enterprise; providing an  
2           effective date.

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

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6           Section 1. Section 501.165, Florida Statutes, is  
7 created to read:

8           501.165 Obtaining personal information for commercial  
9 solicitation.--Any person who intentionally uses deceptive  
10 practices or means to obtain another person's address,  
11 telephone number, or social security number and uses it to  
12 engage in commercial solicitation, or provides it to another  
13 person for purposes of commercial solicitation, commits an  
14 unfair or deceptive act or practice or unfair method of  
15 competition in violation of part II of this chapter, and is  
16 subject to the penalties and remedies provided for such  
17 violation, in addition to remedies otherwise available for  
18 such conduct.

19           Section 2. Section 501.166, Florida Statutes, is  
20 created to read:

21           501.166 Sale or transfer of personal customer  
22 information.--

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

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

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

9 Section 3. Section 501.2075, Florida Statutes, is  
10 amended to read:

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

1 the unlawful act or practice or rule violation. If civil  
2 penalties are assessed in any litigation, the enforcing  
3 authority is entitled to reasonable attorney's fees and costs.  
4 A civil penalty so collected shall accrue to the state and  
5 shall be deposited as received into the General Revenue Fund  
6 unallocated.

7 Section 4. Section 501.2076, Florida Statutes, is  
8 created to read:

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

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

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

25 501.203 Definitions.--As used in this chapter, unless  
26 the context otherwise requires, the term:

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

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

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. If any provision of this act or the  
17 application thereof to any person or circumstance is held  
18 invalid, the invalidity does not affect other provisions or  
19 applications of this act which can be given effect without the  
20 invalid provision or application, and to this end the  
21 provisions of this act are declared severable.

22 Section 9. Subsection (3) of section 501.207, Florida  
23 Statutes, is amended to read:

24 501.207 Remedies of enforcing authority.--

25 (3) Upon motion of the enforcing authority or any  
26 interested party in any action brought under subsection (1),  
27 the court may make appropriate orders, including, but not  
28 limited to, appointment of a master or receiver or  
29 sequestration or freezing of assets, to reimburse consumers or  
30 governmental entities found to have been damaged; to carry out  
31 a transaction in accordance with the reasonable expectations

1 of consumers or governmental entities; to strike or limit the  
2 application of clauses of contracts to avoid an unconscionable  
3 result; to bring actions in the name of and on behalf of the  
4 enterprise; to order any defendant to divest herself or  
5 himself of any interest in any enterprise, including real  
6 estate; to impose reasonable restrictions upon the future  
7 activities of any defendant to impede her or him from engaging  
8 in or establishing the same type of endeavor; to order the  
9 dissolution or reorganization of any enterprise; or to grant  
10 ~~legal, equitable, or~~ other appropriate relief. The court may  
11 assess the expenses of a master or receiver against a person  
12 who has violated, is violating, or is otherwise likely to  
13 violate this part. Any injunctive order, whether temporary or  
14 permanent, issued by the court shall be effective throughout  
15 the state unless otherwise provided in the order.

16 Section 10. This act shall take effect July 1, 2004.  
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