

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Commerce and Consumer Services Committee

BILL: SB 202

INTRODUCER: Senator Aronberg

SUBJECT: Consumer Protection

DATE: February 14, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Earlywine	Cooper	CM	Fav/1 amendment
2.			JU	
3.				
4.				
5.				
6.				

Please see last section for Summary of Amendments

Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill changes obsolete dates and permits a receiver or other neutral party to bring an action on behalf of a defendant against a third party.

This bill amends ss. 501.203, 501.204, and 501.207 of the Florida Statutes.

II. Present Situation:

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) Part II of ch. 501, F.S., provides remedies and penalties for “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce...”¹ Actions may be brought by a state attorney or the Department of Legal Affairs² or by a consumer.³

Under FDUTPA, the Attorney General or other enforcing authority may bring an action on behalf of a consumer⁴ and seek the appointment of a receiver⁵ or fiduciary to seek redress.

¹ Section 501.204, F.S.

² Section 501.203(2), F.S.

³ Section 501.211(1), F.S.

⁴ Section 501.207(1), F.S.

However, under current law, it is unclear whether a receiver or other court appointed person has standing to bring a proceeding on behalf of defendants against a third party who may have an involvement in the wrongdoing.

A receivership allows the court to accomplish “complete justice,” with the goal of providing protection to the property at issue until the final disposition of the matter.⁶ An appointment of a receiver is an equitable question and not a matter of right.⁷ Typically, the appointment of a receiver is an ancillary remedy and can only be obtained in connection with some other action to obtain a specific relief.⁸

III. Effect of Proposed Changes:

Section 1 amends s. 501.203, F.S., to change a date to capture changes in federal law up to July 1, 2006.

Section 2 amends s. 501.204, F.S., to change the date to capture changes in federal law up to July 1, 2006.

Section 3 amends s. 501.207, F.S., to permit the court to enter orders to bring actions “in the name of and on behalf of the defendant enterprise.” The effect is to permit a receiver or other court appointed person to bring an action on behalf of a defendant against a third party who played some role in the alleged wrongdoing.

Section 4 provides an effective date of July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁵ A “receiver” is: A person appointed by a court for the purpose of preserving property of a debtor pending an action against him, or applying the property in satisfaction of a creditor’s claim, whenever there is danger that, in the absence of such an appointment, the property will be lost, removed or injured; An indifferent person between the parties to a cause, appointed by the court to receive and preserve property or fund in litigation, and receive its rents, issues, and profits, and apply or dispose of them at the direction of the court when it does not seem reasonable that either party should hold them; A fiduciary of the court, appointed as an incident to other proceedings wherein certain ultimate relief is prayed; or, A trustee or ministerial officer representing court, and all parties in litigation, and property or fund entrusted to him. BLACK’S LAW DICTIONARY 1268 (6th ed. 1990).

⁶ 44 Fla. Jur. 2d Receivers § 2 (2005).

⁷ 44 Fla. Jur. 2d Receivers § 3 (2005).

⁸ *Id.*

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

Barcode 082252 by Commerce and Consumer Services Committee:

The amendment restores the bill to current law in regards to the forms of relief the court may grant under s. 501.207, F.S.

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