

By the Committee on Agriculture & Consumer Affairs and Representatives Romeo, Gannon, Sobel, Weissman, Peterman, Kendrick, Gibson, Bowen, Stansel, Lerner and Kottkamp

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.; providing exemptions from regulation  
21          under part II of ch. 501, F.S., for certain  
22          activities regulated by the Public Service  
23          Commission; reenacting ss. 501.203 and 501.204,  
24          F.S., to incorporate amendments to federal law  
25          in references thereto; providing an effective  
26          date.

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28                   WHEREAS, the Florida Information Service Technology  
29          Development Task Force determined and the Legislature finds  
30          that, although the Internet offers enormous positive  
31          opportunities for the citizens of this state, it also offers

1 many opportunities for criminal activity and victimization,  
2 and

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

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

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

13

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

16 501.203 Definitions.--As used in this chapter, unless  
17 the context otherwise requires, the term:

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

24 Section 2. Subsections (1), (3), and (6) of section  
25 501.207, Florida Statutes, are amended to read:

26 501.207 Remedies of enforcing authority.--

27 (1) The enforcing authority may bring:

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

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

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

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

29           (6) The enforcing authority may terminate an  
30 investigation or an action upon acceptance of a person's  
31 written assurance of voluntary compliance with this part.

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

12 Section 3. Section 501.2075, Florida Statutes, is  
13 amended to read:

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

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

10 Section 4. Section 501.2091, Florida Statutes, is  
11 repealed.

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

14 501.211 Other individual remedies.--

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

24 Section 6. Section 501.212, Florida Statutes, is  
25 amended to read:

26 501.212 Application.--This part does not apply to:

27 (1) An act or practice required or specifically  
28 permitted by federal or state law.

29 (2) A publisher, broadcaster, printer, or other person  
30 engaged in the dissemination of information or the  
31 reproduction of printed or pictorial matter, insofar as the

1 information or matter has been disseminated or reproduced on  
2 behalf of others without actual knowledge that it violated  
3 this part.

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

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

13 (5) Any activity regulated under laws administered by  
14 the Public Service Commission as determined in writing by the  
15 Public Service Commission.

16 ~~(6)(5)~~ An act or practice involving the sale, lease,  
17 rental, or appraisal of real estate by a person licensed,  
18 certified, or registered pursuant to chapter 475, which act or  
19 practice violates s. 475.42 or s. 475.626.

20 Section 7. For the purpose of incorporating amendments  
21 to federal law in references thereto, sections 501.203 and  
22 501.204, Florida Statutes, are reenacted to read:

23 501.203 Definitions.--As used in this chapter, unless  
24 the context otherwise requires, the term:

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

29 (2) "Enforcing authority" means the office of the  
30 state attorney if a violation of this part occurs in or  
31 affects the judicial circuit under the office's jurisdiction.

1 "Enforcing authority" means the Department of Legal Affairs if  
2 the violation occurs in or affects more than one judicial  
3 circuit or if the office of the state attorney defers to the  
4 department in writing, or fails to act upon a violation within  
5 90 days after a written complaint has been filed with the  
6 state attorney.

7 (3) "Violation of this part" means any violation of  
8 this act and may be based upon any of the following:

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

11 (b) The standards of unfairness and deception set  
12 forth and interpreted by the Federal Trade Commission or the  
13 federal courts;

14 (c) Any law, statute, rule, regulation, or ordinance  
15 which proscribes unfair methods of competition, or unfair,  
16 deceptive, or unconscionable acts or practices.

17 (4) "Department" means the Department of Legal  
18 Affairs.

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

21 (6) "Interested party or person" means any person  
22 affected by a violation of this part or any person affected by  
23 an order of the enforcing authority.

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

29 (8) "Trade or commerce" means the advertising,  
30 soliciting, providing, offering, or distributing, whether by  
31 sale, rental, or otherwise, of any good or service, or any

1 property, whether tangible or intangible, or any other  
2 article, commodity, or thing of value, wherever situated.  
3 "Trade or commerce" shall include the conduct of any trade or  
4 commerce, however denominated, including any nonprofit or  
5 not-for-profit person or activity.

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

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).

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