

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:

Current Law

The Florida Deceptive and Unfair Trade Practices Act ("FDUTPA")¹ was enacted "[t]o protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce."²

Businesses and individuals are afforded broad protection from unfair or deceptive acts or practices under FDUTPA. FDUTPA states a broad proscription, which applies through civil enforcement across industries and business conduct generally in any medium. 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..."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. A receiver only has the powers given to him or her by statute or by order of appointment.⁶ 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.⁷

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

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.

Effect of Bill

The bill amends authorizes a court to permit 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.

¹ Sections 501.201-501.213, F.S.

² Section 501.202(2), F.S.

³ Section 501.204, F.S.

⁴ Section 501.207(1)(c), F.S.

⁵ A "receiver" is defined as "[a] disinterested person appointed by a court, or by a corporation or other person, for the protection or collection of property that is the subject of diverse claims." Black's Law Dictionary 1275 (7th ed. 1999).

⁶ 44 Fla. Jur. 2d Receivers s. 49 (2005).

⁷ *Id.*

⁸ 44 Fla. Jur. 2d Receivers s. 2 (2005).

⁹ 44 Fla. Jur. 2d Receivers s. 3 (2005).

¹⁰ *Id.*

The bill amends ss. 501.203 and 501.204, F.S., to capture changes in federal law from 2001 to 2006.¹¹

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."

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:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

¹¹ To directly link the statute to the interpretation of the federal courts and the Federal Trade Commission would be an unlawful delegation of legislative power. Therefore, the dates in the statute must be periodically updated.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.