

1                   A bill to be entitled  
2           An act relating to consumer protection; creating ss.  
3           501.165 and 501.166, F.S.; prohibiting the use of deception  
4           to obtain certain personal information for commercial  
5           solicitation purposes; prohibiting the sale or other  
6           transfer to a third party of personal customer information  
7           that is protected from disclosure; providing exceptions;  
8           providing applicability; providing that transferring such  
9           protected information is an unfair or deceptive act or  
10          practice or unfair method of competition; providing  
11          penalties; amending s. 501.2075, F.S.; providing an  
12          exception to a civil penalty; creating s. 501.2076, F.S.;  
13          prohibiting falsely representing oneself as being  
14          affiliated with a law enforcement or firefighting agency or  
15          public utility; providing a penalty; providing that a  
16          violation of s. 817.568, F.S., relating to the criminal use  
17          of personal identification information, is an unfair or  
18          deceptive act or practice or unfair method of competition  
19          in violation of part II of ch. 501, F.S.; providing  
20          penalties; amending ss. 501.203 and 501.204, F.S.; changing  
21          obsolete dates; reenacting and amending s. 501.207, F.S.,  
22          relating to remedies of the enforcing authority under the  
23          Florida Deceptive and Unfair Trade Practices Act; providing  
24          that the court may order actions brought under that act on  
25          behalf of an enterprise; providing for severability;  
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 created  
31 to read:

32 501.165 Obtaining personal information for commercial  
33 solicitation.--Any person who intentionally uses deceptive  
34 practices or means to obtain another person's address, telephone  
35 number, or social security number and uses it to engage in  
36 commercial solicitation, or provides it to another person for  
37 purposes of commercial solicitation, commits an unfair or  
38 deceptive act or practice or unfair method of competition in  
39 violation of part II of this chapter, and is subject to the  
40 penalties and remedies provided for such violation, in addition  
41 to remedies otherwise available for such conduct.

42 Section 2. Section 501.166, Florida Statutes, is created  
43 to read:

44 501.166 Sale or transfer of personal customer  
45 information.--

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

52 (2) The prohibition in subsection (1) applies to any  
53 customer who resides in this state at the time the personal  
54 customer information is sold, transferred, or otherwise  
55 obtained.

56 (3) A person who violates or fails to comply with

57 subsection (1) commits an unfair or deceptive act or practice or  
58 unfair method of competition in violation of part II of this  
59 chapter and is subject to the penalties and remedies provided  
60 for such violation, in addition to remedies otherwise available  
61 by law for such conduct.

62 Section 3. Section 501.2075, Florida Statutes, is amended  
63 to read:

64 501.2075 Civil penalty.--Except as provided in s. 501.2076  
65 or s. 501.2077, any person, firm, corporation, association, or  
66 entity, or any agent or employee of the foregoing, who is  
67 willfully using, or has willfully used, a method, act, or  
68 practice declared unlawful under s. 501.204, or who is willfully  
69 violating any of the rules of the department adopted under this  
70 part, is liable for a civil penalty of not more than \$10,000 for  
71 each such violation. Willful violations occur when the person  
72 knew or should have known that his or her conduct was unfair or  
73 deceptive or prohibited by rule. This civil penalty may be  
74 recovered in any action brought under this part by the enforcing  
75 authority; or the enforcing authority may terminate any  
76 investigation or action upon agreement by the person, firm,  
77 corporation, association, or entity, or the agent or employee of  
78 the foregoing, to pay a stipulated civil penalty. The  
79 department or the court may waive any such civil penalty if the  
80 person, firm, corporation, association, or entity, or the agent  
81 or employee of the foregoing, has previously made full  
82 restitution or reimbursement or has paid actual damages to the  
83 consumers or governmental entities who have been injured by the  
84 unlawful act or practice or rule violation. If civil penalties

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85 are assessed in any litigation, the enforcing authority is  
86 entitled to reasonable attorney's fees and costs. A civil  
87 penalty so collected shall accrue to the state and shall be  
88 deposited as received into the General Revenue Fund unallocated.

89 Section 4. Section 501.2076, Florida Statutes, is created  
90 to read:

91 501.2076 Misrepresentations; law enforcement,  
92 firefighters, or public utilities.--Any person who engages in a  
93 deceptive and unfair trade practice with the intent to deceive  
94 another person into believing that he or she is affiliated with  
95 a law enforcement agency, firefighting agency, or public utility  
96 is subject to a civil penalty not to exceed \$15,000 for each  
97 violation.

98 Section 5. A person who violates or fails to comply with  
99 any provision of section 817.568, Florida Statutes, commits an  
100 unfair or deceptive act or practice or unfair method of  
101 competition in violation of part II of chapter 501, Florida  
102 Statutes, and is subject to the penalties and remedies provided  
103 for such violation, in addition to remedies otherwise available  
104 for such conduct.

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

107 501.203 Definitions.--As used in this chapter, unless the  
108 context otherwise requires, the term:

109 (3) "Violation of this part" means any violation of this  
110 act or the rules adopted under this act and may be based upon  
111 any of the following as of July 1, 2005 ~~2001~~:

112 (a) Any rules promulgated pursuant to the Federal Trade

113 Commission Act, 15 U.S.C. ss. 41 et seq.;

114 (b) The standards of unfairness and deception set forth  
 115 and interpreted by the Federal Trade Commission or the federal  
 116 courts; or

117 (c) Any law, statute, rule, regulation, or ordinance which  
 118 proscribes unfair methods of competition, or unfair, deceptive,  
 119 or unconscionable acts or practices.

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

122 501.204 Unlawful acts and practices.--

123 (2) It is the intent of the Legislature that, in  
 124 construing subsection (1), due consideration and great weight  
 125 shall be given to the interpretations of the Federal Trade  
 126 Commission and the federal courts relating to s. 5(a)(1) of the  
 127 Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1) as of July  
 128 1, 2005 ~~2001~~.

129 Section 8. Subsection (1) of section 501.207, Florida  
 130 Statutes, is reenacted, and subsection (3) of that section is  
 131 amended to read:

132 501.207 Remedies of enforcing authority.--

133 (1) The enforcing authority may bring:

134 (a) An action to obtain a declaratory judgment that an act  
 135 or practice violates this part.

136 (b) An action to enjoin any person who has violated, is  
 137 violating, or is otherwise likely to violate, this part.

138 (c) An action on behalf of one or more consumers or  
 139 governmental entities for the actual damages caused by an act or  
 140 practice in violation of this part. However, damages are not

141 recoverable under this section against a retailer who has in  
142 good faith engaged in the dissemination of claims of a  
143 manufacturer or wholesaler without actual knowledge that it  
144 violated this part.

145 (3) Upon motion of the enforcing authority or any  
146 interested party in any action brought under subsection (1), the  
147 court may make appropriate orders, including, but not limited  
148 to, appointment of a general or special magistrate or receiver  
149 or sequestration or freezing of assets, to reimburse consumers  
150 or governmental entities found to have been damaged; to carry  
151 out a transaction in accordance with the reasonable expectations  
152 of consumers or governmental entities; to strike or limit the  
153 application of clauses of contracts to avoid an unconscionable  
154 result; to bring actions in the name of and on behalf of the  
155 defendant enterprise; to order any defendant to divest herself  
156 or himself of any interest in any enterprise, including real  
157 estate; to impose reasonable restrictions upon the future  
158 activities of any defendant to impede her or him from engaging  
159 in or establishing the same type of endeavor; to order the  
160 dissolution or reorganization of any enterprise; or to grant  
161 ~~legal, equitable, or~~ other appropriate relief. The court may  
162 assess the expenses of a general or special magistrate or  
163 receiver against a person who has violated, is violating, or is  
164 otherwise likely to violate this part. Any injunctive order,  
165 whether temporary or permanent, issued by the court shall be  
166 effective throughout the state unless otherwise provided in the  
167 order.

168 Section 9. If any provision of this act or its application

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169 to any person or circumstance is held invalid, the invalidity  
170 does not affect other provisions or applications of the act  
171 which can be given effect without the invalid provision or  
172 application, and to this end the provisions of this act are  
173 severable.

174 Section 10. This act shall take effect July 1, 2005.