

By Senator Aronberg

27-29-05

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., relating to the criminal
22 use of personal identification information, is
23 an unfair or deceptive act or practice or
24 unfair method of competition in violation of
25 part II of ch. 501, F.S.; providing penalties;
26 amending ss. 501.203 and 501.204, F.S.;
27 changing obsolete dates; reenacting and
28 amending s. 501.207, F.S., relating to remedies
29 of the enforcing authority under the Florida
30 Deceptive and Unfair Trade Practices Act;
31 providing that the court may order actions

1 brought under that act on behalf of an
2 enterprise; providing for severability;
3 providing an effective date.
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5 Be It Enacted by the Legislature of the State of Florida:
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7 Section 1. Section 501.165, Florida Statutes, is
8 created to read:

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

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

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

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

30 (2) The prohibition in subsection (1) applies to any
31 customer who resides in this state at the time the personal

1 customer information is sold, transferred, or otherwise
2 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 violation, in addition to remedies otherwise
8 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, 2005 ~~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, 2005 ~~2001~~.

16 Section 8. Subsection (1) of section 501.207, Florida
17 Statutes, is reenacted, and subsection (3) of that section is
18 amended to read:

19 501.207 Remedies of enforcing authority.--

20 (1) The enforcing authority may bring:

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

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

25 (c) An action on behalf of one or more consumers or
26 governmental entities for the actual damages caused by an act
27 or practice in violation of this part. However, damages are
28 not recoverable under this section against a retailer who has
29 in good faith engaged in the dissemination of claims of a
30 manufacturer or wholesaler without actual knowledge that it
31 violated this part.

1 (3) Upon motion of the enforcing authority or any
2 interested party in any action brought under subsection (1),
3 the court may make appropriate orders, including, but not
4 limited to, appointment of a general or special magistrate or
5 receiver or sequestration or freezing of assets, to reimburse
6 consumers or governmental entities found to have been damaged;
7 to carry out a transaction in accordance with the reasonable
8 expectations of consumers or governmental entities; to strike
9 or limit the application of clauses of contracts to avoid an
10 unconscionable result; to bring actions in the name of and on
11 behalf of the defendant enterprise; to order any defendant to
12 divest herself or himself of any interest in any enterprise,
13 including real estate; to impose reasonable restrictions upon
14 the future activities of any defendant to impede her or him
15 from engaging in or establishing the same type of endeavor; to
16 order the dissolution or reorganization of any enterprise; or
17 to grant ~~legal, equitable, or~~ other appropriate relief. The
18 court may assess the expenses of a general or special
19 magistrate or receiver against a person who has violated, is
20 violating, or is otherwise likely to violate this part. Any
21 injunctive order, whether temporary or permanent, issued by
22 the court shall be effective throughout the state unless
23 otherwise provided in the order.

24 Section 9. If any provision of this act or its
25 application to any person or circumstance is held invalid, the
26 invalidity does not affect other provisions or applications of
27 the act which can be given effect without the invalid
28 provision or application, and to this end the provisions of
29 this act are severable.

30 Section 10. This act shall take effect July 1, 2005.
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SENATE SUMMARY

Prohibits the use of deception to obtain certain personal information for commercial solicitation purposes. Prohibits the unauthorized sale or disclosure of certain personal customer information. Prohibits falsely representing oneself as being affiliated with a law enforcement or firefighting agency or public utility. Provides penalties. Provides that the criminal use of personal identification information is an unfair or deceptive act or practice or unfair method of competition. Provides additional remedies of enforcing authorities.