

By the Committee on Commerce and Economic Opportunities; and
Senator Geller

310-1577-01

1 A bill to be entitled
2 An act relating to consumer protection;
3 amending s. 501.202, F.S.; revising rules of
4 construction to provide date of applicability
5 for conforming state consumer protection and
6 enforcement with federal law; amending s.
7 501.203, F.S.; including business or commercial
8 entity within the definition of the term
9 "consumer" for purposes of ch. 501, F.S.;
10 incorporating revisions to applicable
11 regulations; amending s. 501.204, F.S.;
12 incorporating interpretations relating to the
13 Federal Trade Commission Act; amending s.
14 501.207, F.S.; authorizing an action on behalf
15 of a governmental entity for damages caused by
16 a violation of part II of ch. 501, F.S.;
17 amending s. 501.2075, F.S.; providing for
18 waiver of civil penalties if restitution is
19 made for actual damages to a governmental
20 entity; repealing s. 501.2091, F.S., relating
21 to an authorization for a stay of proceedings
22 pending trial by a party to an action under
23 part II of ch. 501, F.S.; amending s. 501.211,
24 F.S.; providing for the recovery of actual
25 damages on the part of a person who suffers a
26 loss as a result of a violation of part II of
27 ch. 501, F.S.; amending s. 501.212, F.S.;
28 providing that an exemption from regulation
29 under part II of ch. 501, F.S., applies to
30 activities regulated under laws administered by
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1 the Public Service Commission; providing an
2 effective date.

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

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

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

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

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21 Section 1. Section 501.202, Florida Statutes, is
22 amended to read:

23 501.202 Purposes; rules of construction.--The
24 provisions of this part shall be construed liberally to
25 promote the following policies:

26 (1) To simplify, clarify, and modernize the law
27 governing consumer protection, unfair methods of competition,
28 and unconscionable, deceptive, and unfair trade practices.

29 (2) To protect the consuming public and legitimate
30 business enterprises from those who engage in unfair methods

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1 of competition, or unconscionable, deceptive, or unfair acts
2 or practices in the conduct of any trade or commerce.

3 (3) To make state consumer protection and enforcement
4 consistent with established policies of federal law relating
5 to consumer protection as of July 1, 2001.

6 Section 2. Section 501.203, Florida Statutes, is
7 amended to read:

8 501.203 Definitions.--As used in this chapter, unless
9 the context otherwise requires, the term:

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

14 (2) "Enforcing authority" means the office of the
15 state attorney if a violation of this part occurs in or
16 affects the judicial circuit under the office's jurisdiction.
17 "Enforcing authority" means the Department of Legal Affairs if
18 the violation occurs in or affects more than one judicial
19 circuit or if the office of the state attorney defers to the
20 department in writing, or fails to act upon a violation within
21 90 days after a written complaint has been filed with the
22 state attorney.

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

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

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

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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 (4) "Department" means the Department of Legal
5 Affairs.

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

8 (6) "Interested party or person" means any person
9 affected by a violation of this part or any person affected by
10 an order of the enforcing authority.

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

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

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

29 Section 3. Section 501.204, Florida Statutes, is
30 amended to read:

31 501.204 Unlawful acts and practices.--

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

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

10 Section 4. Subsections (1), (3), and (6) of section
11 501.207, Florida Statutes, are amended to read:

12 501.207 Remedies of enforcing authority.--

13 (1) The enforcing authority may bring:

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

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

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

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

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

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

29 Section 5. Section 501.2075, Florida Statutes, is
30 amended to read:

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1 501.2075 Civil penalty.--Except as provided in s.
2 501.2077, any person, firm, corporation, association, or
3 entity, or any agent or employee of the foregoing, who is
4 willfully using, or has willfully used, a method, act, or
5 practice declared unlawful under s. 501.204, or who is
6 willfully violating any of the rules of the department adopted
7 ~~promulgated~~ under this part, is liable for a civil penalty of
8 not more than \$10,000 for each such violation. Willful
9 violations occur when the person knew or should have known
10 that his or her conduct was unfair or deceptive or prohibited
11 by rule. This civil penalty may be recovered in any action
12 brought under this part by the enforcing authority; or the
13 enforcing authority may terminate any investigation or action
14 upon agreement by the person, firm, corporation, association,
15 or entity, or the agent or employee of the foregoing, to pay a
16 stipulated civil penalty. The department or the court may
17 waive any such civil penalty if the person, firm, corporation,
18 association, or entity, or the agent or employee of the
19 foregoing, has previously made full restitution or
20 reimbursement or has paid actual damages to the consumers or
21 governmental entities who have been injured by the unlawful
22 act or practice or rule violation. If civil penalties are
23 assessed in any litigation, the enforcing authority is
24 entitled to reasonable attorney's fees and costs. A civil
25 penalty so collected shall accrue to the state and shall be
26 deposited as received into the General Revenue Fund
27 unallocated.

28 Section 6. Section 501.2091, Florida Statutes, is
29 repealed.

30 Section 7. Subsection (2) of section 501.211, Florida
31 Statutes, is amended to read:

1 501.211 Other individual remedies.--

2 (2) In any ~~individual~~ action brought by a person
3 ~~consumer~~ who has suffered a loss as a result of a violation of
4 this part, such person ~~consumer~~ may recover actual damages,
5 plus attorney's fees and court costs as provided in s.
6 501.2105. ~~However, no~~ damages, fees, or costs are not ~~shall~~
7 ~~be~~ recoverable under this section against a retailer who has,
8 in good faith, engaged in the dissemination of claims of a
9 manufacturer or wholesaler without actual knowledge that it
10 violated this part.

11 Section 8. Section 501.212, Florida Statutes, is
12 amended to read:

13 501.212 Application.--This part does not apply to:

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

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

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

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.

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

3 ~~(6)(5)~~ An act or practice involving the sale, lease,
4 rental, or appraisal of real estate by a person licensed,
5 certified, or registered pursuant to chapter 475, which act or
6 practice violates s. 475.42 or s. 475.626.

7 Section 9. This act shall take effect July 1, 2001.

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9 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
10 COMMITTEE SUBSTITUTE FOR
11 SB 208

12 The committee substitute makes the following changes to SB
13 208:

- 14 1. Restores language to s. 501.212, F.S., specifying that
15 the Florida Deceptive and Unfair Trade Practices Act
16 (ch. 501, part II, F.S.) does not apply to a person
17 regulated under laws administered by the Department of
18 Insurance and adds a specific exemption to the act for
19 "[a]ny activity regulated under laws administered by the
20 Florida Public Service Commission."
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22 2. Amends ss. 501.202, 501.203, and 501.204, F.S., in order
23 to capture changes to applicable federal law that may
24 have occurred subsequent to the sections' most recent
25 publications.
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