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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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