

By the Committee on Judiciary; and Senators Aronberg, Fasano,
Lynn, Crist and Miller

590-2078-05

1 A bill to be entitled

2 An act relating to consumer protection;

3 creating s. 501.165, F.S.; prohibiting the use

4 of deception to obtain certain personal

5 information for commercial solicitation

6 purposes; providing that such acts are

7 deceptive trade practices or unfair methods of

8 competition; providing penalties; creating s.

9 501.167, F.S.; prescribing duties of persons

10 and businesses holding computerized personal

11 information upon discovery of a breach of

12 security of the system on which such data are

13 maintained; defining terms; prescribing forms

14 that notification of the breach must take;

15 providing exceptions; providing remedies;

16 amending s. 501.2075, F.S.; providing an

17 exception to a civil penalty; creating s.

18 501.2076, F.S.; prohibiting falsely

19 representing oneself as being affiliated with a

20 law enforcement or firefighting agency or

21 public utility; providing a penalty; amending

22 s. 501.2077, F.S.; providing that it is an

23 unfair or deceptive act to cause a handicapped

24 person or certain senior citizens to waive

25 certain benefits or rights; providing an

26 exception; providing that a violation of s.

27 817.568, F.S., relating to the criminal use of

28 personal identification information, is an

29 unfair or deceptive act or practice or unfair

30 method of competition in violation of part II

31 of ch. 501, F.S.; providing penalties; amending

1 ss. 501.203 and 501.204, F.S.; changing
2 obsolete dates; reenacting and amending s.
3 501.207, F.S., relating to remedies of the
4 enforcing authority under the Florida Deceptive
5 and Unfair Trade Practices Act; providing that
6 the court may order actions brought under that
7 act on behalf of an enterprise; amending s.
8 817.568, F.S.; redefining the term "personal
9 identification information" and defining the
10 term "counterfeit or fictitious personal
11 identification information"; revising criminal
12 penalties relating to the offense of
13 fraudulently using, or possessing with intent
14 to fraudulently use, personal identification
15 information; providing minimum mandatory terms
16 of imprisonment; creating the offenses of
17 willfully and fraudulently using, or possessing
18 with intent to fraudulently use, personal
19 identification information concerning a
20 deceased individual; providing criminal
21 penalties; providing for minimum mandatory
22 terms of imprisonment; creating the offense of
23 willfully and fraudulently creating or using,
24 or possessing with intent to fraudulently use,
25 counterfeit or fictitious personal
26 identification information; providing criminal
27 penalties; providing for reclassification of
28 offenses under certain circumstances; providing
29 for reduction or suspension of sentences under
30 certain circumstances; providing for
31 severability; providing an effective date.

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

2

3 Section 1. Section 501.165, Florida Statutes, is
4 created to read:

5 501.165 Obtaining personal information for commercial
6 solicitation.--Any person who intentionally uses deceptive
7 practices or means to obtain another person's address,
8 telephone number, or social security number and uses it to
9 engage in commercial solicitation, or provides it to another
10 person for purposes of commercial solicitation, commits an
11 unfair or deceptive act or practice or unfair method of
12 competition in violation of part II of this chapter, and is
13 subject to the penalties and remedies provided for such
14 violation, in addition to remedies otherwise available for
15 such conduct.

16 Section 2. Section 501.167, Florida Statutes, is
17 created to read:

18 501.167 Computerized information; breach of security;
19 procedure upon discovery.--

20 (1) Any person or business that conducts business in
21 this state and that maintains computerized data that includes
22 personal information shall disclose any breach of the security
23 of the system following discovery or notification of the
24 breach of the security of the data to any resident of the
25 state whose unencrypted personal information was, or is
26 reasonably believed to have been, acquired by an unauthorized
27 person. For purposes of this section, a resident of this state
28 may be determined to be an individual whose principal mailing
29 address as reflected in the records of the person or business
30 is in Florida. The disclosure shall be made in the most
31 expedient time possible and without unreasonable delay,

1 subject to the legitimate needs of law enforcement agencies,
2 as provided in subsection (3) and the completion of an
3 investigation by the person or business to determine the
4 nature and scope of the incident, to identify the individuals
5 affected, or to restore the reasonable integrity of the data
6 system.

7 (2) Any person or business that maintains computerized
8 data on behalf of another business or person which includes
9 personal information that the person or business does not own
10 shall notify the business or person of the information of any
11 breach of the security of the data immediately following
12 discovery, if the personal information was, or is reasonably
13 believed to have been, acquired by an unauthorized person.

14 (3) The notification required by this section shall be
15 delayed if a law enforcement agency determines that the
16 notification will impede a criminal investigation. If
17 notification is required by this section, it shall be made
18 after the law enforcement agency determines that it will not
19 compromise the investigation.

20 (4) For purposes of this section, the term "breach of
21 the security of the system" means unauthorized acquisition of
22 computerized data which materially compromises the security,
23 confidentiality, or integrity of personal information
24 maintained by the person or business and causes or is
25 reasonably believed to cause loss or injury to the state
26 resident. Good faith acquisition of personal information by an
27 employee or agent of the person or business for the purposes
28 of the person or business is not a breach of the security of
29 the system, provided that the personal information is not used
30 for a purpose unrelated to the business or subject to further
31 unauthorized disclosure.

1 (5)(a) For purposes of this section, the term
2 "personal information" means an individual's first name or
3 first initial and last name in combination with any one or
4 more of the following data elements, when the data elements
5 are not encrypted:
6 1. Social security number.
7 2. Driver's license number or Florida identification
8 card number.
9 3. Account number, credit card number, or debit card
10 number, in combination with any required security code, access
11 code, or password that would permit access to an individual's
12 financial account.
13 (b) For purposes of this section, the term "personal
14 information" does not include publicly available information
15 that is lawfully made available to the general public from
16 federal, state, or local government records or widely
17 distributed media.
18 (6) For purposes of this section, notice may be
19 provided by one of the following methods:
20 (a) Written notice.
21 (b) Electronic notice, if the notice provided is
22 consistent with the provisions regarding electronic records
23 and signatures set forth in 15 U.S.C. s. 7001.
24 (c) Substitute notice, if the person or business
25 demonstrates that the cost of providing notice would exceed
26 \$250,000, or that the affected class of subject persons to be
27 notified exceeds 500,000, or the person or business does not
28 have sufficient contact information. Substitute notice shall
29 consist of all of the following:
30 1. E-mail notice when the person or business has an
31 e-mail address for the subject persons;

1 2. Conspicuous posting of the notice on the Internet
2 website page of the person or business, if the person or
3 business maintains one; and

4 3. Notification to major statewide media.

5 (7) For purposes of this section, the term
6 "unauthorized person" means any person that is not the person
7 to whom the personal information belongs and that does not
8 have permission from or a password issued by the person or
9 business that stores the computerized data to acquire it.

10 (8) Notwithstanding subsection (6), a person or
11 business that maintains its own notification procedures as
12 part of an information security policy for the treatment of
13 personal information and is otherwise consistent with the
14 timing requirements of this part shall be deemed to be in
15 compliance with the notification requirements of this section
16 if the person or business notifies subject persons in
17 accordance with its policies in the event of a breach of
18 security of the system.

19 (9) Notwithstanding subsection (6), notification is
20 not required if, after an appropriate investigation and after
21 consultation with relevant federal or state agencies
22 responsible for law enforcement, the person or business
23 reasonably determines that the breach has not resulted, and
24 will not result, in harm to the individuals whose personal
25 information has been acquired and accessed. Such a
26 determination must be documented in writing, and the
27 documentation maintained for 5 years.

28 (10) Not less than 2 business days prior to making the
29 notification required by subsection (1), the person or
30 business making the notification shall notify all consumer
31 reporting agencies that compile and maintain files on

1 consumers on a nationwide basis of the pending notification
2 and shall provide a copy of the notification. Any consumer
3 reporting agency receiving a notification under this
4 subsection shall transmit the information to any person or
5 entity that reports information to or receives consumer report
6 information from such consumer reporting agency in a timely
7 manner, separate from any regular communication of information
8 to such person or entity.

9 (11) A violation of this section is a deceptive and
10 unfair trade practice and constitutes a violation of the
11 Florida Deceptive and Unfair Trade Practices Act.

12 Section 3. Section 501.2075, Florida Statutes, is
13 amended to read:

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

1 employee of the foregoing, has previously made full
2 restitution or reimbursement or has paid actual damages to the
3 consumers or governmental entities who have been injured by
4 the unlawful act or practice or rule violation. If civil
5 penalties are assessed in any litigation, the enforcing
6 authority is entitled to reasonable attorney's fees and costs.
7 A civil penalty so collected shall accrue to the state and
8 shall be deposited as received into the General Revenue Fund
9 unallocated.

10 Section 4. Section 501.2076, Florida Statutes, is
11 created to read:

12 501.2076 Misrepresentations; law enforcement,
13 firefighters, or public utilities.--Any person who engages in
14 a deceptive and unfair trade practice with the intent to
15 deceive another person into believing that he or she is
16 affiliated with a law enforcement agency, firefighting agency,
17 or public utility is subject to a civil penalty not to exceed
18 \$15,000 for each violation.

19 Section 5. Present subsections (3) and (4) of section
20 501.2077, Florida Statutes, are redesignated as subsections
21 (4) and (5), respectively, and a new subsection (3) is added
22 to that section, to read:

23 501.2077 Violations involving senior citizen or
24 handicapped person; civil penalties; presumption.--

25 (3) It is presumed to be substantively and
26 procedurally unconscionable and an unfair or deceptive trade
27 act in violation of this part for any person to cause a
28 handicapped person, or a senior citizen who is at least 70
29 years of age and whose ability to perform the normal
30 activities of daily living is impaired, or the designee or
31

1 legal representative of the handicapped person or senior
2 citizen, to:

3 (a) Waive or limit any benefit or right conferred by
4 any statute intended to provide protection to such persons; or

5 (b) Waive the person's right of access to a jury
6 trial,

7
8 unless the waiver is acknowledged in writing to be knowing and
9 voluntary by an attorney representing the senior citizen or
10 handicapped person.

11 Section 6. A person who violates or fails to comply
12 with any provision of section 817.568, Florida Statutes,
13 commits an unfair or deceptive act or practice or unfair
14 method of competition in violation of part II of chapter 501,
15 Florida Statutes, and is subject to the penalties and remedies
16 provided for such violation, in addition to remedies otherwise
17 available for such conduct.

18 Section 7. Subsection (3) of section 501.203, Florida
19 Statutes, is amended to read:

20 501.203 Definitions.--As used in this chapter, unless
21 the context otherwise requires, the term:

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

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

27 (b) The standards of unfairness and deception set
28 forth and interpreted by the Federal Trade Commission or the
29 federal courts;

30
31

1 (c) Any law, statute, rule, regulation, or ordinance
2 which proscribes unfair methods of competition, or unfair,
3 deceptive, or unconscionable acts or practices.

4 Section 8. Subsection (2) of section 501.204, Florida
5 Statutes, is amended to read:

6 501.204 Unlawful acts and practices.--

7 (2) It is the intent of the Legislature that, in
8 construing subsection (1), due consideration and great weight
9 shall be given to the interpretations of the Federal Trade
10 Commission and the federal courts relating to s. 5(a)(1) of
11 the Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1) as of
12 July 1, 2005 ~~2001~~.

13 Section 9. Subsection (1) of section 501.207, Florida
14 Statutes, is reenacted, and subsection (3) of that section is
15 amended to read:

16 501.207 Remedies of enforcing authority.--

17 (1) The enforcing authority may bring:

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

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

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

29 (3) Upon motion of the enforcing authority or any
30 interested party in any action brought under subsection (1),
31 the court may make appropriate orders, including, but not

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

21 | Section 10. Section 817.568, Florida Statutes, is
22 | amended to read:

23 | 817.568 Criminal use of personal identification
24 | information.--

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

26 | (a) "Access device" means any card, plate, code,
27 | account number, electronic serial number, mobile
28 | identification number, personal identification number, or
29 | other telecommunications service, equipment, or instrument
30 | identifier, or other means of account access that can be used,
31 | alone or in conjunction with another access device, to obtain

1 money, goods, services, or any other thing of value, or that
2 can be used to initiate a transfer of funds, other than a
3 transfer originated solely by paper instrument.

4 (b) "Authorization" means empowerment, permission, or
5 competence to act.

6 (c) "Harass" means to engage in conduct directed at a
7 specific person that is intended to cause substantial
8 emotional distress to such person and serves no legitimate
9 purpose. "Harass" does not mean to use personal identification
10 information for accepted commercial purposes. The term does
11 not include constitutionally protected conduct such as
12 organized protests or the use of personal identification
13 information for accepted commercial purposes.

14 (d) "Individual" means a single human being and does
15 not mean a firm, association of individuals, corporation,
16 partnership, joint venture, sole proprietorship, or any other
17 entity.

18 (e) "Person" means a "person" as defined in s.
19 1.01(3).

20 (f) "Personal identification information" means any
21 name or number that may be used, alone or in conjunction with
22 any other information, to identify a specific individual,
23 including any:

24 1. Name, postal or electronic mail address, telephone
25 number, social security number, date of birth, mother's maiden
26 name, official state-issued or United States-issued driver's
27 license or identification number, alien registration number,
28 government passport number, employer or taxpayer
29 identification number, Medicaid or food stamp account number,
30 ~~or~~ bank account number, ~~or~~ credit or debit card number, or
31 personal identification number or code assigned to the holder

1 of a debit card by the issuer to permit authorized electronic
2 use of such card;

3 2. Unique biometric data, such as fingerprint, voice
4 print, retina or iris image, or other unique physical
5 representation;

6 3. Unique electronic identification number, address,
7 or routing code; ~~or~~

8 4. Medical records;

9 ~~5.4.~~ Telecommunication identifying information or
10 access device; ~~or~~

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

13 ~~(g)~~ "Counterfeit or fictitious personal identification
14 information" means any counterfeit, fictitious, or fabricated
15 information in the similitude of the data outlined in
16 paragraph (f) that, although not truthful or accurate, would
17 in context lead a reasonably prudent person to credit its
18 truthfulness and accuracy.

19 (2)(a) Any person who willfully and without
20 authorization fraudulently uses, or possesses with intent to
21 fraudulently use, personal identification information
22 concerning an individual without first obtaining that
23 individual's consent, commits the offense of fraudulent use of
24 personal identification information, which is a felony of the
25 third degree, punishable as provided in s. 775.082, s.
26 775.083, or s. 775.084.

27 (b) Any person who willfully and without authorization
28 fraudulently uses personal identification information
29 concerning an individual without first obtaining that
30 individual's consent commits a felony of the second degree,
31 punishable as provided in s. 775.082, s. 775.083, or s.

1 775.084, if the pecuniary benefit, the value of the services
2 received, the payment sought to be avoided, or the amount of
3 the injury or fraud perpetrated is \$5,000 or more or if the
4 person fraudulently uses the personal identification
5 information of 10 or more individuals, but fewer than 20
6 individuals, without their consent. Notwithstanding any other
7 provision of law, the court shall sentence any person
8 convicted of committing the offense described in this
9 paragraph to a mandatory minimum sentence of 3 years'
10 imprisonment.

11 (c) Any person who willfully and without authorization
12 fraudulently uses personal identification information
13 concerning an individual without first obtaining that
14 individual's consent commits a felony of the first degree,
15 punishable as provided in s. 775.082, s. 775.083, or s.
16 775.084, if the pecuniary benefit, the value of the services
17 received, the payment sought to be avoided, or the amount of
18 the injury or fraud perpetrated is \$50,000 or more or if the
19 person fraudulently uses the personal identification
20 information of 20 or more individuals, but fewer than 30
21 individuals, without their consent. Notwithstanding any other
22 provision of law, the court shall sentence any person
23 convicted of committing the offense described in this
24 paragraph+

25 ~~to~~ to a mandatory minimum sentence of 5 years'
26 imprisonment. If the pecuniary benefit, the value of the
27 services received, the payment sought to be avoided, or the
28 amount of the injury or fraud perpetrated is \$100,000 or more,
29 or if the person fraudulently uses the personal identification
30 information of 30 or more individuals without their consent,
31 notwithstanding any other law, the court shall sentence any

1 person convicted of committing the offense described in this
2 paragraph

3 ~~2. to a mandatory minimum sentence of 10 years'~~
4 ~~imprisonment, if the pecuniary benefit, the value of the~~
5 ~~services received, the payment sought to be avoided, or the~~
6 ~~amount of the injury or fraud perpetrated is \$100,000 or more~~
7 ~~or if the person fraudulently uses the personal identification~~
8 ~~information of 30 or more individuals without their consent.~~

9 (3) Neither paragraph (2)(b) nor paragraph (2)(c)
10 prevents a court from imposing a greater sentence of
11 incarceration as authorized by law. If the minimum mandatory
12 terms of imprisonment imposed under paragraph (2)(b) or
13 paragraph (2)(c) exceed the maximum sentences authorized under
14 s. 775.082, s. 775.084, or the Criminal Punishment Code under
15 chapter 921, the mandatory minimum sentence must be imposed.
16 If the mandatory minimum terms of imprisonment under paragraph
17 (2)(b) or paragraph (2)(c) are less than the sentence that
18 could be imposed under s. 775.082, s. 775.084, or the Criminal
19 Punishment Code under chapter 921, the sentence imposed by the
20 court must include the mandatory minimum term of imprisonment
21 as required by paragraph (2)(b) or paragraph (2)(c).

22 (4) A ~~Any~~ person who willfully and without
23 authorization possesses, uses, or attempts to use personal
24 identification information concerning an individual without
25 first obtaining that individual's consent, and who does so for
26 the purpose of harassing that individual, commits the offense
27 of harassment by use of personal identification information,
28 which is a misdemeanor of the first degree, punishable as
29 provided in s. 775.082 or s. 775.083.

30 (5) If an offense prohibited under this section was
31 facilitated or furthered by the use of a public record, as

1 defined in s. 119.011, the offense is reclassified to the next
2 higher degree as follows:

3 (a) A misdemeanor of the first degree is reclassified
4 as a felony of the third degree.

5 (b) A felony of the third degree is reclassified as a
6 felony of the second degree.

7 (c) A felony of the second degree is reclassified as a
8 felony of the first degree.

9
10 For purposes of sentencing under chapter 921 and incentive
11 gain-time eligibility under chapter 944, a felony offense that
12 is reclassified under this subsection is ranked one level
13 above the ranking under s. 921.0022 of the felony offense
14 committed, and a misdemeanor offense that is reclassified
15 under this subsection is ranked in level 2 of the offense
16 severity ranking chart in s. 921.0022.

17 (6) A ~~Any~~ person who willfully and without
18 authorization fraudulently uses personal identification
19 information concerning an individual who is less than 18 years
20 of age without first obtaining the consent of that individual
21 or of his or her legal guardian commits a felony of the second
22 degree, punishable as provided in s. 775.082, s. 775.083, or
23 s. 775.084.

24 (7) A ~~Any~~ person who is in the relationship of parent
25 or legal guardian, or who otherwise exercises custodial
26 authority over an individual who is less than 18 years of age,
27 who willfully and fraudulently uses personal identification
28 information of that individual commits a felony of the second
29 degree, punishable as provided in s. 775.082, s. 775.083, or
30 s. 775.084.

31

1 (8)(a) A person who willfully and fraudulently uses,
2 or possesses with intent to fraudulently use, personal
3 identification information concerning a deceased individual
4 commits the offense of fraudulent use or possession with
5 intent to use personal identification information of a
6 deceased individual, a felony of the third degree, punishable
7 as provided in s. 775.082, s. 775.083, or s. 775.084.

8 (b) A person who willfully and fraudulently uses
9 personal identification information concerning a deceased
10 individual commits a felony of the second degree, punishable
11 as provided in s. 775.082, s. 775.083, or s. 775.084, if the
12 pecuniary benefit, the value of the services received, the
13 payment sought to be avoided, or the amount of injury or fraud
14 perpetrated is \$5,000 or more, or if the person fraudulently
15 uses the personal identification information of 10 or more but
16 fewer than 20 deceased individuals. Notwithstanding any other
17 law, the court shall sentence any person convicted of
18 committing the offense described in this paragraph to a
19 mandatory minimum sentence of 3 years' imprisonment.

20 (c) A person who willfully and fraudulently uses
21 personal identification information concerning a deceased
22 individual commits the offense of aggravated fraudulent use of
23 the personal identification information of multiple deceased
24 individuals, a felony of the first degree, punishable as
25 provided in s. 775.082, s. 775.083, or s. 775.084, if the
26 pecuniary benefit, the value of the services received, the
27 payment sought to be avoided, or the amount of injury or fraud
28 perpetrated is \$50,000 or more, or if the person fraudulently
29 uses the personal identification information of 20 or more but
30 fewer than 30 deceased individuals. Notwithstanding any other
31 law, the court shall sentence a person convicted of the

1 offense described in this paragraph to a minimum mandatory
2 sentence of 5 years' imprisonment. If the pecuniary benefit,
3 the value of the services received, the payment sought to be
4 avoided, or the amount of the injury or fraud perpetrated is
5 \$100,000 or more, or if the person fraudulently uses the
6 personal identification information of 30 or more deceased
7 individuals, notwithstanding any other provision of law, the
8 court shall sentence a person convicted of an offense
9 described in this paragraph to a mandatory minimum sentence of
10 10 years' imprisonment.

11 (9) A person who willfully and fraudulently creates or
12 uses, or possesses with intent to fraudulently use,
13 counterfeit or fictitious personal identification information
14 concerning a fictitious individual, or concerning a real
15 individual without first obtaining that real individual's
16 consent, with intent to use the counterfeit or fictitious
17 personal identification information for the purpose of
18 committing or facilitating the commission of a fraud on
19 another person, commits the offense of fraudulent creation or
20 use, or possession with intent to fraudulently use,
21 counterfeit or fictitious personal identification information,
22 a felony of the third degree, punishable as provided in s.
23 775.082, s. 775.083, or s. 775.084.

24 (10) A person who commits an offense described in this
25 section and for the purpose of obtaining or using personal
26 identification information misrepresents himself or herself to
27 be a law enforcement officer; an employee or representative of
28 a bank, credit card company, credit counseling company, or
29 credit reporting agency; or a person who wrongfully represents
30 that he or she is seeking to assist the victim with a problem
31

1 concerning the victim's credit history shall have the offense
2 reclassified as follows:

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

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

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

9 (d) In the case of a felony of the first degree or a
10 felony of the first degree punishable by a term of
11 imprisonment not exceeding life, the offense is reclassified
12 as a life felony.

13
14 For purposes of sentencing under chapter 921, a felony offense
15 that is reclassified under this subsection is ranked one level
16 above the ranking under s. 921.0022 or s. 921.0023 of the
17 felony offense committed, and a misdemeanor offense that is
18 reclassified under this subsection is ranked in level 2 of the
19 offense severity ranking chart.

20 (11) The prosecutor may move the sentencing court to
21 reduce or suspend the sentence of a person who is convicted of
22 a violation of this section and who provides substantial
23 assistance in the identification, arrest, or conviction of any
24 of that person's accomplices, accessories, coconspirators, or
25 principals or of any other person engaged in fraudulent
26 possession or use of personal identification information. The
27 arresting agency shall be given an opportunity to be heard in
28 aggravation or mitigation in reference to any such motion.
29 Upon good cause shown, the motion may be filed and heard in
30 camera. The judge hearing the motion may reduce or suspend the
31

1 sentence if the judge finds that the defendant rendered such
2 substantial assistance.

3 ~~(12)(8)~~ This section does not prohibit any lawfully
4 authorized investigative, protective, or intelligence activity
5 of a law enforcement agency of this state or any of its
6 political subdivisions, of any other state or its political
7 subdivisions, or of the Federal Government or its political
8 subdivisions.

9 ~~(13)(9)~~(a) In sentencing a defendant convicted of an
10 offense under this section, the court may order that the
11 defendant make restitution under ~~pursuant to~~ s. 775.089 to any
12 victim of the offense. In addition to the victim's
13 out-of-pocket costs, ~~such~~ restitution may include payment of
14 any other costs, including attorney's fees incurred by the
15 victim in clearing the victim's credit history or credit
16 rating, or any costs incurred in connection with any civil or
17 administrative proceeding to satisfy any debt, lien, or other
18 obligation of the victim arising as the result of the actions
19 of the defendant.

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

23 ~~(14)(10)~~ Prosecutions for violations of this section
24 may be brought on behalf of the state by any state attorney or
25 by the statewide prosecutor.

26 ~~(15)(11)~~ The Legislature finds that, in the absence of
27 evidence to the contrary, the location where a victim gives or
28 fails to give consent to the use of personal identification
29 information is the county where the victim generally resides.

30 ~~(16)(12)~~ Notwithstanding any other provision of law,
31 venue for the prosecution and trial of violations of this

1 section may be commenced and maintained in any county in which
2 an element of the offense occurred, including the county where
3 the victim generally resides.

4 ~~(17)(13)~~ A prosecution of an offense prohibited under
5 subsection (2), subsection (6), or subsection (7) must be
6 commenced within 3 years after the offense occurred. However,
7 a prosecution may be commenced within 1 year after discovery
8 of the offense by an aggrieved party, or by a person who has a
9 legal duty to represent the aggrieved party and who is not a
10 party to the offense, if such prosecution is commenced within
11 5 years after the violation occurred.

12 Section 11. If any provision of this act or its
13 application to any person or circumstance is held invalid, the
14 invalidity does not affect other provisions or applications of
15 the act which can be given effect without the invalid
16 provision or application, and to this end the provisions of
17 this act are severable.

18 Section 12. This act shall take effect July 1, 2005.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 284

4 The committee substitute makes the following changes to the
5 underlying bill:

- 6 -- Removes proposed section that would have made it a crime
7 to sell or otherwise transfer personal identification
8 information without that person's consent;
- 9 -- Creates a new section of statute requiring persons
10 maintaining computerized data that includes personal
11 information to disclose breaches of system security under
12 certain circumstances;
- 13 -- Provides that it is a violation of the Florida Deceptive
14 and Unfair Trade Practices Act to cause a senior citizen
15 over the age of 70 or a handicapped person to waive that
16 person's right to a jury trial or to waive or limit that
17 person's right to any benefit or protection conferred on
18 that person; and
- 19 -- Makes numerous revisions to the identity theft statute,
20 including, among other changes, creating a criminal
21 penalty for fraudulent use of deceased person's personal
22 identification information.