

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.; incorporating revisions to applicable  
7           regulations; amending s. 501.204, F.S.;  
8           incorporating interpretations relating to the  
9           Federal Trade Commission Act; amending s.  
10          501.207, F.S.; authorizing an action on behalf  
11          of a governmental entity for damages caused by  
12          a violation of part II of ch. 501, F.S.;  
13          amending s. 501.2075, F.S.; providing for  
14          waiver of civil penalties if restitution is  
15          made for actual damages to a governmental  
16          entity; repealing s. 501.2091, F.S., relating  
17          to an authorization for a stay of proceedings  
18          pending trial by a party to an action under  
19          part II of ch. 501, F.S.; amending s. 501.211,  
20          F.S.; providing for the recovery of actual  
21          damages on the part of a person who suffers a  
22          loss as a result of a violation of part II of  
23          ch. 501, F.S.; amending s. 501.212, F.S.;  
24          providing that an exemption from regulation  
25          under part II of ch. 501, F.S., applies to  
26          activities regulated under laws administered by  
27          the Public Service Commission; providing an  
28          effective date.

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30           WHEREAS, the Florida Information Service Technology  
31          Development Task Force determined and the Legislature finds

1 that, although the Internet offers enormous positive  
2 opportunities for the citizens of this state, it also offers  
3 many opportunities for criminal activity and victimization,  
4 and

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

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

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

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

18 501.203 Definitions.--As used in this chapter, unless  
19 the context otherwise requires, the term:

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

24 (2) "Enforcing authority" means the office of the  
25 state attorney if a violation of this part occurs in or  
26 affects the judicial circuit under the office's jurisdiction.  
27 "Enforcing authority" means the Department of Legal Affairs if  
28 the violation occurs in or affects more than one judicial  
29 circuit or if the office of the state attorney defers to the  
30 department in writing, or fails to act upon a violation within

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1 90 days after a written complaint has been filed with the  
2 state attorney.

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

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

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

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

14 (4) "Department" means the Department of Legal  
15 Affairs.

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

18 (6) "Interested party or person" means any person  
19 affected by a violation of this part or any person affected by  
20 an order of the enforcing authority.

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

27 (8) "Trade or commerce" means the advertising,  
28 soliciting, providing, offering, or distributing, whether by  
29 sale, rental, or otherwise, of any good or service, or any  
30 property, whether tangible or intangible, or any other  
31 article, commodity, or thing of value, wherever situated.

1 "Trade or commerce" shall include the conduct of any trade or  
2 commerce, however denominated, including any nonprofit or  
3 not-for-profit person or activity.

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

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

10 501.204 Unlawful acts and practices.--

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

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

20 Section 3. Subsections (1), (3), and (6) of section  
21 501.207, Florida Statutes, are amended to read:

22 501.207 Remedies of enforcing authority.--

23 (1) The enforcing authority may bring:

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

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

28 (c) An action on behalf of one or more consumers or  
29 governmental entities for the actual damages caused by an act  
30 or practice in violation of this part. However, ~~no~~ damages  
31 are not ~~shall be~~ recoverable under this section against a

1 retailer who has in good faith engaged in the dissemination of  
2 claims of a manufacturer or wholesaler without actual  
3 knowledge that it violated this part.

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

25 (6) The enforcing authority may terminate an  
26 investigation or an action upon acceptance of a person's  
27 written assurance of voluntary compliance with this part.  
28 Acceptance of an assurance may be conditioned on a commitment  
29 to reimburse consumers or governmental entities, make  
30 contributions, pay civil penalties, pay attorney's fees and  
31 costs, or take other appropriate corrective action. An

1 assurance is not evidence of a prior violation of this part.  
2 However, unless an assurance has been rescinded by agreement  
3 of the parties or voided by a court for good cause, subsequent  
4 failure to comply with the terms of an assurance is prima  
5 facie evidence of a violation of this part. ~~No~~ Such assurance  
6 is not shall act as a limitation upon any action or remedy  
7 available to a person aggrieved by a violation of this part.

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

10 501.2075 Civil penalty.--Except as provided in s.  
11 501.2077, any person, firm, corporation, association, or  
12 entity, or any agent or employee of the foregoing, who is  
13 willfully using, or has willfully used, a method, act, or  
14 practice declared unlawful under s. 501.204, or who is  
15 willfully violating any of the rules of the department adopted  
16 ~~promulgated~~ under this part, is liable for a civil penalty of  
17 not more than \$10,000 for each such violation. Willful  
18 violations occur when the person knew or should have known  
19 that his or her conduct was unfair or deceptive or prohibited  
20 by rule. This civil penalty may be recovered in any action  
21 brought under this part by the enforcing authority; or the  
22 enforcing authority may terminate any investigation or action  
23 upon agreement by the person, firm, corporation, association,  
24 or entity, or the agent or employee of the foregoing, to pay a  
25 stipulated civil penalty. The department or the court may  
26 waive any such civil penalty if the person, firm, corporation,  
27 association, or entity, or the agent or employee of the  
28 foregoing, has previously made full restitution or  
29 reimbursement or has paid actual damages to the consumers or  
30 governmental entities who have been injured by the unlawful  
31 act or practice or rule violation. If civil penalties are

1 assessed in any litigation, the enforcing authority is  
2 entitled to reasonable attorney's fees and costs. A civil  
3 penalty so collected shall accrue to the state and shall be  
4 deposited as received into the General Revenue Fund  
5 unallocated.

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

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

10 501.211 Other individual remedies.--

11 (2) In any ~~individual~~ action brought by a person  
12 ~~consumer~~ who has suffered a loss as a result of a violation of  
13 this part, such person ~~consumer~~ may recover actual damages,  
14 plus attorney's fees and court costs as provided in s.  
15 501.2105.~~7~~However, ~~no~~ damages, fees, or costs are not ~~shall~~  
16 ~~be~~ recoverable under this section against a retailer who has,  
17 in good faith, engaged in the dissemination of claims of a  
18 manufacturer or wholesaler without actual knowledge that it  
19 violated this part.

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

22 501.212 Application.--This part does not apply to:

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

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

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

4           (4) Any person or activity regulated under laws  
5 administered by the Department of Insurance ~~or the Florida~~  
6 ~~Public Service Commission~~ or banks and savings and loan  
7 associations regulated by the Department of Banking and  
8 Finance or banks or savings and loan associations regulated by  
9 federal agencies.

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

12           ~~(6)(5)~~ An act or practice involving the sale, lease,  
13 rental, or appraisal of real estate by a person licensed,  
14 certified, or registered pursuant to chapter 475, which act or  
15 practice violates s. 475.42 or s. 475.626.

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