

Bill No. CS for CS for SB 784

Amendment No. Barcode 625712

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Geller moved the following amendment:

Senate Amendment (with title amendment)

On page 27, lines 1 and 2, delete those lines

and insert:

Section 20. Effective July 1, 2001, section 501.203, Florida Statutes, is amended to read:

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

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

(2) "Enforcing authority" means the office of the state attorney if a violation of this part occurs in or affects the judicial circuit under the office's jurisdiction. "Enforcing authority" means the Department of Legal Affairs if the violation occurs in or affects more than one judicial circuit or if the office of the state attorney defers to the 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.

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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 21. Effective July 1, 2001, section 501.204,
9 Florida Statutes, is 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 22. Effective July 1, 2001, subsections (1),
21 (3), and (6) of section 501.207, Florida Statutes, are amended
22 to read:

23 501.207 Remedies of enforcing authority.--

24 (1) The enforcing authority may bring:

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

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

29 (c) An action on behalf of one or more consumers or
30 governmental entities for the actual damages caused by an act
31 or practice in violation of this part. However, ~~no~~ damages

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1 are not ~~shall be~~ recoverable under this section against a
2 retailer who has in good faith engaged in the dissemination of
3 claims of a manufacturer or wholesaler without actual
4 knowledge that it violated this part.

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

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

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

9 Section 23. Effective July 1, 2001, section 501.2075,
10 Florida Statutes, is amended to read:

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

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

7 Section 24. Effective July 1, 2001, section 501.2091,
8 Florida Statutes, is repealed.

9 Section 25. Effective July 1, 2001, subsection (2) of
10 section 501.211, Florida Statutes, is amended to read:

11 501.211 Other individual remedies.--

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

21 Section 26. Effective July 1, 2001, section 501.212,
22 Florida Statutes, is amended to read:

23 501.212 Application.--This part does not apply to:

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

26 (2) A publisher, broadcaster, printer, or other person
27 engaged in the dissemination of information or the
28 reproduction of printed or pictorial matter, insofar as the
29 information or matter has been disseminated or reproduced on
30 behalf of others without actual knowledge that it violated
31 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 27. Except as otherwise expressly provided in
17 this act, this act shall take effect October 1, 2001.

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20 ===== T I T L E A M E N D M E N T =====

21 And the title is amended as follows:

22 On page 2, lines 18 and 19, delete those lines

23

24 and insert:

25 minor repair service; amending s. 501.203,
26 F.S.; including business or commercial entity
27 within the definition of the term "consumer"
28 for purposes of ch. 501, F.S.; incorporating
29 revisions to applicable regulations; amending
30 s. 501.204, F.S.; incorporating interpretations
31 relating to the Federal Trade Commission Act;

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1 amending s. 501.207, F.S.; authorizing an
2 action on behalf of a governmental entity for
3 damages caused by a violation of part II of ch.
4 501, F.S.; amending s. 501.2075, F.S.;
5 providing for waiver of civil penalties if
6 restitution is made for actual damages to a
7 governmental entity; repealing s. 501.2091,
8 F.S., relating to an authorization for a stay
9 of proceedings pending trial by a party to an
10 action under part II of ch. 501, F.S.; amending
11 s. 501.211, F.S.; providing for the recovery of
12 actual damages on the part of a person who
13 suffers a loss as a result of a violation of
14 part II of ch. 501, F.S.; amending s. 501.212,
15 F.S.; providing that an exemption from
16 regulation under part II of ch. 501, F.S.,
17 applies to activities regulated under laws
18 administered by the Public Service Commission;
19 providing effective dates.

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