

By Senator Geller

29-124A-01

1                                   A bill to be entitled  
2           An act relating to consumer protection;  
3           amending s. 501.203, F.S.; including business  
4           or commercial entity within the definition of  
5           the term "consumer" for purposes of ch. 501,  
6           F.S.; amending s. 501.207, F.S.; authorizing an  
7           action on behalf of a governmental entity for  
8           damages caused by a violation of part II of ch.  
9           501, F.S.; amending s. 501.2075, F.S.;  
10          providing for waiver of civil penalties if  
11          restitution is made for actual damages to a  
12          governmental entity; repealing s. 501.2091,  
13          F.S., relating to an authorization for a stay  
14          of proceedings pending trial by a party to an  
15          action under part II of ch. 501, F.S.; amending  
16          s. 501.211, F.S.; providing for the recovery of  
17          actual damages on the part of a person who  
18          suffers a loss as a result of a violation of  
19          part II of ch. 501, F.S.; amending s. 501.212,  
20          F.S.; eliminating an exemption from regulation  
21          under part II of ch. 501, F.S., for persons  
22          regulated under laws administered by other  
23          agencies; providing an effective date.

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

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

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

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

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12           Section 1. Subsection (7) of section 501.203, Florida  
13 Statutes, is amended to read:

14           501.203 Definitions.--As used in this chapter, unless  
15 the context otherwise requires, the term:

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

22           Section 2. Subsections (1), (3), and (6) of section  
23 501.207, Florida Statutes, are amended to read:

24           501.207 Remedies of enforcing authority.--

25           (1) The enforcing authority may bring:

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

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

30           (c) An action on behalf of one or more consumers or  
31 governmental entities for the actual damages caused by an act

1 or practice in violation of this part. However, ~~no~~ damages  
2 are not shall be recoverable under this section against a  
3 retailer who has in good faith engaged in the dissemination of  
4 claims of a manufacturer or wholesaler without actual  
5 knowledge that it violated this part.

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

27 (6) The enforcing authority may terminate an  
28 investigation or an action upon acceptance of a person's  
29 written assurance of voluntary compliance with this part.  
30 Acceptance of an assurance may be conditioned on a commitment  
31 to reimburse consumers or governmental entities, make

1 contributions, pay civil penalties, pay attorney's fees and  
2 costs, or take other appropriate corrective action. An  
3 assurance is not evidence of a prior violation of this part.  
4 However, unless an assurance has been rescinded by agreement  
5 of the parties or voided by a court for good cause, subsequent  
6 failure to comply with the terms of an assurance is prima  
7 facie evidence of a violation of this part. ~~No~~ Such assurance  
8 is not shall act as a limitation upon any action or remedy  
9 available to a person aggrieved by a violation of this part.

10 Section 3. Section 501.2075, Florida Statutes, is  
11 amended to read:

12 501.2075 Civil penalty.--Except as provided in s.  
13 501.2077, any person, firm, corporation, association, or  
14 entity, or any agent or employee of the foregoing, who is  
15 willfully using, or has willfully used, a method, act, or  
16 practice declared unlawful under s. 501.204, or who is  
17 willfully violating any of the rules of the department adopted  
18 ~~promulgated~~ under this part, is liable for a civil penalty of  
19 not more than \$10,000 for each such violation. Willful  
20 violations occur when the person knew or should have known  
21 that his or her conduct was unfair or deceptive or prohibited  
22 by rule. This civil penalty may be recovered in any action  
23 brought under this part by the enforcing authority; or the  
24 enforcing authority may terminate any investigation or action  
25 upon agreement by the person, firm, corporation, association,  
26 or entity, or the agent or employee of the foregoing, to pay a  
27 stipulated civil penalty. The department or the court may  
28 waive any such civil penalty if the person, firm, corporation,  
29 association, or entity, or the agent or employee of the  
30 foregoing, has previously made full restitution or  
31 reimbursement or has paid actual damages to the consumers or

1 governmental entities who have been injured by the unlawful  
2 act or practice or rule violation. If civil penalties are  
3 assessed in any litigation, the enforcing authority is  
4 entitled to reasonable attorney's fees and costs. A civil  
5 penalty so collected shall accrue to the state and shall be  
6 deposited as received into the General Revenue Fund  
7 unallocated.

8 Section 4. Section 501.2091, Florida Statutes, is  
9 repealed.

10 Section 5. Subsection (2) of section 501.211, Florida  
11 Statutes, is amended to read:

12 501.211 Other individual remedies.--

13 (2) In any ~~individual~~ action brought by a person  
14 ~~consumer~~ who has suffered a loss as a result of a violation of  
15 this part, such person ~~consumer~~ may recover actual damages,  
16 plus attorney's fees and court costs as provided in s.  
17 501.2105. ~~However, no damages, fees, or costs are not shall~~  
18 ~~be~~ recoverable under this section against a retailer who has,  
19 in good faith, engaged in the dissemination of claims of a  
20 manufacturer or wholesaler without actual knowledge that it  
21 violated this part.

22 Section 6. Subsection (4) of section 501.212, Florida  
23 Statutes, is amended to read:

24 501.212 Application.--This part does not apply to:

25 (4) Any ~~person or~~ activity regulated under laws  
26 administered by the Department of Insurance ~~or the Florida~~  
27 ~~Public Service Commission~~ or banks and savings and loan  
28 associations regulated by the Department of Banking and  
29 Finance or banks or savings and loan associations regulated by  
30 federal agencies.

31 Section 7. This act shall take effect July 1, 2001.

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SENATE SUMMARY

Includes businesses and commercial entities within the definition of the term "consumer" for purposes of ch. 501, F.S., relating to consumer protection. Provides for actions under ch. 501, F.S., on behalf of a governmental entity. Deletes an exemption from regulation under part II of ch. 501, F.S., for persons regulated under laws administered by certain other state or federal agencies. (See bill for details.)