

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 637

Consumer Protection

**SPONSOR(S):** Seiler

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 202

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture Committee	9 Y, 0 N	Blanchette	Reese
2) Civil Justice Committee			
3) Judiciary Appropriations Committee			
4) State Resources Council			
5) _____			

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**SUMMARY ANALYSIS**

The bill amends the Florida Deceptive and Unfair Trade Practices Act by changing obsolete dates and allowing a receiver or other neutral party to bring an action on behalf of a defendant against a third party.

This act shall take effect July 1, 2006, and does not appear to have a fiscal impact on state or local government.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### **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...”<sup>1</sup> The Department of Legal Affairs,<sup>2</sup> office of the state attorney or a consumer<sup>3</sup> may bring an action under ch. 501, F.S.

Under FDUTPA, the Attorney General or other enforcing authority may bring an action on behalf of a consumer<sup>4</sup> and seek the appointment of a receiver<sup>5</sup> or fiduciary to seek redress. A receiver only has the powers given to him or her by statute or by order of appointment.<sup>6</sup> Under most circumstances, it is the receiver’s duty to safeguard the property in his or her custody and to protect the rights and interests of all claimants while still maintaining neutrality.<sup>7</sup>

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.<sup>8</sup> An appointment of a receiver is an equitable question and not a matter of right.<sup>9</sup> 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.<sup>10</sup>

##### **Effect of Proposed Changes**

The bill amends ss. 501.203 and 501.204, F.S., to change the date from 2001 to 2006 in order to capture changes in federal law up to July 1, 2006.

The bill amends s. 501.207, F.S., to allow the court to enter orders to bring actions “in the name of and on behalf of the defendant enterprise.” The effect is to allow 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.

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<sup>1</sup> Section 501.204, F.S.

<sup>2</sup> Section 501.203(2), F.S.

<sup>3</sup> Section 501.211(1), F.S.

<sup>4</sup> Section 501.207(1), F.S.

<sup>5</sup> 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 (6<sup>th</sup> ed. 1990).

<sup>6</sup> 44 Fla. Jur. 2d Receivers § 49 (2005).

<sup>7</sup> 44 Fla. Jur. 2d Receivers § 49 (2005).

<sup>8</sup> 44 Fla. Jur. 2d Receivers § 2 (2005).

<sup>9</sup> 44 Fla. Jur. 2d Receivers § 3 (2005).

<sup>10</sup> 44 Fla. Jur. 2d Receivers § 3 (2005).

C. SECTION DIRECTORY:

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 a date to capture changes in federal law up to July 1, 2006.

Section 3. Amends s. 501.207, F.S., to allow the court to enter orders to bring actions “in the name of and on behalf of the defendant enterprise.” The effect is to allow 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.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable, because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None.