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LEGISLATIVE INTENT SEARCH RECORD

HB or SB 1915 YEAR 1973 SESSION LAW NUMBER 73-124

(SM) SB 1159 STATUTE NUMBER \_\_\_\_\_

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BILL FILES (Staff analysis)

COMMITTEE SERIES/CARTON NUMBER OF PAGES

H. Bus. Reg. 19/17 (DECEPTIVE TRADE PRACTICES ACT), 16

H. Gov. Ops 19/285 - 0

S. Commerce (SB) 18/37 - 0 (file empty)

(HB) 18/38 - 1

MEETING FILES

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TAPES

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By Committee on Business Regulation and Representatives Andrews  
and Forbes

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3 A bill to be entitled  
4 An act relating to unfair and deceptive  
5 trade practices, repealing parts III and  
6 IV of chapter 817, creating part II of  
7 chapter 501, Florida Statutes, to prohibit  
8 deceptive and unfair trade practices and  
9 to provide civil and administrative  
10 remedies for consumers, state attorneys  
11 and the department of legal affairs;  
12 providing an effective date.

13  
14 Be It Enacted by the Legislature of the State of  
15 Florida:

16  
17 Section 1. Part II of chapter 501, Florida  
18 Statutes, consisting of sections 501.201, 501.202,  
19 501.203, 501.204, 501.205, 501.206, 501.207, 501.208,  
20 501.209, 501.210, 501.211, 501.212; and 501.213, is  
21 created to read:

22 501.201 Short title.--This part shall be  
23 known and may be cited as the Florida deceptive and  
24 unfair trade practices act.

25 501.202 Purposes, rules of construction.--  
26 The provisions of this part shall be construed liber-  
27 ally to promote the following policies:

- 28 (1) To simplify, clarify, and modernize the  
29 law governing consumer sales practices;  
30 (2) To protect consumers from suppliers who  
31 commit deceptive and unfair trade practices; and

1 (3) To make state regulation of consumer  
2 sales practices consistent with established policies  
3 of federal law relating to consumer protection.

4 501.203 Definitions.--As used in this chap-  
5 ter, unless the context otherwise requires, the term:

6 (1) "Consumer transaction" means a sale,  
7 lease, assignment, award by chance, or other dispo-  
8 sition of an item of goods, a service, or an intangi-  
9 ble, to an individual for purposes that are primarily  
10 personal, family, or household, or that relate to  
11 a business opportunity that requires both his expen-  
12 diture of money or property and his personal services  
13 on a continuing basis and in which he has not been  
14 previously engaged, or a solicitation by a supplier  
15 with respect to any of these dispositions;

16 (2) "Final judgment" means a judgment,  
17 including any supporting opinion, that determines the  
18 rights of the parties and concerning which appellate  
19 remedies have been exhausted or the time for appeal  
20 has expired;

21 (3) "Supplier" means a seller, lessor,  
22 assignor, or other person who regularly solicits,  
23 engages in, or enforces consumer transactions,  
24 whether or not he deals directly with the consumer;

25 (4) "Enforcing authority" means the office  
26 of state attorney if a violation of this part occurs  
27 in or affects the judicial circuit under the office's  
28 jurisdiction, and the department of legal affairs if  
29 the violation occurs in or affects more than one (1)  
30 judicial circuit, or if the office of state attorney

1 fails to act upon a violation solely within his  
2 judicial circuit within a reasonable period of time  
3 after it has been brought to his attention.

4 (5) "Violation of this part" means either a  
5 violation of a provision of this part or a violation  
6 of any rule promulgated pursuant to this part;

7 (6) "Department" means the department of  
8 legal affairs;

9 (7) "Order" means a cease and desist order  
10 issued by the enforcing authority as set forth in  
11 section 501.208;

12 (8) "Interested party or person" means any  
13 person affected by a violation of this part or any  
14 person affected by an order of the enforcing author-  
15 ity.

16 501.204 Unlawful acts and practices.--

17 (1) Unfair methods of competition and unfair  
18 or deceptive acts or practices in the conduct of any  
19 trade or commerce are hereby declared unlawful.

20 (2) It is the intent of the legislature that  
21 in construing subsection (1) of this section due  
22 consideration and great weight shall be given to the  
23 interpretations of the Federal Trade Commission and  
24 the federal courts relating to §5(a)(1) of the Federal  
25 Trade Commission Act (15 U.S.C. 45(a)(1)), as from  
26 time to time amended.

27 501.205 Rule making power.--

28 (1) The department shall propose rules to  
29 the cabinet that prohibit with specificity acts or  
30 practices that violate this part and which prescribe  
31 procedural rules for the administration of this

1 part. Such rules shall be adopted by majority vote  
2 of the cabinet. All rules prescribed by the  
3 cabinet and administrative action taken by the  
4 department shall be pursuant to chapter 120, Florida  
5 Statutes.

6 (2) All substantive rules and regulations  
7 promulgated under this part shall be consistent with  
8 the rules, regulations and decisions of the Federal  
9 Trade Commission and the federal courts in interpret-  
10 ing the provisions of §5(a)(1) of the Federal Trade  
11 Commission Act (15 U.S.C., 45(a)(1)), as from time  
12 to time amended.

13 501.206 Investigative powers of the enforc-  
14 ing authority.--

15 (1) If, by his own inquiries or as a result  
16 of complaints, the enforcing authority has reason  
17 to believe that a person has engaged in, is engaging  
18 in, or is about to engage in an act or practice that  
19 violates this part, he may administer oaths and  
20 affirmations, subpoena witnesses or matter, and  
21 collect evidence.

22 (2) If matter that the enforcing authority  
23 seeks to obtain by subpoena is located outside the  
24 state, the person subpoenaed may make it available to  
25 the enforcing authority or his representative to  
26 examine the matter at the place where it is located.  
27 The enforcing authority may designate representatives,  
28 including officials of the state in which the matter  
29 is located, to inspect the matter on his behalf, and  
30 he may respond to similar requests from officials of  
31 other states.

1 (3) Upon failure of a person without lawful  
2 excuse to obey a subpoena and upon reasonable notice  
3 to all persons affected, the enforcing authority  
4 may apply to the circuit court for an order  
5 compelling compliance.

6 (4) The enforcing authority may request that  
7 an individual who refuses to comply with a subpoena  
8 on the ground that testimony or matter may incrimi-  
9 nate him be ordered by the court to provide the tes-  
10 timony or matter. Except in a prosecution for perju-  
11 ry, an individual who complies with a court order to  
12 provide testimony or matter after asserting a privi-  
13 lege against self-incrimination to which he is  
14 entitled by law, may not be subjected to a criminal  
15 proceeding or to a civil penalty with respect to the  
16 consumer transaction concerning which he is required  
17 to testify or produce relevant matter.

18 501.207 Remedies of the enforcing author-  
19 ity.--

20 (1) The enforcing authority may bring:

21 (a) An action to obtain a declaratory judg-  
22 ment that an act or practice violates this part;

23 (b) An action to enjoin a supplier who has  
24 violated, is violating, or is otherwise likely to  
25 violate this part; or

26 (c) An action on behalf of one or more con-  
27 sumers for the actual damages caused by an act or  
28 practice performed in violation of this part.

29 (d) Before bringing an action under para-  
30 graphs (a) or (c) of this subsection, the enforcing  
31 authority shall pursuant to an administrative hearing

1 determine that there is probable cause to bring the  
2 action.

3 (2) Upon motion of the enforcing authority in  
4 any action brought under subsection (1), the court  
5 may make appropriate orders, including appointment of  
6 a master or receiver or sequestration of assets, to  
7 reimburse consumers found to have been damaged, or to  
8 carry out a consumer transaction in accordance with  
9 consumers' reasonable expectations, or to strike or  
10 limit the application of clauses of contracts to  
11 avoid an unconscionable result, or to grant other  
12 appropriate relief. The court may assess the ex-  
13 penses of a master or receiver against a supplier.

14 (3) If a supplier shows that a violation of  
15 this part resulted from a bona fide error notwith-  
16 standing the maintenance of procedures reasonably  
17 adapted to avoid the error, recovery under this sec-  
18 tion is limited to the amount, if any, by which the  
19 supplier was unjustly enriched by the violation.

20 (4) No action may be brought by the enforc-  
21 ing authority under this section more than two (2)  
22 years after the occurrence of a violation of this  
23 part, or more than one (1) year after the last pay-  
24 ment in a consumer transaction involved in a viola-  
25 tion of this part, whichever is later.

26 (5) The enforcing authority may terminate an  
27 investigation or an action upon acceptance of a  
28 supplier's written assurance of voluntary compliance  
29 with this part. Acceptance of an assurance may be  
30 conditioned on a commitment to reimburse consumers or  
31 take other appropriate corrective action. An assur-

1 ance is not evidence of a prior violation of this  
2 part. However, unless an assurance has been rescinded  
3 by agreement of the parties or voided by a court for  
4 good cause, subsequent failure to comply with the  
5 terms of an assurance is prima facie evidence of a  
6 violation of this part. No such assurance shall act  
7 as a limitation upon any action or remedy available  
8 to a person aggrieved by a violation of this part.

9 501.208 Cease and desist orders; proce-  
10 dures.--

11 (1) Whenever the enforcing authority shall  
12 have reason to believe that a person has been or  
13 is violating this part and if it shall appear to the  
14 enforcing authority that a proceeding by it in  
15 respect thereof would be to the interest of the  
16 public, it shall issue and serve upon such person a  
17 complaint or notice stating its charges in that  
18 respect and containing a notice of a hearing upon a  
19 day and at a place therein fixed at least thirty (30)  
20 days after the service of said complaint. The  
21 person so complained of shall have the right to  
22 appear at the place and time so fixed and show cause  
23 why an order should not be entered by the enforcing  
24 authority requiring such person to cease and desist  
25 from the violation of this part so charged in said  
26 complaint. Any interested party or person may make  
27 application and upon good cause shown may be allowed  
28 by the enforcing authority to intervene and appear in  
29 said proceeding by counsel or in person. The testi-

1 mony in any such proceeding shall be reduced to writ-  
2 ing and filed in the office of the enforcing author-  
3 ity. If upon such hearing the enforcing authority  
4 shall be of the opinion that the act is in violation  
5 of this act, it shall make a report in writing in  
6 which it shall state its findings as to the facts and  
7 shall issue and cause to be served on such person an  
8 order requiring such person to cease and desist from  
9 using such method of competition or such act or prac-  
10 tice. The person affected by the order has ten (10)  
11 days from the date of issuance of the order to file a  
12 petition for review with the attorney general. When  
13 a petition for review is filed, the attorney general  
14 shall either affirm, modify or set aside the order  
15 within forty-five (45) days after the filing date of  
16 the petition for review.

17 (2) The enforcing authority may modify or  
18 set aside its order at any time by rehearing upon  
19 its own motion when such rehearing is in the interest  
20 of the public welfare.

21 (3) Judicial review of orders of the enforc-  
22 ing authority shall be by certiorari to the district  
23 courts of appeal in accordance with the provisions  
24 set forth in section 120.31 of part III of the  
25 Administrative Procedure Act, chapter 120, Florida  
26 Statutes, and shall take precedence over other civil  
27 cases pending, and shall be in every way expedited.

28 (4) If the alleged violation of this part  
29 occurs in a county or municipality having an ordin-

1 ance covering such unlawful activity with appropriate  
2 administrative proceedings to enforce the ordinance  
3 then the enforcing authority may initiate any cease  
4 and desist action according to the procedural rules  
5 of the ordinance, and may hold administrative hear-  
6 ings before the boards or bodies created by the or-  
7 dinance; however, any appeal of a local administra-  
8 tive body's decision shall be to the attorney general  
9 with judicial review through the district court of  
10 appeals as provided for in this section.

11 (5) An order of the enforcing authority to  
12 cease and desist shall not become effective until  
13 ten (10) days after all administrative action has  
14 been concluded, or, if appeal is made to the district  
15 court of appeal and bond is posted, until a final  
16 order has been entered by that court.

17 (6) No cease and desist order shall act as  
18 a limitation upon any other action or remedy availa-  
19 ble to a person aggrieved by a violation of this act.

20 (7) When a court remands an order of the  
21 enforcing authority for rehearing, such rehearing  
22 shall be held within forty-five (45) days after the  
23 remand.

24 (8) Any person who violates a cease and de-  
25 sist order of the enforcing authority after it has  
26 become final, and while such order is in effect, shall  
27 forfeit and pay to the state of Florida a civil penal-  
28 ty of not more than five thousand dollars (\$5,000)  
29 for each violation, which shall accrue to the state  
30 of Florida and may be recovered in a civil action

1 brought by the state. Each separate violation of  
2 such an order shall be a separate offense, except  
3 that in the case of a violation through continuing  
4 failure or neglect to obey a final order of the  
5 enforcing authority each day of continuance of such  
6 failure or neglect shall be deemed a separate of-  
7 fense.

8 501.209 Other supervision.--If the  
9 enforcing authority receives a complaint or other  
10 information relating to noncompliance with this  
11 act by a supplier who is subject to other super-  
12 vision in this state, the enforcing authority  
13 shall inform the official or agency having that  
14 supervision.

15 501.210 Attorney fees.--

16 (1) In any civil litigation resulting from a  
17 consumer transaction involving a violation of this  
18 part, except as provided in subsection (6), the pre-  
19 vailing party, after judgment in the trial court and  
20 exhaustion of all appeals, if any, shall receive his  
21 reasonable attorney's fees and costs from the non-  
22 prevailing party.

23 (2) The attorney for the prevailing party  
24 shall submit a sworn affidavit of his time spent on  
25 the case, and his costs incurred for all the motions,  
26 hearings, and appeals to the trial judge who pre-  
27 sided over the civil case.

28 (3) The trial judge shall award the prevail-  
29 ing party the sum of reasonable costs incurred in the  
30

1 action plus a reasonable legal fee for the hours ac-  
2 tually spent on the case as sworn to in an affidavit.

3 (4) The trial judge may not award attorney's  
4 fees in excess of the amount of the judgment for the  
5 prevailing party.

6 (5) Any award of attorney's fees or costs  
7 shall become a part of the judgment and subject to  
8 execution as the laws of Florida allow.

9 (6) This section shall not apply to any ac-  
10 tion initiated by the enforcing authority.

11 501.211 Other individual remedies.--

12 (1) Without regard to any other remedy or  
13 relief to which a person is entitled, anyone  
14 aggrieved by a violation of this part may bring an  
15 action to obtain a declaratory judgment that an  
16 act or practice violates this part, enjoin a  
17 supplier who has violated, is violating, or is other-  
18 wise likely to violate this part.

19 (2) In any individual action brought by a  
20 consumer who has suffered a loss as a result of a  
21 violation of this part, such individual may recover  
22 actual damages or one hundred dollars (\$100), which-  
23 ever is greater, plus attorney's fees and court costs  
24 as provided in section 501.210.

25 501.212 Application.--This part does not  
26 apply to:

27 (1) An act or practice required or specif-  
28 ically permitted by federal or state law;

29 (2) A publisher, broadcaster, printer, or  
30

1 other person engaged in the dissemination of infor-  
2 mation or the reproduction of printed or pictorial  
3 matter insofar as the information or matter has been  
4 disseminated or reproduced on behalf of others with-  
5 out actual knowledge that it violated this part;

6 (3) A claim for personal injury or death or  
7 a claim for damage to property other than the prop-  
8 erty that is the subject of the consumer transaction;  
9 or

10 (4) The credit terms of a consumer transaction  
11 otherwise subject to this part.

12 501.213 Effect on other remedies.--

13 (1) The remedies of this part are in addi-  
14 tion to remedies otherwise available for the same  
15 conduct under state or local law.

16 (2) A person alleged to have violated this  
17 part has the burden of showing, as a defense in any  
18 action brought against him, the inapplicability of  
19 this part.

20 (3) This part is supplemental to and makes  
21 no attempt to preempt local consumer protection ord-  
22 nances not inconsistent with this part.

23 Section 2. Part III consisting of sections  
24 817.69, 817.70, 817.71, 817.72, 817.73, 817.74,  
25 817.75 and 817.751 and part IV consisting of sections  
26 817.76, 817.77, 817.771, 817.78, 817.79, 817.80,  
27 817.81, 817.82, 817.83, 817.84 and 817.85 of chapter  
28 817, Florida Statutes, are repealed.

29 Section 3. If any provision of this part or  
30  
31

1 the application thereof to any person or circumstance  
2 is held invalid, the invalidity shall not affect  
3 other provisions or applications of this part which  
4 can be given effect without the invalid provision  
5 or application, and to this end the provisions of  
6 this part are severable.

7 Section 4. This part shall take effect on  
8 October 1, 1973.

---

#### LEGISLATIVE SUMMARY

Declares unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce to be unlawful and provides remedies of the following nature: actions by the state attorney or Department of Legal Affairs to obtain a declaratory judgment, to enjoin a supplier from violation, or to obtain actual damages on behalf of aggrieved consumers; issuance of cease and desist orders by the state attorney or Department of Legal Affairs; and actions by aggrieved consumers for actual damages or \$100 per day, whichever is greater. Provides for rule making by the Cabinet and investigative powers for the state attorney or Department of Legal Affairs. Provides procedures, including those for issuance of cease and desist orders, and stipulates a fine of not more than \$5,000 for each violation of a cease and desist order. Provides for payment of attorney's fees and costs to the prevailing party in an action under the act and exempts persons engaged in the dissemination of information, acts or practices required or specifically permitted by federal or state law, claims for personal injury, death, and property damage, and credit terms from application of the act. Repeals the Uniform Deceptive Trade Practices Act and the Unfair Trade Practices and Consumer Protection Act.



House Bill # 1915

Draft # \_\_\_\_\_

Assigned to: Brown Date Assigned: \_\_\_\_\_ Typed by: Cathy

Verified by: BB/84 Approved: \_\_\_\_\_ Checked by: \_\_\_\_\_

Amendments Needed:

House Bill # 1915

Declares unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce to be unlawful and provides remedies of the following nature: actions by the state attorney or Department of Legal Affairs to obtain a declaratory judgment, to enjoin a supplier from violation, or to obtain actual damages on behalf of aggrieved consumers; issuance of cease and desist orders by the state attorney or Department of Legal Affairs; and actions by aggrieved consumers for actual damages or \$100 per day, whichever is greater. Provides for rule making by the Cabinet and investigative powers for the state attorney or Department of Legal Affairs. Provides procedures, including those for issuance of cease and desist orders, and stipulates a fine of not more than \$5,000 for each violation of a cease and desist order. Provides for payment of attorney's fees and costs to the prevailing party in an action under the act and exempts persons engaged in the dissemination of information, acts or practices required or specifically permitted by federal or state law, claims for personal injury, death, and property damage, and credit terms from application of the act. Repeals the Uniform Deceptive Trade Practices Act and the Unfair Trade Practices and Consumer Protection Act.

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STATE ARCHIVES  
DEPARTMENT OF STATE  
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Tallahassee, FL 32399-0250  
Phone: 904-633-3301  
Fax: 904-633-3301  
18 Carton 39



305 South Gadsden Street  
P. O. Box 1170  
Tallahassee, Florida 32302

File HB 11

Re: Deceptive and Unfair Trade Practices Act (Chapter 501 Florida Statutes, Part II)

Dear Joe:

I confess that I have found considerable difficulty in trying to comprehend the scope of the new law which will become effective October 1, 1973.

It seems to be a consumer protection law but refers to the Federal Trade Commission Act and directs the Department of Legal Affairs to propose rules consistent with the rules, regulations and decisions under the Federal Trade Commission Act. The Federal Trade Commission Act is by no means limited to consumers and covers the broad spectrum of competitive behavior at all levels of business enterprise.

While this is in no sense urgent, it would be appreciated if you would, at your convenience, try to ascertain how the Department of Legal Affairs views this law and the general nature of the rules to be adopted.

Sincerely,

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Heir

I received the above letter from the attorney for a major national concern. I would deeply appreciate any information you might have which would answer the question posed.

Flames

Joe J.

INFORMATION RECORD  
Representatives

File with Clerk

The Committee on Business Regulation met at 10:30 o'clock on April 26, 1973, in Room 212-H, and considered a proposed committee

bill relating to unfair and deceptive trade practices.  
On motion to report the bill  FAVORABLE

FAVORABLE WITH \_\_\_\_\_ AMENDMENTS  
(number)

FAVORABLE WITH SUBSTITUTE

the vote was:

YEA	MEMBER	NAY	YEA	MEMBER	NAY	
x	Clark, John R.		y	Singleton, Carl		
x	Dubbin, Murray		x	Steinberg, Paul		
x	Forbes, John R.			Fillman, Jim K.	x	
x	Gorman, William		x	Walker, Lorenzo		
	Grizzle, Mary			Whitson, Ed, Jr.	x	
	Harlee, John	y	x	Young, Walter C.		
	Hazelton, Donald	x	y	Hartnett, Robert		
x	Hector, Robert		x	Andrews, Bill (Chm)		
x	James, William					
x	Libertore, Larry					
x	McPherson, Tom			<i>Bill Andrews</i>		
x	Nergard, Charles			Bill Andrews, Chairman		
	Papy, Charles, Jr.	x				
TOTAL YEAS			15	TOTAL NAYS		5

COMMITTEE APPEARANCE RECORD

The following persons (other than legislators) appeared before the committee during consideration of this bill:

NAME	REPRESENTING	ADDRESS
Mr. Robert Shevin	Attorney General State of Florida	The Capitol
Mr. George Stallings, Jr.	Fla. Retail Federation	1601 Gulf Life Tower Jacksonville, Fla.
Mr. Arthur J. England, Jr.	The Governor	The Capitol

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## FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT

### SECTIONAL SUMMARY

Section 501.201 Part II of Chapter 501 shall be cited as the Florida Deceptive and Unfair Trade Practices Act.

Section 501.202 Purposes, rules of construction -- The purpose of this part is to protect the consumer from unfair transactions in the market place and to make state regulation of consumer sales practices consistent with related federal law.

Section 501.203 Definitions -- This section defines the terms "consumer transaction", "supplier", "enforcing authority", "interested party or person" and other relevant terms.

"Consumer transaction" typically involves a natural person who obtains or is solicited to obtain an item of goods, a consumer service, or an intangible primarily for personal, family, or household purposes. Also included are certain analogous transactions in which a natural person obtains or is solicited to obtain a business opportunity in which he has not been previously engaged. In view of the extensive state regulation of securities transactions, their exclusion is intentional. On the assumption that land transactions frequently are, and should be, regulated by specialized legislation, they are excluded altogether.

"Supplier" means debt collection agencies and advertising agencies as well as manufacturers, wholesalers and dealers.

"Enforcing authority" includes both the various state attorneys and the department of legal affairs. The state attorneys would have jurisdiction to enforce this act for local violations if a complaint of such violation has been referred to the state attorney by the department. The department would concentrate on state-wide violations but could take action on a local violation if the state attorney fails to act within a reasonable time.

"Interested party or person" means any person affected by a violation or by an order of the enforcing authority.

Section 501.204 Unlawful acts and practices -- This section forbids all deceptive or unfair activity including deceptive advertising, deceptive statements made when goods are delivered, and deceptive statements made in connection with debt collection. A deceptive act or practice has the likelihood of inducing a state of mind in a consumer that is not in accord with the facts. It is immaterial whether this capacity to mislead arises from a verbal, written, or graphic misrepresentation or a nondisclosure by a supplier.

Section 501.205 Rule-making power -- This section requires the department of legal affairs to propose specific substantive rules prohibiting deceptive consumer sales acts and practices. Such proposals shall be adopted as rules by majority vote of the cabinet. This

substantive rule-making power must be exercised within the legislative standards provided by this act. Adoption of appropriate procedural rules also is required unless otherwise spelled out in the act. The rule-making power is essential to specifically define the intentional broad language of the act. Since the market place is so complicated, rule-making from broad statutory language is the only way to identify and stop all deceptive activity. In interpreting this part and rules and regulations established thereunder, due consideration and great weight shall be given to the interpretation of the Federal Trade Commission and the federal courts relative to Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended.

Section 501.206 Investigative powers of the enforcing authority -- If he has reason to believe that this act has been or is being violated this section authorizes the enforcing authority to investigate whether legal proceedings should be instituted. The Florida Rules of Civil Procedure shall be followed. If necessary, the enforcing authority may request a court order requiring compliance with his investigative directives.

Section 501.207 Remedies of the enforcing authority -- In addition to declaratory and injunctive relief, the enforcing authority may bring an action for damages on behalf of individual consumers. However, no damages shall be recoverable against a retailer who has, in good faith, engaged in the dissemination of claims of a manufacturer or wholesaler without actual knowledge that it violated this part.

Since the term "retailer" has not been defined but was used instead of the term "supplier" which was defined, its exact meaning may cause some confusion.

This section would appear to allow an unjustly enriched retailer to retain the fruits of such unjust enrichment, but not a supplier per subsection (3). However, the term "supplier" is broad enough to encompass the term "retailer". It is doubtful that any court will allow a person to be unjustly enriched.

Before bringing an action to obtain a declaratory judgment or to recover damages on behalf of a consumer, the enforcing authority must hold a hearing to determine that there is probable cause to bring the action. Written notice of such a hearing shall be given to the party charged with the violation. Such party shall have the right to file a written answer to the charges and to be represented by counsel at the hearing and to cross-examine complaining witnesses. The hearing shall be held in the county in which the party charged resides or in the county in which the alleged violation occurred.

An action must be brought by the enforcing authority within two years of a violation of this act, except with respect to consumer transactions in which a consumer becomes obligated to pay someone

other than the supplier with whom he engaged in the transaction, the statute of limitations against that supplier nonetheless runs until one year following the last scheduled payment arising in the consumer transaction.

This section authorizes the enforcing authority to terminate investigative and enforcement proceedings upon acceptance of a written assurance of voluntary compliance with the act from a supplier. Unless an assurance has been abrogated by the parties or a court, subsequent failure to comply with the terms of an assurance is prima facie evidence of a violation of this act.

Section 501.208 Cease and desist orders, procedures -- If the enforcing authority has grounds to believe this act is being violated he may issue a cease and desist order by way of speedy administrative procedures. The initial hearing to determine if a violation of the act has occurred will be held before the state attorney or the department of legal affairs, depending on who will issue the cease and desist order if a violation is found. However, if the alleged deceptive act occurs in a county or city with an ordinance and administrative procedure covering such activity the enforcing authority may proceed through the administrative mechanism established by the ordinance. This is intended to encourage local consumer protection agencies and not preempt the area from local jurisdiction. All appeals from any administrative decision, either by the state attorney, the department of legal affairs, or a local consumer protection agency, must first go to the attorney general for review with judicial review by way of certiorari to the district court of appeals. However, section 501.2091 contains a provision allowing any person made a party to a proceeding brought by the enforcing authority to obtain a stay of such proceedings at any time by filing a civil action requesting a trial on the issues in circuit court. All parties shall be bound by the final order of the court.

A person violating a cease and desist order after it has become final and while it is in effect is subject to a civil penalty of \$5,000 for each violation.

Section 501.209 Other supervision -- This section coordinates the enforcing authority's power with other administrative supervision of suppliers. Conduct that is required or specifically permitted by other regulatory authorities is exempted from the act.

Section 501.2091 Jury trial -- This section contains a provision whereby any person made a party to any proceeding brought under the provisions of the act by the enforcing authority may obtain a stay of such proceeding at any time by filing a civil action requesting a trial on the issues raised by the enforcing authority in circuit court. All parties shall be bound by the final order of the court.

Section 501.210 Attorney's fees -- This section attempts to define "reasonable" attorney's fees. Hopefully this will attract

private attorneys to accept a consumer's civil case since the attorney would be assured that if his client prevails, he would gain a legal fee proportionate to his efforts. This section applies to civil litigation arising from a consumer transaction in violation of this act.

Section 501.211 Other individual remedies -- This section permits a consumer to obtain appropriate declaratory and injunctive relief regardless whether he recovers or has standing to recover damages.

In order to make an individual damage remedy meaningful, this section allows a consumer who has incurred actual damage to recover such damages. However, no damages, fees or costs shall be recoverable against a retailer (an undefined term) who has, in good faith, engaged in the dissemination of claims of a manufacturer or wholesaler without actual knowledge that it violated the act. If an action brought under this section is deemed to be frivolous, the court may require the person bringing the action to post a bond in an amount sufficient to indemnify the defendant for any damages incurred.

Section 501.212 Application -- This act does not apply to an act permitted by state or federal law.

It does not apply to disseminators of information unless they commit a violation of this act on behalf of others with actual knowledge that they are violating the act or unless they commit a violation on their own behalf.

It does not apply to claims for personal injury or death or for damage to property other than the property that is the subject of the consumer transaction.

It does not apply to the holder in due course of a negotiable instrument or the transferee of a credit agreement received in good faith without knowledge of a violation of the act.

It does not apply to any person or activity regulated under the department of insurance, the Florida public service administration, or banks and savings and loan associations regulated by the department of banking and finance.

Section 501.213 Effect on other remedies -- This section proclaims consumer protection is not preempted from local involvement and local consumer protection ordinances not inconsistent with this part are not invalid.

In addition to the above sections which go into part II of Chapter 501, Florida Statutes, the act amends section 570.283 to authorize the division of consumer services of the department of agriculture and consumer services to conduct investigations, subpoena witnesses and evidence, and administrative oaths and affirmations relating to a violation of the laws of the state in the area of consumer protection. The act repeals Parts III and IV of Chapter 817, Florida Statutes. The act contains a severability clause and the effective date of the act is October 1, 1973.