

By Senator Geller

29-1141-00

1 A bill to be entitled
2 An act relating to consumer protection;
3 requiring that the Department of Law
4 Enforcement increase public awareness on
5 Internet safety; requiring the department to
6 develop guidelines for using the Internet;
7 requiring the development of a mechanism to
8 report crimes through an Internet site;
9 amending s. 501.203, F.S.; including business
10 or commercial entity within the definition of
11 the term "consumer" for purposes of ch. 501,
12 F.S.; amending s. 501.207, F.S.; authorizing an
13 action on behalf of a governmental entity for
14 damages caused by a violation of part II of ch.
15 501, F.S.; amending s. 501.2075, F.S.;
16 providing for waiver of civil penalties if
17 restitution is made for actual damages to a
18 governmental entity; repealing s. 501.2091,
19 F.S., relating to an authorization for a stay
20 of proceedings pending trial by a party to an
21 action under part II of ch. 501, F.S.; amending
22 s. 501.211, F.S.; providing for the recovery of
23 actual damages on the part of a person who
24 suffers a loss as a result of a violation of
25 part II of ch. 501, F.S.; amending s. 501.212,
26 F.S.; deleting an exemption from regulation
27 under part II of ch. 501, F.S., for persons
28 regulated under laws administered by other
29 agencies; providing an effective date.
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1 WHEREAS, the Florida Information Service Technology
2 Development Task Force determined and the Legislature finds
3 that, although the Internet offers enormous positive
4 opportunities for the citizens of this state, it also offers
5 many opportunities for criminal activity and victimization,
6 and

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

10 WHEREAS, although many businesses and residents have
11 become aware of the potential dangers and are cautious in
12 their use of the Internet, others, perhaps even a majority of
13 Internet users, are unaware of the dangers of on-line crime or
14 are unaware of what they can do to prevent becoming victims of
15 on-line crime, and

16 WHEREAS, the Legislature finds that the state should
17 improve public awareness on how to safely use the Internet,
18 and

19 WHEREAS, the task force also recommended and the
20 Legislature finds, that it is important to ensure that the
21 statutory protections provided for businesses and the public
22 against fraud, child abuse, and crimes continue into the new
23 world of electronic commerce over the Internet, and

24 WHEREAS, it is of paramount importance for the courts
25 of this state to maintain jurisdiction over perpetrators of
26 Internet crime in order to protect businesses and members of
27 the public, and

28 WHEREAS, sellers of goods and services to businesses
29 and individuals in this state should be regulated in the same
30 manner, regardless of the method used to contact or deliver
31 the goods or services to that business or individual, and

1 WHEREAS, a person's right to equal protection under the
2 laws of this state should not be diminished because of the
3 type of sales transaction having changed due to technological
4 advances, NOW, THEREFORE,

5
6 Be It Enacted by the Legislature of the State of Florida:

7
8 Section 1. Public awareness campaign on Internet
9 safety.--

10 (1) The Computer Crime Center within the Department of
11 Law Enforcement shall coordinate the development of a
12 comprehensive public awareness campaign on Internet safety.
13 This effort should include a partnership with the Attorney
14 General and the Department of Education, as well as other
15 agencies and organizations as necessary. At a minimum, the
16 campaign must include the development of guidelines for the
17 safe and secure use of the Internet, including the best ways
18 to prevent users from becoming victims of Internet crime.
19 These should also include detailed guidelines for parents to
20 consider for protecting their children from on-line encounters
21 with molesters, pedophiles, and other criminal elements.

22 (2) In addition, the public awareness campaign must
23 include the development of a mechanism to report Internet
24 crimes through the public Internet site of the Department of
25 Law Enforcement. Because of the need to establish a simple
26 method for reporting Internet crimes to law enforcement
27 agencies, the Department of Law Enforcement shall work in
28 cooperation with local law enforcement agencies in
29 investigating and prosecuting Internet crimes.

30 Section 2. Subsection (7) of section 501.203, Florida
31 Statutes, is amended to read:

1 501.203 Definitions.--As used in this chapter, unless
2 the context otherwise requires, the term:

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

9 Section 3. Subsections (1), (3), and (6) of section
10 501.207, Florida Statutes, are amended to read:

11 501.207 Remedies of enforcing authority.--

12 (1) The enforcing authority may bring:

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

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

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

24 (3) Upon motion of the enforcing authority or any
25 interested party in any action brought under subsection (1),
26 the court may make appropriate orders, including, but not
27 limited to, appointment of a master or receiver or
28 sequestration or freezing of assets, to reimburse consumers or
29 governmental entities found to have been damaged; to carry out
30 a transaction in accordance with the consumers' reasonable
31 expectations of consumers or governmental entities; to strike

1 or limit the application of clauses of contracts to avoid an
2 unconscionable result; to order any defendant to divest
3 herself or himself of any interest in any enterprise,
4 including real estate; to impose reasonable restrictions upon
5 the future activities of any defendant to impede her or him
6 from engaging in or establishing the same type of endeavor; to
7 order the dissolution or reorganization of any enterprise; or
8 to grant other appropriate relief. The court may assess the
9 expenses of a master or receiver against a person who has
10 violated, is violating, or is otherwise likely to violate this
11 part. Any injunctive order, whether temporary or permanent,
12 issued by the court shall be effective throughout the state
13 unless otherwise provided in the order.

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

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

30 501.2075 Civil penalty.--Except as provided in s.
31 501.2077, any person, firm, corporation, association, or

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

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

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

30 501.211 Other individual remedies.--

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