

By the Committee on Judiciary; and Senators Aronberg and Crist

590-2330-06

1 A bill to be entitled
2 An act relating to consumer protection;
3 amending ss. 501.203 and 501.204, F.S.;
4 changing obsolete dates; reenacting and
5 amending s. 501.207, F.S., relating to remedies
6 of the enforcing authority under the Florida
7 Deceptive and Unfair Trade Practices Act;
8 providing that the court may order actions
9 brought under that act on behalf of an
10 enterprise; creating s. 501.972, F.S.;
11 providing requirements for protection of a
12 creation not subject to copyright; providing an
13 effective date.

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

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17 Section 1. Subsection (3) of section 501.203, Florida
18 Statutes, is amended to read:

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

21 (3) "Violation of this part" means any violation of
22 this act or the rules adopted under this act and may be based
23 upon any of the following as of July 1, 2006 ~~2001~~:

24 (a) Any rules promulgated pursuant to the Federal
25 Trade Commission Act, 15 U.S.C. ss. 41 et seq.;

26 (b) The standards of unfairness and deception set
27 forth and interpreted by the Federal Trade Commission or the
28 federal courts;

29 (c) Any law, statute, rule, regulation, or ordinance
30 which proscribes unfair methods of competition, or unfair,
31 deceptive, or unconscionable acts or practices.

1 Section 2. Subsection (2) of section 501.204, Florida
2 Statutes, is amended to read:

3 501.204 Unlawful acts and practices.--

4 (2) It is the intent of the Legislature that, in
5 construing subsection (1), due consideration and great weight
6 shall be given to the interpretations of the Federal Trade
7 Commission and the federal courts relating to s. 5(a)(1) of
8 the Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1) as of
9 July 1, 2006 ~~2001~~.

10 Section 3. Subsection (1) of section 501.207, Florida
11 Statutes, is reenacted, and subsection (3) of that section is
12 amended to read:

13 501.207 Remedies of enforcing authority.--

14 (1) The enforcing authority may bring:

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

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

19 (c) An action on behalf of one or more consumers or
20 governmental entities for the actual damages caused by an act
21 or practice in violation of this part. However, damages are
22 not recoverable under this section against a retailer who has
23 in good faith engaged in the dissemination of claims of a
24 manufacturer or wholesaler without actual knowledge that it
25 violated this part.

26 (3) Upon motion of the enforcing authority or any
27 interested party in any action brought under subsection (1),
28 the court may make appropriate orders, including, but not
29 limited to, appointment of a general or special magistrate or
30 receiver or sequestration or freezing of assets, to reimburse
31 consumers or governmental entities found to have been damaged;

1 to carry out a transaction in accordance with the reasonable
2 expectations of consumers or governmental entities; to strike
3 or limit the application of clauses of contracts to avoid an
4 unconscionable result; to bring actions in the name of and on
5 behalf of the defendant enterprise, without regard to any
6 wrongful acts that were committed by the enterprise; to order
7 any defendant to divest herself or himself of any interest in
8 any enterprise, including real estate; to impose reasonable
9 restrictions upon the future activities of any defendant to
10 impede her or him from engaging in or establishing the same
11 type of endeavor; to order the dissolution or reorganization
12 of any enterprise; or to grant legal, equitable, or other
13 appropriate relief. The court may assess the expenses of a
14 general or special magistrate or receiver against a person who
15 has violated, is violating, or is otherwise likely to violate
16 this part. Any injunctive order, whether temporary or
17 permanent, issued by the court shall be effective throughout
18 the state unless otherwise provided in the order.

19 Section 4. Section 501.972, Florida Statutes, is
20 created to read:

21 501.972 Actions based upon use of a creation that is
22 not protected under federal copyright law.--

23 (1) Except as provided in subsection (2), the use of
24 an idea, procedure, process, system, method of operation,
25 concept, principle, discovery, thought, or other creation that
26 is not a work of authorship protected under federal copyright
27 law does not give rise to a claim or cause of action, in law
28 or in equity, unless the parties to the claim or cause of
29 action have executed a writing sufficient to indicate that a
30 contract has been made between them governing such use.

31 (2) Subsection (1) does not affect or limit:

1 (a) Any cause of action based in copyright, trademark,
2 patent, or trade secret; or

3 (b) Any defense raised in connection with a cause of
4 action described in paragraph (a).

5 Section 5. This act shall take effect July 1, 2006.

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7 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
8 COMMITTEE SUBSTITUTE FOR
9 Senate Bill 202

10 The committee substitute makes the following changes to the
11 underlying bill:

- 12 -- Clarifies language to provide that receivers may bring an
13 action for recovery from third parties that may have
14 contributed to an unfair trade practice, regardless of
15 any wrongful acts that were committed by the enterprise
16 for whom the receiver has been appointed;
- 17 -- Reinstates existing law allowing for legal or equitable
18 relief; and
- 19 -- Provides that the use of a creation that is not protected
20 under federal copyright law shall not give rise to a
21 claim or cause of action unless the parties to the claim
22 or cause of action have executed a writing sufficient to
23 indicate that a contract has been made between them
24 governing such use.
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