

STORAGE NAME: h0685.ag.doc
DATE: March 12, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
AGRICULTURE & CONSUMER AFFAIRS
ANALYSIS**

BILL #: HB 685
RELATING TO: Consumer Protection
SPONSOR(S): Representative(s) Romeo
TIED BILL(S): none

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) AGRICULTURE & CONSUMER AFFAIRS (CCC)
- (2) STATE ADMINISTRATION (SGC)
- (3) COUNCIL FOR COMPETITIVE COMMERCE
- (4)
- (5)

I. SUMMARY:

House Bill 685 codifies some specified recommendations of the legislatively created Information Service Technology Development Task Force regarding consumer protection for businesses and governmental entities from unfair or deceptive acts or practices over or through the Internet. The bill incorporates specific changes to various sections of ch. 501, Part II, F.S., the Florida Deceptive and Unfair Trade Practices Act, recommended by the Task Force.

The bill substantially amends the following sections of the Florida Statutes: 501.203, 501.207, 501.2075, 501.211, and 501.212. The bill also repeals s. 501.2091, F.S.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Information Service Technology Development Task Force

The 1999 Legislature created the Information Service Technology Development Task Force ("Task Force") within the Department of Management Services (Chapter 99-354, Laws of Florida). The Task Force, whose two-year term expires on June 11, 2001, is comprised of 34 bipartisan members from the public and private sector. Since its creation, the task force has held several meetings throughout the state. The Task Force was directed to develop policies benefiting state residents by fostering free market development and beneficial use of advanced communication networks and information technologies within Florida.

To achieve its purposes, the Task Force divided its stated directives among eight subcommittees. Each subcommittee developed policy recommendations according to its stated directive. In its *1999 Annual Report to the Legislature*, the Task Force included numerous policy recommendations and implementation strategies to carry out the recommendations. Subsequently, the Task Force issued its *2001 Legislative Report/Proposed Recommendations/eLaws: Civil and Criminal*. Both reports contained the same recommendations to amend various sections of Chapter 501, Part II, F.S., the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA").

Much of the information included in this analysis is taken from these two reports. As the recommendations relating to changes to the FDUTPA do not differ between reports, no distinction is made between unless otherwise noted or unless text from a specific report is quoted.

Civil and Criminal Subcommittee Findings

The self-titled "Elaws: Civil and Criminal Subcommittee" (Subcommittee 7) was directed to evaluate state laws, rules, and procedures to determine if there is a need to create new laws or amend or repeal existing laws, rules, or procedures to reflect the impact of electronic commerce (e-commerce). The term "e-commerce" represents the buying or selling of products and services by businesses and consumers over the Internet. Three typical e-commerce transactions take place via the Internet: business-to-business, business to consumer, and consumer-to-consumer.

The subcommittee noted that most of Florida's laws were created prior to the rapid proliferation of the Internet and e-commerce and stressed the importance of ensuring that the many protections against fraud and other criminal activity apply in the e-commerce world. The subcommittee also

recognized that to protect Florida businesses and residents, Florida courts must maintain jurisdiction over perpetrators of crimes. In the following statement, the subcommittee stressed that, in addition to the need for changes to Florida's criminal laws, the state's civil laws should be amended to protect its citizens and businesses.

Sellers of goods and services to businesses and individuals in Florida should be regulated in the same manner, regardless of the method used to contact or deliver the goods or services to that business or individual. The person's right to equal protection under the laws of this state should not be diminished because of the type of sales transaction having changed due to technological advances.
(1999 Annual Report)

C. EFFECT OF PROPOSED CHANGES:

House Bill 685 codifies some of the Information Service Technology Development Task Force's (Task Force) specific recommendations regarding consumer protection for businesses and governmental entities from unfair or deceptive acts or practices over or through the Internet. The bill incorporates specific changes to various sections of ch. 501, Part II, F.S., the Florida Deceptive and Unfair Trade Practices Act (FDUTPA).

Following is a section-by-section analysis of HB 685.

Section 1: amends s. 501.203, F.S., relating to definitions for the FDUTPA. The definition of "consumer" is modified to include a "business" and "any commercial entity, however denominated." The effect is that wherever the word "consumer" appears in the FDUTPA regarding protections and remedies under the Act, those protections and remedies will clearly extend to consumers, as defined by the bill. The Task Force believed the Legislature intended the definition of "consumer" to track the definition of "person" in s. 1.01(3), F.S., a definition that includes businesses. The Task Force also believed the Legislature intended to afford the remedies and protections of the FDUTPA to businesses.

Section 2: amends s. 501.207, F.S., relating to remedies of the "enforcing authority", either the office of state attorney or the Department of Legal Affairs, depending on such factors as where the violation occurred. Current law does not mention governmental entities in connection with certain actions the enforcing authority may take on behalf of consumers. By including the words "governmental entities," the bill provides the enforcing authority with power to take the same actions on behalf of governmental entities that it now takes on behalf of consumers. Additionally, the bill specifies that such actions can include seeking legal and equitable relief not currently specified in statute. The Task Force believed governmental entities should have the same protection under the FDUTPA from those who use the Internet or any other method to deceive or defraud as legitimate businesses receive. "E-mail and e-commerce are becoming as prevalent in the public realm as they are in the private sector." *2001 Legislative Report.*

Section 3: amends s. 501.2075, F.S., relating to civil penalties under the FDUTPA. The bill adds reference to "governmental entities," the effect of which is to provide that the court may waive the civil penalties for violations of the FDUTPA if a governmental entity has been made whole. This is now the case with consumers who have received full restitution, have been reimbursed, or have recovered actual damages.

Section 4: repeals s. 501.2091, F.S., relating to venue of proceedings brought under the FDUTPA. Section 501.2091, F.S., currently provides that anyone made a party to a pending (administrative or judicial) proceeding under the FDUTPA may file a civil action to have the matter addressed instead in the circuit court of the county of his or her residence. According to the Task Force, s. 501.2091,

F.S., is antiquated. It once existed in tandem with an administrative enforcement provision that has been repealed. The Task Force expressed concern "that this provision may be misused in the future by someone from out-of-state, such as an Internet provider, to argue the proper venue for hearing a case brought against him for allegedly harming a Florida consumer is only proper in the provider's home state." *2001 Legislative Report*. The Task Force was also concerned that wronged consumers would have to travel to the provider's home state and this may have a chilling effect on consumers trying to recover under the law.

Section 5: amends s. 501.211, F.S., relating to other remedies available to someone suffering a loss under the FDUTPA, including the right to recover directly actual damages plus attorneys' fees and costs. The bill strikes the word "consumer" and substitutes the word "person." This appears to be intended to clarify that remedies available to individuals under the FDUTPA are also available to businesses harmed by a violation of the FDUTPA. Under s. 1.01(c), F.S., the term "person" is understood to include a business.

Section 6: amends s. 501.212, F.S., relating to persons, entities or activities exempt from the application of the FDUTPA. The bill deletes the words "persons or" and "or the Florida Public Service Commission (PSC)." The effect is that only activities regulated under the laws administered by the Department of Insurance or banks and savings and loan associations regulated by the Department of Banking and Finance (or federal agencies) would be exempt from the FDUTPA. The Task Force recommended amending s. 501.212, F.S., "to prevent circumvention of consumer protection laws by entities which are regulated by . . . [the PSC] but which are engaging in activities not regulated by the state agency." *2001 Legislative Report*.

Section 7: provides that the effective date of the act is July 1, 2001.

D. SECTION-BY-SECTION ANALYSIS:

Please see C. EFFECT OF PROPOSED CHANGES.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Unknown.

2. Expenditures:

Unknown.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Unknown.

2. Expenditures:

Unknown.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Section 4 repeals s. 501.2091, F.S. It appears this change would affect the ability of in-state and out-of-state persons to seek to have in the circuit court in the county of the person's residence, a civil action requesting a trial on the issues raised by the enforcing authority.

Section 6 appears to remove the current FDUTPA exemption for persons regulated by any entities specified in s. 501.212(4), F.S., not simply those that are PSC-regulated.

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue is the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce any state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

Section 6 amends s. 501.212, F.S., relating to persons, entities or activities exempt from the application of the FDUTPA. The words "persons or" and "or the Florida Public Service Commission" are deleted. The effect is that only activities regulated under the laws administered by the Department of Insurance or banks and savings and loan associations regulated by the Department of Banking and Finance (or federal agencies) would be exempt from the FDUTPA.

The proposed language may be broader than the Task Force's recommendation: "to prevent circumvention of consumer protection laws by entities which are regulated by . . . [the PSC] but which are engaging in activities not regulated by the state agency." It appears the changes were to close a perceived potential loophole that allows a PSC-certificated company doing business over

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the Internet to assert an exemption from FDUTPA as a PSC-regulated "person" under s. 501.212(4), F.S., regardless of whether that "person" is engaged in a legitimate or illegitimate activity. However, the effect of the amendment appears to be that it not only eliminates the current exemption from the FDUTPA for persons and activities regulated under the laws administered by the PSC, but also eliminates the exemption for any persons regulated under the laws administered by the Department of Insurance or banks and savings and loan associations regulated by the Department of Banking and Finance (or federal agencies).

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON AGRICULTURE & CONSUMER AFFAIRS:

Prepared by:

Staff Director:

Susan D. Reese

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