

## Committee Substitute for Senate Bill No. 208

An act relating to consumer protection; amending s. 501.203, F.S.; including business or commercial entity within the definition of the term “consumer” for purposes of ch. 501, F.S.; incorporating revisions to applicable regulations; amending s. 501.204, F.S.; incorporating interpretations relating to the Federal Trade Commission Act; amending s. 501.207, F.S.; authorizing an action on behalf of a governmental entity for damages caused by a violation of part II of ch. 501, F.S.; amending s. 501.2075, F.S.; providing for waiver of civil penalties if restitution is made for actual damages to a governmental entity; repealing s. 501.2091, F.S., relating to an authorization for a stay of proceedings pending trial by a party to an action under part II of ch. 501, F.S.; amending s. 501.211, F.S.; providing for the recovery of actual damages on the part of a person who suffers a loss as a result of a violation of part II of ch. 501, F.S.; amending s. 501.212, F.S.; providing that an exemption from regulation under part II of ch. 501, F.S., applies to activities regulated under laws administered by the Public Service Commission; providing an effective date.

WHEREAS, the Florida Information Service Technology Development Task Force determined and the Legislature finds that, although the Internet offers enormous positive opportunities for the citizens of this state, it also offers many opportunities for criminal activity and victimization, and

WHEREAS, computer and Internet-related crime continues to escalate rapidly throughout our state, the nation, and the world, and

WHEREAS, the task force determined and the Legislature finds that it is important to ensure that the statutory protections provided for businesses and individuals against fraud and other crimes continue into the new world of electronic commerce over the Internet, NOW, THEREFORE,

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

Section 1. Section 501.203, Florida Statutes, is amended to read:

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

(1) “Final judgment” means a judgment, including any supporting opinion, that determines the rights of the parties and concerning which appellate remedies have been exhausted or the time for appeal has expired.

(2) “Enforcing authority” means the office of the state attorney if a violation of this part occurs in or affects the judicial circuit under the office’s jurisdiction. “Enforcing authority” means the Department of Legal Affairs if the violation occurs in or affects more than one judicial circuit or if the office of the state attorney defers to the department in writing, or fails to act

upon a violation within 90 days after a written complaint has been filed with the state attorney.

(3) “Violation of this part” means any violation of this act or the rules adopted under this act and may be based upon any of the following as of July 1, 2001:

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

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

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

(4) “Department” means the Department of Legal Affairs.

(5) “Order” means a cease and desist order issued by the enforcing authority as set forth in s. 501.208.

(6) “Interested party or person” means any person affected by a violation of this part or any person affected by an order of the enforcing authority.

(7) “Consumer” means an individual; child, by and through its parent or legal guardian; business; firm; association; joint venture; partnership; estate; trust; business trust; syndicate; fiduciary; corporation; any commercial entity, however denominated; or any other group or combination.

(8) “Trade or commerce” means the advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, of any good or service, or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated. “Trade or commerce” shall include the conduct of any trade or commerce, however denominated, including any nonprofit or not-for-profit person or activity.

(9) “Thing of value” may include, without limitation, any moneys, donation, membership, credential, certificate, prize, award, benefit, license, interest, professional opportunity, or chance of winning.

Section 2. Section 501.204, Florida Statutes, is amended to read:

501.204 Unlawful acts and practices.—

(1) Unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

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

Section 3. Subsections (1), (3), and (6) of section 501.207, Florida Statutes, are amended to read:

501.207 Remedies of enforcing authority.—

(1) The enforcing authority may bring:

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

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

(c) An action on behalf of one or more consumers or governmental entities for the actual damages caused by an act or practice in violation of this part. However, ~~no damages are not shall be~~ recoverable under this section against a retailer who has in good faith engaged in the dissemination of claims of a manufacturer or wholesaler without actual knowledge that it violated this part.

(3) Upon motion of the enforcing authority or any interested party in any action brought under subsection (1), the court may make appropriate orders, including, but not limited to, appointment of a master or receiver or sequestration or freezing of assets, to reimburse consumers or governmental entities found to have been damaged; to carry out a transaction in accordance with the consumers' reasonable expectations of consumers or governmental entities; to strike or limit the application of clauses of contracts to avoid an unconscionable result; to order any defendant to divest herself or himself of any interest in any enterprise, including real estate; to impose reasonable restrictions upon the future activities of any defendant to impede her or him from engaging in or establishing the same type of endeavor; to order the dissolution or reorganization of any enterprise; or to grant legal, equitable, or other appropriate relief. The court may assess the expenses of a master or receiver against a person who has violated, is violating, or is otherwise likely to violate this part. Any injunctive order, whether temporary or permanent, issued by the court shall be effective throughout the state unless otherwise provided in the order.

(6) The enforcing authority may terminate an investigation or an action upon acceptance of a person's written assurance of voluntary compliance with this part. Acceptance of an assurance may be conditioned on a commitment to reimburse consumers or governmental entities, make contributions, pay civil penalties, pay attorney's fees and costs, or take other appropriate corrective action. An assurance is not evidence of a prior violation of this part. However, unless an assurance has been rescinded by agreement of the parties or voided by a court for good cause, subsequent failure to comply with the terms of an assurance is prima facie evidence of a violation of this part. ~~No Such assurance is not shall act as~~ a limitation upon any action or remedy available to a person aggrieved by a violation of this part.

Section 4. Section 501.2075, Florida Statutes, is amended to read:

501.2075 Civil penalty.—Except as provided in s. 501.2077, any person, firm, corporation, association, or entity, or any agent or employee of the

foregoing, who is willfully using, or has willfully used, a method, act, or practice declared unlawful under s. 501.204, or who is willfully violating any of the rules of the department ~~adopted~~ promulgated under this part, is liable for a civil penalty of not more than \$10,000 for each such violation. Willful violations occur when the person knew or should have known that his or her conduct was unfair or deceptive or prohibited by rule. This civil penalty may be recovered in any action brought under this part by the enforcing authority; or the enforcing authority may terminate any investigation or action upon agreement by the person, firm, corporation, association, or entity, or the agent or employee of the foregoing, to pay a stipulated civil penalty. The department or the court may waive any such civil penalty if the person, firm, corporation, association, or entity, or the agent or employee of the foregoing, has previously made full restitution or reimbursement or has paid actual damages to the consumers or governmental entities who have been injured by the unlawful act or practice or rule violation. If civil penalties are assessed in any litigation, the enforcing authority is entitled to reasonable attorney's fees and costs. A civil penalty so collected shall accrue to the state and shall be deposited as received into the General Revenue Fund unallocated.

Section 5. Section 501.2091, Florida Statutes, is repealed.

Section 6. Subsection (2) of section 501.211, Florida Statutes, is amended to read:

501.211 Other individual remedies.—

(2) In any ~~individual~~ action brought by a person consumer who has suffered a loss as a result of a violation of this part, such ~~person consumer~~ may recover actual damages, plus attorney's fees and court costs as provided in s. 501.2105; However, ~~no~~ damages, fees, or costs are not shall be recoverable under this section against a retailer who has, in good faith, engaged in the dissemination of claims of a manufacturer or wholesaler without actual knowledge that it violated this part.

Section 7. Section 501.212, Florida Statutes, is amended to read:

501.212 Application.—This part does not apply to:

(1) An act or practice required or specifically permitted by federal or state law.

(2) A publisher, broadcaster, printer, or other person engaged in the dissemination of information or the reproduction of printed or pictorial matter, insofar as the information or matter has been disseminated or reproduced on behalf of others without actual knowledge that it violated this part.

(3) A claim for personal injury or death or a claim for damage to property other than the property that is the subject of the consumer transaction.

(4) Any person or activity regulated under laws administered by the Department of Insurance ~~or the Florida Public Service Commission~~ or banks and savings and loan associations regulated by the Department of Banking

and Finance or banks or savings and loan associations regulated by federal agencies.

(5) Any activity regulated under laws administered by the Florida Public Service Commission.

~~(6)~~(5) An act or practice involving the sale, lease, rental, or appraisal of real estate by a person licensed, certified, or registered pursuant to chapter 475, which act or practice violates s. 475.42 or s. 475.626.

Section 8. This act shall take effect July 1, 2001.

Approved by the Governor May 4, 2001.

Filed in Office Secretary of State May 4, 2001.