

CHAMBER ACTION

1 The Justice Appropriations Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5
6 A bill to be entitled

7 An act relating to consumer protection; creating s.
8 501.165, F.S.; prohibiting the use of deception to obtain
9 certain personal information for commercial solicitation
10 purposes; providing that such acts are deceptive trade
11 practices or unfair methods of competition; providing
12 penalties; amending s. 501.2075, F.S.; providing an
13 exception to a civil penalty; creating s. 501.2076, F.S.;
14 prohibiting falsely representing oneself as being
15 affiliated with a law enforcement or firefighting agency or
16 public utility; providing a penalty; providing that a
17 violation of s. 817.568, F.S., relating to the criminal use
18 of personal identification information, is an unfair or
19 deceptive act or practice or unfair method of competition
20 in violation of part II of ch. 501, F.S.; providing
21 penalties; amending ss. 501.203 and 501.204, F.S.; changing
22 obsolete dates; reenacting and amending s. 501.207, F.S.,
23 relating to remedies of the enforcing authority under the

24 Florida Deceptive and Unfair Trade Practices Act; providing
25 that the court may order actions brought under that act on
26 behalf of an enterprise; amending s. 817.568, F.S.;
27 including other information within the definition of the
28 term "personal identification information"; defining the
29 term "counterfeit or fictitious personal identification
30 information"; revising criminal penalties relating to the
31 offense of fraudulently using, or possessing with intent to
32 fraudulently use, personal identification information;
33 providing minimum mandatory terms of imprisonment; creating
34 the offenses of willfully and fraudulently using, or
35 possessing with intent to fraudulently use, personal
36 identification information concerning a deceased
37 individual; providing criminal penalties; providing for
38 minimum mandatory terms of imprisonment; creating the
39 offense of willfully and fraudulently creating or using, or
40 possessing with intent to fraudulently use, counterfeit or
41 fictitious personal identification information; providing
42 criminal penalties; providing for reclassification of
43 offenses under certain circumstances; providing for
44 reduction or suspension of sentences under certain
45 circumstances; creating s. 817.5681, F.S.; requiring
46 business persons maintaining computerized data that
47 includes personal information to provide notice of breaches
48 of system security under certain circumstances; providing
49 requirements; providing for administrative fines; providing
50 exceptions and limitations; authorizing delays of such
51 disclosures under certain circumstances; providing

52 definitions; providing for alternative notice methods;
 53 specifying conditions of compliance for persons maintaining
 54 certain alternative notification procedures; specifying
 55 conditions under which notification is not required;
 56 providing requirements for documentation and maintenance of
 57 documentation; providing an administrative fine for failing
 58 to document certain failures to comply; providing for
 59 application of administrative sanctions to certain persons
 60 under certain circumstances; authorizing the Department of
 61 Legal Affairs to institute proceedings to assess and
 62 collect fines; providing that no entity may accumulate or
 63 report a consumer's drug test results with any of their
 64 other personal data; providing exceptions; providing for
 65 severability; providing an effective date.

66
 67 Be It Enacted by the Legislature of the State of Florida:

68
 69 Section 1. Section 501.165, Florida Statutes, is created
 70 to read:

71 501.165 Obtaining personal information for commercial
 72 solicitation.--Any person who intentionally uses deceptive
 73 practices or means to obtain another person's address, telephone
 74 number, or social security number and uses it to engage in
 75 commercial solicitation, or provides it to another person for
 76 purposes of commercial solicitation, commits an unfair or
 77 deceptive act or practice or unfair method of competition in
 78 violation of part II of this chapter, and is subject to the

79 | penalties and remedies provided for such violation, in addition
 80 | to remedies otherwise available for such conduct.

81 | Section 2. Section 501.2075, Florida Statutes, is amended
 82 | to read:

83 | 501.2075 Civil penalty.--Except as provided in s. 501.2076
 84 | or s. 501.2077, any person, firm, corporation, association, or
 85 | entity, or any agent or employee of the foregoing, who is
 86 | willfully using, or has willfully used, a method, act, or
 87 | practice declared unlawful under s. 501.204, or who is willfully
 88 | violating any of the rules of the department adopted under this
 89 | part, is liable for a civil penalty of not more than \$10,000 for
 90 | each such violation. Willful violations occur when the person
 91 | knew or should have known that his or her conduct was unfair or
 92 | deceptive or prohibited by rule. This civil penalty may be
 93 | recovered in any action brought under this part by the enforcing
 94 | authority; or the enforcing authority may terminate any
 95 | investigation or action upon agreement by the person, firm,
 96 | corporation, association, or entity, or the agent or employee of
 97 | the foregoing, to pay a stipulated civil penalty. The
 98 | department or the court may waive any such civil penalty if the
 99 | person, firm, corporation, association, or entity, or the agent
 100 | or employee of the foregoing, has previously made full
 101 | restitution or reimbursement or has paid actual damages to the
 102 | consumers or governmental entities who have been injured by the
 103 | unlawful act or practice or rule violation. If civil penalties
 104 | are assessed in any litigation, the enforcing authority is
 105 | entitled to reasonable attorney's fees and costs. A civil

HB 129 CS

2005
CS

106 penalty so collected shall accrue to the state and shall be
107 deposited as received into the General Revenue Fund unallocated.

108 Section 3. Section 501.2076, Florida Statutes, is created
109 to read:

110 501.2076 Misrepresentations; law enforcement,
111 firefighters, or public utilities.--Any person who engages in a
112 deceptive and unfair trade practice with the intent to deceive
113 another person into believing that he or she is affiliated with
114 a law enforcement agency, firefighting agency, or public utility
115 is subject to a civil penalty not to exceed \$15,000 for each
116 violation.

117 Section 4. A person who violates or fails to comply with
118 any provision of section 817.568, Florida Statutes, commits an
119 unfair or deceptive act or practice or unfair method of
120 competition in violation of part II of chapter 501, Florida
121 Statutes, and is subject to the penalties and remedies provided
122 for such violation, in addition to remedies otherwise available
123 for such conduct.

124 Section 5. Subsection (3) of section 501.203, Florida
125 Statutes, is amended to read:

126 501.203 Definitions.--As used in this chapter, unless the
127 context otherwise requires, the term:

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

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

HB 129 CS

2005
CS

133 (b) The standards of unfairness and deception set forth
134 and interpreted by the Federal Trade Commission or the federal
135 courts;

136 (c) Any law, statute, rule, regulation, or ordinance which
137 proscribes unfair methods of competition, or unfair, deceptive,
138 or unconscionable acts or practices.

139 Section 6. Subsection (2) of section 501.204, Florida
140 Statutes, is amended to read:

141 501.204 Unlawful acts and practices.--

142 (2) It is the intent of the Legislature that, in
143 construing subsection (1), due consideration and great weight
144 shall be given to the interpretations of the Federal Trade
145 Commission and the federal courts relating to s. 5(a)(1) of the
146 Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1) as of July
147 1, 2005 ~~2001~~.

148 Section 7. Subsection (1) of section 501.207, Florida
149 Statutes, is reenacted, and subsection (3) of that section is
150 amended to read:

151 501.207 Remedies of enforcing authority.--

152 (1) The enforcing authority may bring:

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

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

157 (c) An action on behalf of one or more consumers or
158 governmental entities for the actual damages caused by an act or
159 practice in violation of this part. However, damages are not
160 recoverable under this section against a retailer who has in

HB 129 CS

2005
CS

161 good faith engaged in the dissemination of claims of a
162 manufacturer or wholesaler without actual knowledge that it
163 violated this part.

164 (3) Upon motion of the enforcing authority or any
165 interested party in any action brought under subsection (1), the
166 court may make appropriate orders, including, but not limited
167 to, appointment of a general or special magistrate or receiver
168 or sequestration or freezing of assets, to reimburse consumers
169 or governmental entities found to have been damaged; to carry
170 out a transaction in accordance with the reasonable expectations
171 of consumers or governmental entities; to strike or limit the
172 application of clauses of contracts to avoid an unconscionable
173 result; to bring actions in the name of and on behalf of the
174 defendant enterprise; to order any defendant to divest herself
175 or himself of any interest in any enterprise, including real
176 estate; to impose reasonable restrictions upon the future
177 activities of any defendant to impede her or him from engaging
178 in or establishing the same type of endeavor; to order the
179 dissolution or reorganization of any enterprise; or to grant
180 legal, equitable, or other appropriate relief. The court may
181 assess the expenses of a general or special magistrate or
182 receiver against a person who has violated, is violating, or is
183 otherwise likely to violate this part. Any injunctive order,
184 whether temporary or permanent, issued by the court shall be
185 effective throughout the state unless otherwise provided in the
186 order.

187 Section 8. Section 817.568, Florida Statutes, is amended
188 to read:

Page 7 of 25

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0129-03-c3

189 817.568 Criminal use of personal identification
190 information.--

191 (1) As used in this section, the term:

192 (a) "Access device" means any card, plate, code, account
193 number, electronic serial number, mobile identification number,
194 personal identification number, or other telecommunications
195 service, equipment, or instrument identifier, or other means of
196 account access that can be used, alone or in conjunction with
197 another access device, to obtain money, goods, services, or any
198 other thing of value, or that can be used to initiate a transfer
199 of funds, other than a transfer originated solely by paper
200 instrument.

201 (b) "Authorization" means empowerment, permission, or
202 competence to act.

203 (c) "Harass" means to engage in conduct directed at a
204 specific person that is intended to cause substantial emotional
205 distress to such person and serves no legitimate purpose.

206 "Harass" does not mean to use personal identification
207 information for accepted commercial purposes. The term does not
208 include constitutionally protected conduct such as organized
209 protests or the use of personal identification information for
210 accepted commercial purposes.

211 (d) "Individual" means a single human being and does not
212 mean a firm, association of individuals, corporation,
213 partnership, joint venture, sole proprietorship, or any other
214 entity.

215 (e) "Person" means a "person" as defined in s. 1.01(3).

216 (f) "Personal identification information" means any name
 217 or number that may be used, alone or in conjunction with any
 218 other information, to identify a specific individual, including
 219 any:

220 1. Name, postal or electronic mail address, telephone
 221 number, social security number, date of birth, mother's maiden
 222 name, official state-issued or United States-issued driver's
 223 license or identification number, alien registration number,
 224 government passport number, employer or taxpayer identification
 225 number, Medicaid or food stamp account number, ~~or~~ bank account
 226 number, ~~or~~ credit or debit card number, or personal
 227 identification number or code assigned to the holder of a debit
 228 card by the issuer to permit authorized electronic use of such
 229 card;

230 2. Unique biometric data, such as fingerprint, voice
 231 print, retina or iris image, or other unique physical
 232 representation;

233 3. Unique electronic identification number, address, or
 234 routing code; ~~or~~

235 4. Medical records;

236 ~~5.4. Telecommunication identifying information or access~~
 237 ~~device; or-~~

238 6. Other number or information that can be used to access
 239 a person's financial resources.

240 (g) "Counterfeit or fictitious personal identification
 241 information" means any counterfeit, fictitious, or fabricated
 242 information in the similitude of the data outlined in paragraph
 243 (f) that, although not truthful or accurate, would in context

244 | lead a reasonably prudent person to credit its truthfulness and
 245 | accuracy.

246 | (2)(a) Any person who willfully and without authorization
 247 | fraudulently uses, or possesses with intent to fraudulently use,
 248 | personal identification information concerning an individual
 249 | without first obtaining that individual's consent, commits the
 250 | offense of fraudulent use of personal identification
 251 | information, which is a felony of the third degree, punishable
 252 | as provided in s. 775.082, s. 775.083, or s. 775.084.

253 | (b) Any person who willfully and without authorization
 254 | fraudulently uses personal identification information concerning
 255 | an individual without first obtaining that individual's consent
 256 | commits a felony of the second degree, punishable as provided in
 257 | s. 775.082, s. 775.083, or s. 775.084, if the pecuniary benefit,
 258 | the value of the services received, the payment sought to be
 259 | avoided, or the amount of the injury or fraud perpetrated is
 260 | \$5,000 or more or if the person fraudulently uses the personal
 261 | identification information of 10 or more individuals, but fewer
 262 | than 20 individuals, without their consent. Notwithstanding any
 263 | other provision of law, the court shall sentence any person
 264 | convicted of committing the offense described in this paragraph
 265 | to a mandatory minimum sentence of 3 years' imprisonment.

266 | (c) Any person who willfully and without authorization
 267 | fraudulently uses personal identification information concerning
 268 | an individual without first obtaining that individual's consent
 269 | commits a felony of the first degree, punishable as provided in
 270 | s. 775.082, s. 775.083, or s. 775.084, if the pecuniary benefit,
 271 | the value of the services received, the payment sought to be

HB 129 CS

2005
CS

272 avoided, or the amount of the injury or fraud perpetrated is
 273 \$50,000 or more or if the person fraudulently uses the personal
 274 identification information of 20 or more individuals, but fewer
 275 than 30 individuals, without their consent. Notwithstanding any
 276 other provision of law, the court shall sentence any person
 277 convicted of committing the offense described in this paragraph:

278 ~~1.~~ to a mandatory minimum sentence of 5 years'
 279 imprisonment. If the pecuniary benefit, the value of the
 280 services received, the payment sought to be avoided, or the
 281 amount of the injury or fraud perpetrated is \$100,000 or more,
 282 or if the person fraudulently uses the personal identification
 283 information of 30 or more individuals without their consent,
 284 notwithstanding any other provision of law, the court shall
 285 sentence any person convicted of committing the offense
 286 described in this paragraph

287 ~~2.~~ to a mandatory minimum sentence of 10 years'
 288 imprisonment, ~~if the pecuniary benefit, the value of the~~
 289 ~~services received, the payment sought to be avoided, or the~~
 290 ~~amount of the injury or fraud perpetrated is \$100,000 or more or~~
 291 ~~if the person fraudulently uses the personal identification~~
 292 ~~information of 30 or more individuals without their consent.~~

293 (3) Neither paragraph (2)(b) nor paragraph (2)(c) prevents
 294 a court from imposing a greater sentence of incarceration as
 295 authorized by law. If the minimum mandatory terms of
 296 imprisonment imposed under paragraph (2)(b) or paragraph (2)(c)
 297 exceed the maximum sentences authorized under s. 775.082, s.
 298 775.084, or the Criminal Punishment Code under chapter 921, the
 299 mandatory minimum sentence must be imposed. If the mandatory

300 minimum terms of imprisonment under paragraph (2)(b) or
 301 paragraph (2)(c) are less than the sentence that could be
 302 imposed under s. 775.082, s. 775.084, or the Criminal Punishment
 303 Code under chapter 921, the sentence imposed by the court must
 304 include the mandatory minimum term of imprisonment as required
 305 by paragraph (2)(b) or paragraph (2)(c).

306 (4) Any person who willfully and without authorization
 307 possesses, uses, or attempts to use personal identification
 308 information concerning an individual without first obtaining
 309 that individual's consent, and who does so for the purpose of
 310 harassing that individual, commits the offense of harassment by
 311 use of personal identification information, which is a
 312 misdemeanor of the first degree, punishable as provided in s.
 313 775.082 or s. 775.083.

314 (5) If an offense prohibited under this section was
 315 facilitated or furthered by the use of a public record, as
 316 defined in s. 119.011, the offense is reclassified to the next
 317 higher degree as follows:

318 (a) A misdemeanor of the first degree is reclassified as a
 319 felony of the third degree.

320 (b) A felony of the third degree is reclassified as a
 321 felony of the second degree.

322 (c) A felony of the second degree is reclassified as a
 323 felony of the first degree.

324
 325 For purposes of sentencing under chapter 921 and incentive gain-
 326 time eligibility under chapter 944, a felony offense that is
 327 reclassified under this subsection is ranked one level above the

HB 129 CS

2005
CS

328 ranking under s. 921.0022 of the felony offense committed, and a
 329 misdemeanor offense that is reclassified under this subsection
 330 is ranked in level 2 of the offense severity ranking chart in s.
 331 921.0022.

332 (6) Any person who willfully and without authorization
 333 fraudulently uses personal identification information concerning
 334 an individual who is less than 18 years of age without first
 335 obtaining the consent of that individual or of his or her legal
 336 guardian commits a felony of the second degree, punishable as
 337 provided in s. 775.082, s. 775.083, or s. 775.084.

338 (7) Any person who is in the relationship of parent or
 339 legal guardian, or who otherwise exercises custodial authority
 340 over an individual who is less than 18 years of age, who
 341 willfully and fraudulently uses personal identification
 342 information of that individual commits a felony of the second
 343 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 344 775.084.

345 (8)(a) Any person who willfully and fraudulently uses, or
 346 possesses with intent to fraudulently use, personal
 347 identification information concerning a deceased individual
 348 commits the offense of fraudulent use or possession with intent
 349 to use personal identification information of a deceased
 350 individual, a felony of the third degree, punishable as provided
 351 in s. 775.082, s. 775.083, or s. 775.084.

352 (b) Any person who willfully and fraudulently uses
 353 personal identification information concerning a deceased
 354 individual commits a felony of the second degree, punishable as
 355 provided in s. 775.082, s. 775.083, or s. 775.084, if the

HB 129 CS

2005
CS

356 pecuniary benefit, the value of the services received, the
357 payment sought to be avoided, or the amount of injury or fraud
358 perpetrated is \$5,000 or more, or if the person fraudulently
359 uses the personal identification information of 10 or more but
360 fewer than 20 deceased individuals. Notwithstanding any other
361 provision of law, the court shall sentence any person convicted
362 of committing the offense described in this paragraph to a
363 mandatory minimum sentence of 3 years' imprisonment.

364 (c) Any person who willfully and fraudulently uses
365 personal identification information concerning a deceased
366 individual commits the offense of aggravated fraudulent use of
367 the personal identification information of multiple deceased
368 individuals, a felony of the first degree, punishable as
369 provided in s. 775.082, s. 775.083, or s. 775.084, if the
370 pecuniary benefit, the value of the services received, the
371 payment sought to be avoided, or the amount of injury or fraud
372 perpetrated is \$50,000 or more, or if the person fraudulently
373 uses the personal identification information of 20 or more but
374 fewer than 30 deceased individuals. Notwithstanding any other
375 provision of law, the court shall sentence any person convicted
376 of the offense described in this paragraph to a minimum
377 mandatory sentence of 5 years' imprisonment. If the pecuniary
378 benefit, the value of the services received, the payment sought
379 to be avoided, or the amount of the injury or fraud perpetrated
380 is \$100,000 or more, or if the person fraudulently uses the
381 personal identification information of 30 or more deceased
382 individuals, notwithstanding any other provision of law, the
383 court shall sentence any person convicted of an offense

Page 14 of 25

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0129-03-c3

384 described in this paragraph to a mandatory minimum sentence of
 385 10 years' imprisonment.

386 (9) Any person who willfully and fraudulently creates or
 387 uses, or possesses with intent to fraudulently use, counterfeit
 388 or fictitious personal identification information concerning a
 389 fictitious individual, or concerning a real individual without
 390 first obtaining that real individual's consent, with intent to
 391 use such counterfeit or fictitious personal identification
 392 information for the purpose of committing or facilitating the
 393 commission of a fraud on another person, commits the offense of
 394 fraudulent creation or use, or possession with intent to
 395 fraudulently use, counterfeit or fictitious personal
 396 identification information, a felony of the third degree,
 397 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

398 (10) Any person who commits an offense described in this
 399 section and for the purpose of obtaining or using personal
 400 identification information misrepresents himself or herself to
 401 be a law enforcement officer; an employee or representative of a
 402 bank, credit card company, credit counseling company, or credit
 403 reporting agency; or any person who wrongfully represents that
 404 he or she is seeking to assist the victim with a problem with
 405 the victim's credit history shall have the offense reclassified
 406 as follows:

407 (a) In the case of a misdemeanor, the offense is
 408 reclassified as a felony of the third degree.

409 (b) In the case of a felony of the third degree, the
 410 offense is reclassified as a felony of the second degree.

411 (c) In the case of a felony of the second degree, the
 412 offense is reclassified as a felony of the first degree.

413 (d) In the case of a felony of the first degree or a
 414 felony of the first degree punishable by a term of imprisonment
 415 not exceeding life, the offense is reclassified as a life
 416 felony.

417
 418 For purposes of sentencing under chapter 921, a felony offense
 419 that is reclassified under this subsection is ranked one level
 420 above the ranking under s. 921.0022 or s. 921.0023 of the felony
 421 offense committed, and a misdemeanor offense that is
 422 reclassified under this subsection is ranked in level 2 of the
 423 offense severity ranking chart.

424 (11) The prosecutor may move the sentencing court to
 425 reduce or suspend the sentence of any person who is convicted of
 426 a violation of this section and who provides substantial
 427 assistance in the identification, arrest, or conviction of any
 428 of that person's accomplices, accessories, coconspirators, or
 429 principals or of any other person engaged in fraudulent
 430 possession or use of personal identification information. The
 431 arresting agency shall be given an opportunity to be heard in
 432 aggravation or mitigation in reference to any such motion. Upon
 433 good cause shown, the motion may be filed and heard in camera.
 434 The judge hearing the motion may reduce or suspend the sentence
 435 if the judge finds that the defendant rendered such substantial
 436 assistance.

437 (12)~~(8)~~ This section does not prohibit any lawfully
 438 authorized investigative, protective, or intelligence activity

439 of a law enforcement agency of this state or any of its
 440 political subdivisions, of any other state or its political
 441 subdivisions, or of the Federal Government or its political
 442 subdivisions.

443 (13)~~(9)~~(a) In sentencing a defendant convicted of an
 444 offense under this section, the court may order that the
 445 defendant make restitution under ~~pursuant to~~ s. 775.089 to any
 446 victim of the offense. In addition to the victim's out-of-pocket
 447 costs, ~~such~~ restitution may include payment of any other costs,
 448 including attorney's fees incurred by the victim in clearing the
 449 victim's credit history or credit rating, or any costs incurred
 450 in connection with any civil or administrative proceeding to
 451 satisfy any debt, lien, or other obligation of the victim
 452 arising as the result of the actions of the defendant.

453 (b) The sentencing court may issue such orders as are
 454 necessary to correct any public record that contains false
 455 information given in violation of this section.

456 (14)~~(10)~~ Prosecutions for violations of this section may
 457 be brought on behalf of the state by any state attorney or by
 458 the statewide prosecutor.

459 (15)~~(11)~~ The Legislature finds that, in the absence of
 460 evidence to the contrary, the location where a victim gives or
 461 fails to give consent to the use of personal identification
 462 information is the county where the victim generally resides.

463 (16)~~(12)~~ Notwithstanding any other provision of law, venue
 464 for the prosecution and trial of violations of this section may
 465 be commenced and maintained in any county in which an element of

466 the offense occurred, including the county where the victim
467 generally resides.

468 ~~(17)(13)~~ A prosecution of an offense prohibited under
469 subsection (2), subsection (6), or subsection (7) must be
470 commenced within 3 years after the offense occurred. However, a
471 prosecution may be commenced within 1 year after discovery of
472 the offense by an aggrieved party, or by a person who has a
473 legal duty to represent the aggrieved party and who is not a
474 party to the offense, if such prosecution is commenced within 5
475 years after the violation occurred.

476 Section 9. Section 817.5681, Florida Statutes, is created
477 to read:

478 817.5681 Breach of security concerning confidential
479 personal information in third-party possession; administrative
480 penalties.--

481 (1)(a) Any person who conducts business in this state and
482 maintains computerized data in a system that includes personal
483 information shall provide notice of any breach of the security
484 of the system, following a determination of the breach, to any
485 resident of this state whose unencrypted personal information
486 was, or is reasonably believed to have been, acquired by an
487 unauthorized person. The notification shall be made without
488 unreasonable delay, consistent with the legitimate needs of law
489 enforcement, as provided in subsection (3) and paragraph
490 (10)(a), or subject to any measures necessary to determine the
491 presence, nature, and scope of the breach and restore the
492 reasonable integrity of the system. Notification must be made no

493 later than 45 days following the determination of the breach
494 unless otherwise provided in this section.

495 (b) Any person required to make notification under
496 paragraph (a) who fails to do so within 45 days following the
497 determination of a breach or receipt of notice from law
498 enforcement as provided in subsection (3) is liable for an
499 administrative fine not to exceed \$500,000, as follows:

500 1. In the amount of \$1,000 for each day the breach goes
501 undisclosed for up to 30 days and, thereafter, \$50,000 for each
502 30-day period or portion thereof for up to 180 days.

503 2. If notification is not made within 180 days, any person
504 required to make notification under paragraph (a) who fails to
505 do so is subject to an administrative fine of up to \$500,000.

506 (c) The administrative sanctions for failure to notify
507 provided in this subsection shall not apply in the case of
508 personal information in the custody of any governmental agency
509 or subdivision, unless that governmental agency or subdivision
510 has entered into a contract with a contractor or third-party
511 administrator to provide governmental services. In such case,
512 the contractor or third-party administrator shall be a person to
513 whom the administrative sanctions provided in this subsection
514 would apply, although such contractor or third-party
515 administrator found in violation of the notification
516 requirements provided in this subsection would not have an
517 action for contribution or set-off available against the
518 employing agency or subdivision.

519 (2)(a) Any person who maintains computerized data that
520 includes personal information on behalf of another business

521 entity shall disclose to the business entity for which the
 522 information is maintained any breach of the security of the
 523 system as soon as practicable, but no later than 10 days
 524 following the determination, if the personal information was, or
 525 is reasonably believed to have been, acquired by an unauthorized
 526 person. The person who maintains the data on behalf of another
 527 business entity and the business entity on whose behalf the data
 528 is maintained may agree who will provide the notice, if any is
 529 required, as provided in paragraph (1)(a), provided only a
 530 single notice for each breach of the security of the system
 531 shall be required. If agreement regarding notification cannot be
 532 reached, the person who has the direct business relationship
 533 with the resident of this state shall be subject to the
 534 provisions of paragraph (1)(a).

535 (b) Any person required to disclose to a business entity
 536 under paragraph (a) who fails to do so within 10 days after the
 537 determination of a breach or receipt of notification from law
 538 enforcement as provided in subsection (3) is liable for an
 539 administrative fine not to exceed \$500,000, as follows:

540 1. In the amount of \$1,000 for each day the breach goes
 541 undisclosed for up to 30 days and, thereafter, \$50,000 for each
 542 30-day period or portion thereof for up to 180 days.

543 2. If disclosure is not made within 180 days, any person
 544 required to make disclosures under paragraph (a) who fails to do
 545 so is subject to an administrative fine of up to \$500,000.

546 (c) The administrative sanctions for nondisclosure
 547 provided in this subsection shall not apply in the case of
 548 personal information in the custody of any governmental agency

HB 129 CS

2005
CS

549 or subdivision unless that governmental agency or subdivision
550 has entered into a contract with a contractor or third-party
551 administrator to provide governmental services. In such case,
552 the contractor or third-party administrator shall be a person to
553 whom the administrative sanctions provided in this subsection
554 would apply, although such contractor or third-party
555 administrator found in violation of the nondisclosure
556 restrictions in this subsection would not have an action for
557 contribution or set-off available against the employing agency
558 or subdivision.

559 (3) The notification required by this section may be
560 delayed upon a request by law enforcement if a law enforcement
561 agency determines that the notification will impede a criminal
562 investigation. The notification time period required by this
563 section shall commence after the person receives notice from the
564 law enforcement agency that the notification will not compromise
565 the investigation.

566 (4) For purposes of this section, the terms "breach" and
567 "breach of the security of the system" mean unlawful and
568 unauthorized acquisition of computerized data that materially
569 compromises the security, confidentiality, or integrity of
570 personal information maintained by the person. Good faith
571 acquisition of personal information by an employee or agent of
572 the person is not a breach or breach of the security of the
573 system, provided the information is not used for a purpose
574 unrelated to the business or subject to further unauthorized
575 use.

576 (5) For purposes of this section, the term "personal
 577 information" means an individual's first name, first initial and
 578 last name, or any middle name and last name, in combination with
 579 any one or more of the following data elements when the data
 580 elements are not encrypted:

581 (a) Social security number.

582 (b) Driver's license number or Florida Identification Card
 583 number.

584 (c) Account number, credit card number, or debit card
 585 number, in combination with any required security code, access
 586 code, or password that would permit access to an individual's
 587 financial account.

588
 589 For purposes of this section, the term "personal information"
 590 does not include publicly available information that is lawfully
 591 made available to the general public from federal, state, or
 592 local government records or widely distributed media.

593 (6) For purposes of this section, notice may be provided
 594 by one of the following methods:

595 (a) Written notice;

596 (b) Electronic notice, if the notice provided is
 597 consistent with the provisions regarding electronic records and
 598 signatures set forth in 15 U.S.C. s. 7001; or

599 (c) Substitute notice, if the person demonstrates that the
 600 cost of providing notice would exceed \$250,000, the affected
 601 class of subject persons to be notified exceeds 500,000, or the
 602 person does not have sufficient contact information. Substitute
 603 notice shall consist of all of the following:

604 1. Electronic mail or email notice when the person has an
 605 electronic mail or email address for the subject persons.

606 2. Conspicuous posting of the notice on the web page of
 607 the person, if the person maintains a web page.

608 3. Notification to major statewide media.

609 (7) For purposes of this section, the term "unauthorized
 610 person" means any person who does not have permission from, or a
 611 password issued by, the person who stores the computerized data
 612 to acquire such data, but does not include any individual to
 613 whom the personal information pertains.

614 (8) For purposes of this section, the term "person" means
 615 a person as defined in s. 1.01(3). For purposes of this section,
 616 the State of Florida, as well as any of its agencies or
 617 political subdivisions, and any of the agencies of its political
 618 subdivisions, constitutes a person.

619 (9) Notwithstanding subsection (6), a person who
 620 maintains:

621 (a) The person's own notification procedures as part of an
 622 information security or privacy policy for the treatment of
 623 personal information, which procedures are otherwise consistent
 624 with the timing requirements of this part; or

625 (b) A notification procedure pursuant to the rules,
 626 regulations, procedures, or guidelines established by the
 627 person's primary or functional federal regulator,

628
 629 shall be deemed to be in compliance with the notification
 630 requirements of this section if the person notifies subject
 631 persons in accordance with the person's policies or the rules,

632 regulations, procedures, or guidelines established by the
633 primary or functional federal regulator in the event of a breach
634 of security of the system.

635 (10)(a) Notwithstanding subsection (2), notification is
636 not required if, after an appropriate investigation and after
637 consultation with relevant federal, state, and local agencies
638 responsible for law enforcement, the person reasonably
639 determines that the breach has not and will not likely result in
640 harm to the individuals whose personal information has been
641 acquired and accessed. Such a determination must be documented
642 in writing and the documentation must be maintained for 5 years.

643 (b) Any person required to document a failure to notify
644 affected persons who fails to document the failure as required
645 in this subsection or who, if documentation was created, fails
646 to maintain the documentation for the full 5 years as required
647 in this subsection is liable for an administrative fine in the
648 amount of up to \$50,000 for such failure.

649 (c) The administrative sanctions outlined in this
650 subsection shall not apply in the case of personal information
651 in the custody of any governmental agency or subdivision, unless
652 that governmental agency or subdivision has entered into a
653 contract with a contractor or third-party administrator to
654 provide governmental services. In such case the contractor or
655 third-party administrator shall be a person to whom the
656 administrative sanctions outlined in this subsection would
657 apply, although such contractor or third-party administrator
658 found in violation of the documentation and maintenance of
659 documentation requirements in this subsection would not have an

HB 129 CS

2005
CS

660 action for contribution or set-off available against the
661 employing agency or subdivision.

662 (11) The Department of Legal Affairs may institute
663 proceedings to assess and collect the fines provided in this
664 section.

665 Section 10. No entity may accumulate or report a
666 consumer's drug test results with any of their other personal
667 data except for the name and social security number or driver's
668 license number or Florida identification card number of the
669 consumer.

670 Section 11. If any provision of this act or its
671 application to any person or circumstance is held invalid, the
672 invalidity does not affect other provisions or applications of
673 the act which can be given effect without the invalid provision
674 or application, and to this end the provisions of this act are
675 severable.

676 Section 12. This act shall take effect July 1, 2005.