

Committee Substitute for Senate Bill No. 202

An act relating to consumer protection; amending ss. 501.203 and 501.204, F.S.; changing obsolete dates; reenacting and amending s. 501.207, F.S., relating to remedies of the enforcing authority under the Florida Deceptive and Unfair Trade Practices Act; providing that the court may order actions brought under that act on behalf of an enterprise; creating s. 501.972, F.S.; providing requirements for protection of a creation not subject to copyright; providing an effective date.

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

Section 1. Subsection (3) of section 501.203, Florida Statutes, is amended to read:

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

(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, 2006 ~~2001~~:

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

(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.

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

501.204 Unlawful acts and practices.—

(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, 2006 ~~2001~~.

Section 3. Subsection (1) of section 501.207, Florida Statutes, is reenacted, and subsection (3) of that section is 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, damages are not 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 general or special magistrate 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 reasonable expectations of consumers or governmental entities; to strike or limit the application of clauses of contracts to avoid an unconscionable result; to bring actions in the name of and on behalf of the defendant enterprise, without regard to any wrongful acts that were committed by the enterprise; 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 general or special magistrate 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.

Section 4. Section 501.972, Florida Statutes, is created to read:

501.972 Actions based upon use of a creation that is not protected under federal copyright law.—

(1) Except as provided in subsection (2), the use of an idea, procedure, process, system, method of operation, concept, principle, discovery, thought, or other creation that is not a work of authorship protected under federal copyright law does not give rise to a claim or cause of action, in law or in equity, unless the parties to the claim or cause of action have executed a writing sufficient to indicate that a contract has been made between them governing such use.

(2) Subsection (1) does not affect or limit:

(a) Any cause of action based in copyright, trademark, patent, or trade secret; or

(b) Any defense raised in connection with a cause of action described in paragraph (a).

Section 5. This act shall take effect July 1, 2006.

Approved by the Governor June 13, 2006.

Filed in Office Secretary of State June 13, 2006.