

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.)

BILL: SB 208

SPONSOR: Senator Geller

SUBJECT: Consumer Protection

DATE: January 16, 2001

REVISED: 02/13/01 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Senate Bill 208 codifies some of the 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 the 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. Present Situation:

A. Creation and Responsibilities of the Information Service Technology Development Task Force

In 1999, the Legislature created the Information Service Technology Development Task Force ("Task Force") within the Department of Management Services. *See* ch. 99-354, L.O.F. 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 purpose of the Task Force is to develop policies to benefit state residents by fostering free market development and beneficial use of advanced communication networks and information technologies within this state. The Task Force parceled its stated directives among eight subcommittees.

Each subcommittee developed policy recommendations in accordance with its stated directive. On February 14, 2000, the Task Force issued its first of two reports containing numerous policy recommendations and implementation strategies from the subcommittees to carry out those

recommendations. *See 1999 Annual Report to the Legislature, Information Service Technology Development Task Force* (February 14, 2000) (“1999 Annual Report”). Subsequently, the Task Force issued its *2001 Legislative Report/Proposed Recommendations/eLaws: Civil and Criminal* (“2001 Legislative Report”). In both reports, the Task Force made the same recommendations to amend various sections of ch. 501, Part II, F.S., the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”).

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

B. General Findings of the Civil and Criminal Subcommittee

The self-titled “Elaws: Civil and Criminal Subcommittee” (Subcommittee 7) was charged with the responsibility of evaluating state laws, rules, and procedures to determine if there was a need to create new laws or amend or repeal existing laws, rules, or procedures to reflect the impact of electronic commerce (e-commerce). *1999 Annual Report*. The term “e-commerce” is the buying or selling of products and services by businesses and consumers over the Internet. Three typical ecommerce transactions take place over 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 ecommerce, and stressed that it was important to ensure that the many protections against fraud and other criminal activity apply in the new world of e-commerce. *1999 Annual Report*. The subcommittee also recognized the importance of the Florida courts maintaining jurisdiction over perpetrators of crimes in order to protect Florida businesses and residents. *Id.* In addition to the need for changes to criminal laws, the subcommittee stressed that Florida needed to amend its civil laws to protect its citizens and businesses. *Id.* The subcommittee issued the following general policy statement:

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.

Id.

III. Effect of Proposed Changes:

Senate Bill 208 codifies some of the 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 the 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 following is a section-by-section analysis of SB 208.

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 of the amendment 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 those entities. The Task Force believed that 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 believed that the Legislature intended to afford the remedies and protections under the FDUTPA to businesses.

Section 2 amends s. 501.207, F.S., relating to remedies of the “enforcing authority” (which is the office of state attorney or the Department of Legal Affairs, depending on such factors as where the violation occurred. *See* s. 501.203(2), F.S.). Current law does not mention governmental entities in connection with certain actions the enforcing authority may take on behalf of consumers. By inclusion of the words “governmental entities,” the amendment provides the enforcing authority with the power to take the same actions on behalf of governmental entities that it now takes on behalf of consumers. Additionally, the amendment specifies that such actions can include seeking legal and equitable relief, which is not currently specified in the statute. The Task Force believed that 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 eCommerce 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. Under the current law, this is the case with consumers who have received full restitution, have been reimbursed, or have recovered actual damages. This amendment appears to be related to the changes in Section 3 of the bill and the Task Force’s rationale for those changes.

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 since been repealed. The Task Force was concerned “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 concerned that wronged consumers would then have to travel to the provider’s home state and this may have a chilling effect on consumers trying to recover under the law. *Id.*

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” where it appears in the text of the statute and substitutes the word “person.” This amendment appears to be intended to clarify that the remedies

available to individuals under the FDUTPA are also available to businesses that are harmed by a violation of the FDUTPA. Under s. 1.01(c), F.S., a “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.” The effect of the amendment 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. (See the “Related Issues” section of this analysis). 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*. (See the “Related Issues” section of this analysis.)

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Section 4 of SB 208 repeals s. 501.2091, F.S. It appears this change would affect the ability of both an in-state and out-of-state person 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 of SB 208 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.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

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.” The effect of the amendment 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 amendment may be broader than the Task Force’s recommendation, which the Task Force stated was “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*. It appears that the changes recommended by the Task Force were to close what the Task Force believed is a potential loophole that allows a PSC-certificated company doing business over 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). *See* Senate Analysis of CS/SB 1284, 1476, 1528 and 1616 (April 14, 2000).

VIII. Amendments:

None.