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DEPARTMENT OF STATE
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1 A bill to be entitled
2 An act relating to deceptive and unfair trade
3 practices; amending s. 501.206, F.S.; deleting
4 the requirement that the enforcing authority
5 exercise certain of its investigative powers
6 according to the Florida Rules of Civil
7 Procedure; authorizing a party served with a
8 subpoena to petition to set aside the subpoena
9 and to raise certain objections or privileges;
10 conforming the provision governing immunity to
11 the general immunity law; amending s. 501.207,
12 F.S.; deleting the requirement that the
13 enforcing authority hold an administrative
14 hearing to determine probable cause in certain
15 actions; providing for certain notification to
16 the suspected violator of the substance of the
17 alleged violation; providing for a
18 determination that an enforcement action serves
19 the public interest; giving statewide effect to
20 court injunctive orders; extending certain
21 defenses and settlement options to all alleged
22 violators; providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Section 501.206, Florida Statutes, is
27 amended to read:

28 501.206 Investigative powers of enforcing authority.--

29 (1) If, by his own inquiries or as a result of
30 complaints, the enforcing authority has reason to believe that
31 a person has engaged in, or is engaging in, an act or practice

1 that violates this part, he may administer oaths and
2 affirmations, subpoena witnesses or matter, and collect
3 evidence ~~according to the Florida Rules of Civil Procedure.~~
4 Within 10 days after the service of a subpoena or at any time
5 before the return date specified therein, whichever is longer,
6 the party served may file in the circuit court in the county
7 in which he resides or in which he transacts business and
8 serve upon the enforcing authority a petition for an order
9 modifying or setting aside the subpoena. The petitioner may
10 raise any objection or privilege which would be available
11 under this chapter or upon service of such subpoena in a civil
12 action. The subpoena shall inform the party served of his
13 rights under this subsection.

14 (2) If matter that the enforcing authority seeks to
15 obtain by subpoena is located outside the state, the person
16 subpoenaed may make it available to the enforcing authority or
17 his representative to examine the matter at the place where it
18 is located. The enforcing authority may designate
19 representatives, including officials of the state in which the
20 matter is located, to inspect the matter on his behalf, and he
21 may respond to similar requests from officials of other
22 states.

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

27 (4) The enforcing authority may request that an
28 individual who refuses to comply with a subpoena on the ground
29 that testimony or matter may incriminate him be ordered by the
30 court to provide the testimony or matter. Except in a
31 prosecution for perjury, an individual who complies with a

1 court order to provide testimony or matter after asserting a
2 privilege against self-incrimination to which he is entitled
3 by law shall not have the testimony or matter so provided or
4 evidence derived therefrom, received against him in any
5 criminal investigation or proceeding may not be subjected to a
6 criminal proceeding or to a civil penalty with respect to the
7 consumer transaction concerning which he is required to
8 testify or produce relevant matter.

9 Section 2. Section 501.207, Florida Statutes, is
10 amended to read:

11 501.207 Remedies of enforcing authority.--

12 (1) The enforcing authority may bring:

13 (a) An action to obtain a declaratory judgment that an
14 act or practice violates this part.

15 (b) An action to enjoin a supplier who has violated,
16 is violating, or is otherwise likely to violate, this part.

17 (c) An action on behalf of one or more consumers for
18 the actual damages caused by an act or practice performed in
19 violation of this part. However, no damages shall be
20 recoverable under this section against a retailer who has in
21 good faith engaged in the dissemination of claims of a
22 manufacturer or wholesaler without actual knowledge that it
23 violated this part.

24 (2) Before bringing an action under paragraphs (a) or
25 (c) of subsection (1):

26 (a) The enforcing authority shall conduct an
27 investigation and shall provide the party or parties being
28 investigated with notice of the substance of the alleged
29 violation and a reasonable opportunity to respond.

30 (b) The head of the enforcing authority shall review
31 the matter and determine if an enforcement action serves the

1 public interest. This determination shall be made in writing,
2 but shall not be subject to the provisions of chapter 120.7
3 ~~pursuant to an administrative hearing; determine that there is~~
4 ~~probable cause to bring the action;--Written notice of such~~
5 ~~hearing together with a copy of all sworn affidavits of~~
6 ~~complaining witnesses shall be served by certified mail upon~~
7 ~~the party charged with a violation of this part at least 15~~
8 ~~days prior to such hearing;--The party charged shall have the~~
9 ~~right to file a written answer to the charges at any time~~
10 ~~prior to the hearing and shall have the right to be~~
11 ~~represented by counsel at such hearing and to cross-examine~~
12 ~~any witnesses and to rebut other evidence;--The determination~~
13 ~~of probable cause may be based upon a complaint made in~~
14 ~~writing and sworn to by the complaining witness or witnesses~~
15 ~~before a person authorized to administer oaths when the~~
16 ~~complaint states facts which show that a violation of this~~
17 ~~part may have occurred;--The party charged shall not be~~
18 ~~prevented from offering testimony or other evidence to rebut~~
19 ~~the complaint at the administrative hearing;--The~~
20 ~~administrative hearing shall be held in the county in which~~
21 ~~the party charged resides or in the county in which the~~
22 ~~violation is alleged to have occurred;--The administrative~~
23 ~~hearing shall otherwise be as provided by s. 120.57.~~

24 (3) Upon motion of the enforcing authority or any
25 interested party in any action brought under subsection (1),
26 the court may make appropriate orders, including appointment
27 of a master or receiver or sequestration of assets, to
28 reimburse consumers found to have been damaged, to carry out a
29 consumer transaction in accordance with consumers' reasonable
30 expectations, to strike or limit the application of clauses of
31 contracts to avoid an unconscionable result, or to grant other

1 appropriate relief. The court may assess the expenses of a
2 master or receiver against a supplier. Any injunctive order,
3 whether temporary or permanent, issued by the court shall be
4 effective throughout the state unless otherwise provided in
5 the order.

6 (4) If a violator supplier shows that a violation of
7 this part resulted from a bona fide error notwithstanding the
8 maintenance of procedures reasonably adapted to avoid the
9 error, recovery under this section is limited to the amount,
10 if any, by which the violator supplier was unjustly enriched
11 by the violation.

12 (5) No action may be brought by the enforcing
13 authority under this section more than 2 years after the
14 occurrence of a violation of this part, or more than 1 year
15 after the last payment in a consumer transaction involved in a
16 violation of this part, whichever is later.

17 (6) The enforcing authority may terminate an
18 investigation or an action upon acceptance of a person's
19 supplier's written assurance of voluntary compliance with this
20 part. Acceptance of an assurance may be conditioned on a
21 commitment to reimburse consumers or to take other appropriate
22 corrective action. An assurance is not evidence of a prior
23 violation of this part. However, unless an assurance has been
24 rescinded by agreement of the parties or voided by a court for
25 good cause, subsequent failure to comply with the terms of an
26 assurance is prima facie evidence of a violation of this part.
27 No such assurance shall act as a limitation upon any action or
28 remedy available to a person aggrieved by a violation of this
29 part.

30 Section 3. This act shall take effect October 1, 1985.
31

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Christensen</u>	<u>Lester</u> <i>BL</i>	1. <u>JCI</u>	<u>Fav/CS</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____

SUBJECT:

Deceptive & Unfair Trade Practices

BILL NO. AND SPONSOR:

CS/SB 154 by
Judiciary-Civil Committee,
Senators Dunn and Gersten

I. SUMMARY:

A. Present Situation:

Section 501.206(1), F.S., provides that the authority enforcing the "Florida Deceptive and Unfair Trade Practices Act" (either the office of the state attorney or the Department of Legal Affairs) may administer oaths and affirmations, subpoena witnesses or matter, and collect evidence according to the Florida Rules of Civil Procedure, if it has reason to believe that a person has violated the Act.

Section 501.206(4), F.S., provides that an individual who complies with a court order to provide testimony or matter regarding a consumer transaction, after asserting a privilege against self-incrimination to which he is entitled, may not be subjected to a criminal proceeding or civil penalty with respect to the consumer transaction.

Section 501.207(2), F.S., requires the enforcing authority to determine probable cause, pursuant to an administrative hearing, prior to an action to obtain a declaratory judgment that an act or practice violates the Act, and prior to an action on behalf of consumers for actual damages caused by an act or practice performed in violation of the Act. This subsection then provides the requirements for the probable cause administrative hearing.

Section 501.207(4), F.S., provides a partial good faith defense to enforcing authority action available to "suppliers." Section 501.207(6), F.S., authorizes the enforcing authority to enter settlement agreements with "suppliers."

B. Effect of Proposed Changes:

The reference to the Florida Rules of Civil Procedure in s. 501.206(1), F.S., is deleted. Language is added to provide that a party served with a subpoena may petition the appropriate circuit court for an order modifying or setting aside the subpoena. Moreover, such petitioner may raise any objection or privilege available under chapter 501 or available to a subpoenaed party in a civil action.

The immunity provisions of s. 501.206(4), F.S., are conformed with s. 914.04, F.S., the state's general immunity statute.

Section 501.207(2), F.S., is amended to delete the requirement that the enforcing authority determine probable cause pursuant to an administrative hearing prior to bringing an action for declaratory relief or consumer reimbursement. Language is added to provide that, prior to bringing certain actions, an

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enforcing authority shall conduct an investigation, notify the parties being investigated of the substance of the alleged violation, and afford such parties an opportunity to respond, and shall determine in writing that the action serves the public interest.

Section 501.207(3), F.S., is amended to provide that an injunctive order issued by a court upon motion of the enforcing authority (which injunctive orders are authorized under the present statute) shall be effective throughout the state.

Sections 501.207(4) and 501.207(6), F.S., are amended to extend certain defenses and settlement options to all alleged violators, and not just "suppliers" as defined.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

The enforcing agency should realize some fiscal savings for the following reasons:

1. The enforcing agency will no longer be required to determine probable cause, pursuant to an administrative hearing, prior to bringing an action for declaratory relief or consumer reimbursement.
2. Because of statewide effect of injunctive orders issued upon motion of the enforcing authority, duplicative litigation will be eliminated.

III. COMMENTS:

The amendment to s. 501.206(1), F.S., is meant to eliminate any confusion about the enforcing authority's power to investigate prior to filing an action.

The office of the Attorney General recommends the repeal of s. 507.207(2), F.S. According to this office, the administrative probable cause proceeding was included in the statute to protect a defendant against groundless actions by the enforcing authority; however, the need for this protection has been diminished by subsequent legislation authorizing the award of costs and attorneys' fees to the defendant if the government brings a groundless action.

The amendment of s. 501.207(3), F.S., is in response to Health Care Services of Florida, Inc. v. Shevin, 311 So.2d 760 (Fla. 3d DCA 1975). The District Court held that the scope of an injunctive order, issued by a court upon motion of the enforcing authority, was limited to the circuit in which the case was brought. This holding requires the enforcing authority to sue a violator separately in each judicial circuit where the violator may be found.

IV. AMENDMENTS:

None.

REVISED: _____

BILL NO. PCB 4

DATE: January 8, 1985Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Christensen</u>	<u>Lester</u>	1. <u>JCI</u>	_____
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____

SUBJECT: Florida Deceptive and Unfair Trade Practices Act

BILL NO. AND SPONSOR: PCB 4 by Judiciary-Civil Committee

I. SUMMARY:

A. Present Situation:

Section 501.206(1), F.S., provides that the authority enforcing the "Florida Deceptive and Unfair Trade Practices Act" (either the office of the state attorney or the Department of Legal Affairs) may administer oaths and affirmations, subpoena witnesses or matter, and collect evidence according to the Florida Rules of Civil Procedure, if it has reason to believe that a person has violated this Act.

Section 501.206(4), F.S., provides that an individual who complies with a court order to provide testimony or matter regarding a consumer transaction, after asserting a privilege against self-incrimination to which he is entitled, may not be subjected to a criminal proceeding or civil penalty with respect to the consumer transaction.

Section 501.207(2), F.S., requires the enforcing authority to determine probable cause, pursuant to an administrative hearing, prior to an action to obtain a declaratory judgment that an act or practice violates the Act, and prior to an action on behalf of consumers for actual damages caused by an act or practice performed in violation of the Act. This subsection then provides the requirements for the probable cause administrative hearing.

Section 501.207(4), F.S., provides a partial good faith defense to enforcing authority action available to "suppliers." "Supplier" is defined in the Act as a person who engages in "consumer transactions;" "consumer transaction" is defined in the Act as a transaction providing goods or services that are primarily for personal, family or household purposes.

Section 501.207(6), F.S., authorizes the enforcing authority to enter settlement agreements with "suppliers."

B. Effect of Proposed Changes:

This bill amends s. 501.206(1), F.S., to delete a reference to the Florida Rules of Civil Procedure.

This bill amends s. 501.206(4), F.S., to replace the present transactional immunity provisions of this subsection with use immunity provisions.

This bill repeals s. 501.207(2), F.S., in order to delete the requirement that the enforcing authority determine probable cause pursuant to an administrative hearing prior to bringing an action for declaratory relief or consumer reimbursement.

This bill adds a sentence to present s. 501.207(3), F.S., to state that an injunctive order issued by a court upon motion of the enforcing authority (which injunctive orders are authorized under the present statute) shall be effective throughout the state.

This bill amends present s. 501.207(4), F.S., to replace the word "supplier" with the word "violateur."

This bill amends present s. 501.207(6), F.S., to replace the word "supplier's" with the word "person's."

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

The enforcing agency (the office of the state attorney or the Department of Legal Affairs) should realize some fiscal savings for the following reasons:

1. This bill deletes the requirement that the enforcing agency determine probable cause pursuant to an administrative hearing prior to bringing an action for declaratory relief or consumer reimbursement.
2. This bill provides for statewide effect of injunctive orders issued upon motion of the enforcing authority, eliminating duplicative litigation.

III. COMMENTS:

The amendment to s. 501.206(1), F.S., is meant to eliminate any confusion about the enforcing authority's power to investigate prior to filing an action.

The amendment to s. 501.206(4), F.S., is meant to conform this subsection to s. 914.04, F.S., the state's general immunity statute.

The repeal of s. 501.207(2), F.S., is recommended because the administrative probable cause proceeding is no longer necessary. The administrative probable cause proceeding was included in the statute to protect a defendant against groundless actions by the enforcing authority; however, the need for this protection has been diminished by subsequent legislation authorizing the award of costs and attorneys' fees to the defendant if the government brings a groundless action.

The addition of a sentence to s. 501.207(3), F.S., is in response to Health Care Services of Florida, Inc. v. Shevin, 311 So.2d 760 (Fla. 3d DCA 1975). The District Court held that the scope of such injunctive orders was limited to the circuit in which the case was brought. This holding requires the enforcing authority to sue a violator separately in each judicial circuit where the violator may be found. The amendment is necessary to eliminate duplicative litigation.

The amendments to sections 501.207(4), F.S., and 501.207(6), F.S., are meant to eliminate a distinction between defendants who are "suppliers" and those who are not. Present section 501.207(4), F.S., provides a partial good faith defense to "suppliers," but not to other defendants. Section 501.207(6), F.S., authorizes the

REVISED: _____

BILL NO. PCB 4

DATE: January 8, 1985

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enforcing authority to enter settlement agreements with "suppliers," but not with other defendants. These subsections should be amended to treat all defendants uniformly.

IV. AMENDMENTS:

None.

MEMORANDUM

FTC
FILE: SB 154

TO: PAT GRIFFITH
FROM: DAVE MILLER JM
RE: PROPOSED REVISION OF
CH. 501, PART II, F.S.
DATE: NOVEMBER 19, 1984

Pursuant to our discussion, here are short narrative statements describing proposed changes in Ch. 501, Part II, F.S. I will begin drafting as soon as you direct.

I. Provisions Relating to Investigative Powers

The provision for the enforcing authorities' investigative powers under §501.206, F.S., requires two changes:

(1) Elimination of the inappropriate reference to the Florida Rules of Civil Procedure in §501.206(1), F.S. This avoids any confusion about the authority to investigate prior to filing an action. A similar amendment was made in the RICO Act in Ch. 84-38, Laws of Florida.

(2) Replacement of the transactional immunity provisions in §501.206(4), F.S., with use immunity provisions. This step is necessary to conform to the general immunity law, §914.04, F.S.

II. Probable Cause Requirement

The enforcing authority is required to bring an administrative probable cause proceeding under §501.207(2), F.S., before suing in court for declaratory relief or consumer reimbursement. This requirement was included in the original act to protect the defendant against groundless actions by the enforcing authority.

The need for this protection has been diminished by subsequent legislation providing the defendant costs and attorneys' fees if the government brings a groundless action. See Ch. 79-386, Laws of Florida (amending Little FTC Act); Ch. 84-78, Laws of Florida (Equal Access to Justice Act); Ch. 84-203, Laws of Florida (amending APA).

Assuming that a probable cause proceeding is still desirable, however, the present statute is unwieldy because it makes the enforcing authority act as both prosecutor and judge. It also requires litigation in multiple forums, thereby adding unnecessarily to the litigants' expenses and risking conflicting rulings. The purposes of the probable cause proceeding would be better served if the statute were amended to require the proceedings in a neutral forum, i.e., the same circuit court that ultimately rules on the merits.

III. Statewide Injunctive Orders

The enforcing authority is authorized to sue for injunctive relief under §501.207(1), F.S. A District Court of Appeal has ruled, however, that the scope of injunctive relief is limited to that circuit in which the case is brought. Health Care Services of Florida, Inc., v. Shevin, 311 So.2d 760 (Fla. 3d DCA 1975). This ruling requires the enforcing authority to sue a violator separately in each judicial circuit where it may be found. A statutory amendment is necessary to eliminate the need for duplicative litigation.

IV. Amendments for Uniformity

The provisions of §501.207(4) and (6), F.S., create an unwarranted distinction between defendants who are "suppliers" and those who are not. A "supplier" is defined in the act as a person who engages in consumer transactions, i.e., provides goods or services that are primarily for personal, family or household purposes. Section 501.207(4), F.S., provides a partial good faith defense to "suppliers," but not to other defendants. Section 501.207(6), F.S., authorizes the enforcing authority to enter settlement agreements with "suppliers," but not with other defendants. These provisions should be amended to treat all defendants uniformly.

DKM/sw

BILL ACTION REPORT

(C3-75: File with Secretary of Senate)

(S) ~~XX~~ BILL NO. 154

COMMITTEE ON Judiciary-Civil

DATE March 6, 1985

Date Reported March 6, 1985

TIME 9:00 - 12:00 noon

FINAL ACTION:

PLACE Committee Room "B"

 Favorably with amendments

OTHER COMMITTEE REFERENCES:
(In order shown)

 X Favorably with Committee Substitute

 Unfavorably

None

OTHER: Temporarily Passed

 Reconsidered

 Not Considered

THE VOTE WAS:
*moved by Hair
(as CS)*

FINAL BILL VOTE		SENATORS	<i>Fox</i> Am. #1 <i>p. 1, l. 26</i>		<i>Fox</i> Am. #2 <i>p. 2, l. 16</i>		<i>Fox</i> Am. #3 <i>pp. 3+4</i>		<i>Langley</i> Am./Am. #3 <i>p. 1, l. 19</i>		<i>Fox</i> Am. #4 <i>p. 5, l. 4</i>	
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay
X		FOX, Roberta										
X		FRANK, Pat										
X		HAIR, Mattox	<i>Without Objection</i>		<i>Without Objection</i>		<i>Without Objection (as amended)</i>		<i>Without Objection</i>		<i>Withdrawn</i>	
X		KISER, Curtis										
X		LANGLEY, Richard										
X		GERSTEN, Joseph M.										
X		DUNN, Edgar M., Jr.										
6	0	TOTAL	X		X		X		X		---	---
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay

(Attach additional page if necessary)

Please Complete: The key sponsor appeared (X) Dunn
 A Senator appeared ()
 Sponsor's aide appeared ()
 Other appearance (X) Griffith, Miller

STORAGE NAME: fsa-SB154

Date: _____

Revised: _____

Final: June 26, 1985

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HOUSE OF REPRESENTATIVES
COMMITTEE ON COMMERCE
FINAL STAFF ANALYSIS

BILL# SB 154 SPONSOR Senator Dunn
(As enacted by the Legislature)

EFFECTIVE DATE Oct. 1, 1985 IDENTICAL/SIMILAR BILLS HB 223

BECAME LAW May 2, 1985 Chapter 85-3 Laws of Florida

RELATING TO Deceptive and Unfair Trade Practices

COMMITTEE CONSIDERATION Judiciary - Civil

I. SUMMARY:

House Bill 223 is an effort to clarify and streamline enforcement procedures as well as ensure enforcement uniformity. The bill sets forth procedures by which a party shall serve upon the enforcing authority or petition the court for an order to set aside or modify a subpoena issued under the Florida Deceptive and Unfair Trade Practices Act. Further, there is a restriction on the usage of certain testimony in criminal investigations and proceedings when provided by an individual served with a subpoena. Moreover, the bill provides that the enforcing authority shall conduct an investigation, notify the suspected violator of the substance of the allegation, afford such individual an opportunity to respond, and determine in writing that pursuing the action serves the public interest prior to bringing certain causes of action. Additionally, the bill permits injunctive orders issued pursuant to the act to be effective throughout the state. The extension of present defenses and settlement options to all defendants is also incorporated within the bill.

A. Current Law & Present Situation:

Chapter 501, Part II, Florida Statutes, The Florida Deceptive and Unfair Trade Practices Act, also referred to as Florida's "Little FTC Act", serves to protect consumers within the State of Florida from deceptive and unfair trade practices. Further, members of the business community are guarded against unfair methods of competition.

Section 501.206, F.S., sets forth the investigative powers of the enforcing authority (the office of the State Attorney or the Department of Legal Affairs). Currently, s. 501.256(1), F.S., grants to the office of the State Attorney or the

Department of Legal Affairs, the right to administer oaths and affirmation, subpoena witnesses or matter, and collect evidence according to the Florida Rules of Civil Procedure where there is reason to believe that a violation of the act has occurred.

Section 501.206(4), F.S., provides that an individual who refuses to comply with a subpoena may be ordered by the court to render such testimony or matter. However, the testimony or matter obtained from the individual who complies with the court order after asserting a privilege against self-incrimination, to which he is entitled by law, may not be subjected to a criminal proceeding or to a civil penalty with respect to the consumer transaction in question.

Section 501.207, F.S., describes the remedies available to the enforcing authority. Subsection (2) of this section requires the enforcing authority, pursuant to an administrative hearing, to determine the existence of probable cause prior to bringing an action for declaratory relief or consumer reimbursement for actual damages incurred. Further, this subsection delineates the requirements for the administrative probable cause proceeding.

Section 501.207(3), F.S., permits the enforcing authority or any interested party in an action brought under this act to motion the court to make appropriate orders to achieve the appropriate relief.

Section 501.207(4), F.S., allows a supplier to assert a partial good faith defense which results in the supplier being liable only for the unjustly enriched amount. The supplier must show that the violation resulted from a bona fide error.

Similarly, s. 501.207(6), F.S., authorizes the enforcing authority to terminate an investigation or an action where the supplier provides written assurance of voluntary compliance with chapter 501.

B. Effect of Changes:

This bill amends the Florida Deceptive and Unfair Trade Practices Act as it relates to the investigative powers of the enforcing authority and the available remedies under the act.

Section 501.206(1), F.S., deletes the reference to the Florida Rules of Civil Procedure allowing the enforcing authority to administer oaths and affirmation, subpoena witnesses or matter and collect evidence without consideration of the stated rules. Moreover, this section is amended to permit a party served with a subpoena to file in the circuit court and serve upon the enforcing authority a petition for an order to modify or set aside the subpoena. However, the filing of a petition must occur within 10 days after the service of a subpoena or at any time before the specified return date, whichever is longer. Further,

the petitioner may raise any objection or privilege available under the "Little FTC Act" or available to a person issued a subpoena in a civil action.

Replacing the present transactional immunity provision with a use immunity provision, s. 501.206(2), F.S., conforms this section to Florida general immunity law, s. 914.04, F.S. Testimony or matter supplied by an individual who complies with a court order after asserting a privilege against self-incrimination may not be subjected to any criminal investigation or proceeding. However, the testimony or matter could result in a civil penalty being applied.

Prior to filing an action for declaratory relief or an action on behalf of a consumer for actual damages, the enforcing authority must, according to an amendment to s. 501.207(2), F.S., conduct an investigation and provide notice of the substance of the alleged violation to the party being investigated. Moreover, the individual must be given a reasonable opportunity to respond. Further, language is added which requires the enforcing authority to review the matter and make a written determination that pursuing the action serves the interest of the public. The determination is not subject to the Administrative Procedure Act, chapter 120, F.S. The amendment to this subsection also eliminates the requirement for an administrative probable cause hearing as well as the details of such a hearing.

Under s. 501.207(3), F.S., the enforcing authority or any interested party may motion to have the court render an appropriate order for any remedy available under chapter 501. This subsection is amended to allow any injunction issued by the court to be effective throughout the state.

Providing for uniformity in the treatment of all defendants, s. 501.207(4), F.S., replaces the word "supplier" with the word "violation". This replacement extends the available good faith defense beyond suppliers to all alleged violators.

Similarly, s. 501.207(6), F.S., is amended to allow the present settlement option to be available to all defendants. The word "supplier's" is removed from the statute and replaced with the word "person's". This change would permit any alleged violator to enter into a written agreement with the enforcing authority assuring voluntary compliance with the act.

II. ECONOMIC IMPACT:

A. Public: None

B. Government:

Although the precise economic impact of this bill is indeterminable, the governmental sector is likely to experience

some degree of fiscal savings. Deleting the requirement for a formal probable cause hearing prior to bringing an action for declaratory relief or consumer reimbursement will result in a financial gain due to the elimination of costs associated with duplicative proceedings, delay in litigation, and the overall hearing. Additionally, the statewide effect extended to injunctive orders issued by the court eliminates the need for duplicative litigation.

III. COMMENTS:

By amending s. 501.206(1), F.S., the lack of clarity regarding the enforcing authority's power to investigate prior to filing an action is eliminated. A similar amendment was made in the RICO Act in Chapter 84-38, Laws of Florida.

Eliminating the requirement to determine probable cause pursuant to an administrative hearing relieves the enforcing authority of litigating in multiple forums, thereby decreasing the litigants' expense and the risk of confusing rulings. Section 501.207(2), F.S., was included in the statute, according to the office of the Attorney General, to render protection to the defendant from groundless actions by the enforcing authority. However, this need has been diminished by subsequent legislation providing the defendant's costs and attorney's fees for groundless action by the government.

The statutory amendment to s. 501.207(3), F.S., is recommended by the office of the Attorney General to overcome the ruling in Health Care Services, Inc., v. Shevin, 311 So.2d 760 (Fla. 3d DCA 1975), cert. denied, 334 So.2d 608 (Fla. 1976), and conform injunction practice under chapter 501, part II, to ordinary injunction practice. The District Court of Appeal ruled that the scope of an injunctive order is limited to the circuit in which the action is litigated. As a result, the enforcing authority is required to sue a violator separately in each judicial circuit where an alleged violation occurs.

Eliminating the distinction between suppliers and all other alleged violators, the amendments to s. 501.207(4) and s. 501.207(6), F.S., result in equal treatment of all defendants. A "supplier" is defined in the act as a person who engages in consumer transactions, i.e., provides goods or services that are primarily for personal, family, or household purposes.

Statement of Substantial Changes Made In Committee Substitute:

Providing increased protection to alleged violators of the Florida Deceptive and Unfair Trade Practices Act, the original Senate bill was amended to add the following provisions:

(1) Language was added to s. 501.206(1), F.S., to provide that a party served with a subpoena may petition the appropriate circuit court for an order modifying or setting aside the subpoena. This must be done within 10 days after service of a subpoena or prior to the specified return date. Moreover, such petitioner may raise any objection or privilege available under chapter 501 or available upon service of a subpoena in a civil action.

(2) Language was added to subsection (2) of s. 501.207, F.S., which was deleted in its entirety in the original SB 154. The new language provides that before bringing certain actions, an enforcing authority shall conduct an investigation, notify the parties being investigated of the substance of the alleged violation, and afford such parties an opportunity to respond. In addition, the head of the enforcing authority shall determine in writing that such action serves the public interest.

IV. LEGISLATIVE HISTORY:

A. Enacted Bill:

Senate Bill 154 was prefiled on February 1, 1985 by Senator Dunn and referred to the Senate Committee on Judiciary-Civil. On March 6, the Committee considered the bill, adopted two amendments, and reported it out as a Committee Substitute for SB 154. These amendments created new language which provided alleged violators with greater protection. The first amendment allows a party served with a subpoena to petition the appropriate circuit court for an order modifying or setting aside the subpoena. Moreover, such petitioner may raise any objection or privilege available under chapter 501 or available to a party served with a subpoena in a civil action. Amendment 2 provides that, prior to bringing specified actions, the enforcing authority shall conduct an investigation, notify the parties being investigated of the substance of the alleged violation, afford such parties an opportunity to respond, and determine in writing that the action serves the public interest.

On April 16, the bill was placed on the Special Order Calendar where it passed with a vote of 39-0 (SJ 111). The bill was immediately sent over in messages to the House. It was received on April 18 and substituted for HB 223 which was laid on the table. The Senate bill passed the House by a vote of 110-0 (HJ 150).

The bill was orderd enrolled, signed by the officers, and presented to the Governor on April 25, 1985. It became law on May 2 after being signed by the Governor.

B. Disposition of Companion:

House Bill 223 was prefiled by Representative Burned on February 11, 1985. The bill was referred to the House Committee on Judiciary but was later withdrawn and referred to the House Committee on Commerce. It was subreferred to the Subcommittee on General Commerce which recommended the bill to the full Commerce Committee. On April 9, the full committee reported the bill favorably without amendments. It was placed on the Special Order Calendar and read a second time. The Senate bill was substituted for HB 223 which was laid on the table under the Rule.

V. PREPARED BY

Beryl D. Roberts

Beryl Roberts

VI. STAFF DIRECTOR

Wyatt J. Martin

STORAGE NAME: sa-HB223

Date: March 19, 1985

Revised: _____

Final: _____

HOUSE OF REPRESENTATIVES
COMMITTEE ON COMMERCE
STAFF ANALYSIS

BILL# HB 223 SPONSOR Beverly B. Burnsed

EFFECTIVE DATE October 1, 1985 IDENTICAL/SIMILAR BILLS SB 154

RELATING TO deceptive and unfair trade practices

OTHER COMMITTEES OF REFERENCE _____

I. SUMMARY:

House Bill 223 is an effort to clarify and streamline enforcement procedures as well as ensure enforcement uniformity. The bill sets forth procedures by which a party shall serve upon the enforcing authority or petition the court for an order to set aside or modify a subpoena issued under the Florida Deceptive and Unfair Trade Practices Act. Further, there is a restriction on the usage of certain testimony in criminal investigations and proceedings when provided by an individual served with a subpoena. Moreover, the bill provides that the enforcing authority shall conduct an investigation, notify the suspected violator of the substance of the allegation, afford such individual an opportunity to respond, and determine in writing that pursuing the action serves the public interest prior to bringing certain causes of action. Additionally, the bill permits injunctive orders issued pursuant to the act to be effective throughout the state. The extension of present defenses and settlement options to all defendants is also incorporated within the bill.

Chapter 501, Part II, Florida Statutes, The Florida Deceptive and Unfair Trade Practices Act, also referred to as Florida's "Little FTC Act", serves to protect consumers within the State of Florida from deceptive and unfair trade practices. Further, members of the business community are guarded against unfair methods of competition.

Section 501.206, F.S., sets forth the investigative powers of the enforcing authority. Currently, s. 501.256(1), F.S., grants to the office of the State Attorney or the Department of Legal Affairs, the right to administer oaths and affirmation, subpoena witnesses or matter, and collect evidence according to the Florida Rules of Civil Procedure where there is reason to believe that a violation of the act has occurred.

Section 501.206(4), F.S., provides that an individual who refuses to comply with a subpoena may be ordered by the court to render such testimony or matter. However, the testimony or matter obtained from the individual who complies with the court order after asserting a privilege against self-incrimination, to which he is entitled by law, may not be subjected to a criminal proceeding or to a civil penalty with respect to the consumer transaction in question.

Section 501.207, F.S., describes the remedies available to the enforcing authority. Subsection (2) of this section requires the enforcing authority, pursuant to an administrative hearing, to determine the existence of probable cause prior to bringing an action for declaratory relief or consumer reimbursement for actual damages incurred. Further, this subsection delineates the requirements for the administrative probable cause proceeding.

Section 501.207(3), F.S., permits the enforcing authority or any interested party in an action brought under this act to motion the court to make appropriate orders to achieve the appropriate relief.

Section 501.207(4), F.S., allows a supplier to assert a partial good faith defense which results in the supplier being liable only for the unjustly enriched amount. The supplier must show that the violation resulted from a bona fide error.

Similarly, s. 501.207(6), F.S., authorizes the enforcing authority to terminate an investigation or an action where the supplier provides written assurance of voluntary compliance with chapter 501.

The proposed legislation amends the Florida Deceptive and Unfair Trade Practices Act as it relates to the investigative powers of the enforcing authority and the available remedies under the act.

Section 501.206(1), F.S., deletes the reference to the Florida Rules of Civil Procedure allowing the enforcing authority to administer oaths and affirmation, subpoena witnesses or matter and collect evidence without consideration of the stated rules. Moreover, this section is amended to permit a party served with a subpoena to file in the circuit court and serve upon the enforcing authority a petition for an order to modify or set aside the subpoena. However, the filing of a petition must occur within 10 days after the service of a subpoena or at any time before the specified return date, whichever is longer. Further, the petitioner may raise any objection or privilege available under the "Little FTC Act" or available to a person issued a subpoena in a civil action.

Replacing the present transactional immunity provision with a use immunity provision, s. 501.206(2), F.S., conforms this

section to Florida general immunity law, s. 914.04, F.S. Testimony or material supplied by an individual who complies with a court order after asserting a privilege against self-incrimination may not be subjected to any criminal investigation or proceeding. However, the testimony or material could result in a civil penalty being applied.

Prior to filing an action for declaratory relief or an action on behalf of a consumer for actual damages, the enforcing authority must, according to an amendment to s. 501.207(2), F.S., conduct an investigation and provide notice of the substance of the alleged violation to the party being investigated. Moreover, the individual must be given a reasonable opportunity to respond. Further, language is added which requires the enforcing authority to review the matter and make a written determination that pursuing the action serves the interest of the public. The determination is not subject to the Administrative Procedure Act, chapter 120, F.S. The amendment to this subsection also eliminates the requirement for an administrative probable cause hearing as well as the details of such a hearing.

Under s. 501.207(3), F.S., the enforcing authority or any interested party may motion to have the court render an appropriate order for any remedy available under chapter 501. This subsection is amended to allow any injunction issued by the court to be effective throughout the state.

Providing for uniformity in the treatment of all defendants, s. 501.207(4), F.S., replaces the word "supplier" with the word "violinator". This replacement extends the available good faith defense beyond suppliers to all alleged violators.

Similarly, s. 501.207(6), F.S., is amended to allow the present settlement option to be available to all defendants. The word "supplier's" is removed from the statute and replaced with the word "person's". This change would permit any alleged violator to enter into a written agreement with the enforcing authority assuring voluntary compliance with the act.

II. ECONOMIC IMPACT:

A. Public: None

B. Government:

Although the precise economic impact of this bill is indeterminable, the governmental sector is likely to experience some degree of fiscal savings. Deleting the requirement for a formal probable cause hearing prior to bringing an action for declaratory relief or consumer reimbursement will result in a financial gain due to the elimination of costs associated with duplicative proceedings, delay in litigation, and the overall hearing. Additionally, the statewide effect extended to

injunctive orders issued by the court eliminates the need for duplicative litigation.

III. COMMENTS:

By amending s. 501.206(1), F.S., the lack of clarity regarding the enforcing authority's power to investigate prior to filing an action is eliminated. A similar amendment was made in the RICO Act in Chapter 84-38, Laws of Florida.

Eliminating the requirement to determine probable cause pursuant to an administrative hearing relieves the enforcing authority of litigating in multiple forums, thereby decreasing the litigants' expense and the risk of confusing rulings. Section 501.207(2), F.S., was included in the statute, according to the office of the Attorney General, to render protection to the defendant from groundless actions by the enforcing authority. However, this need has been diminished by subsequent legislation providing the defendant's costs and attorney's fees for groundless action by the government.

The statutory amendment to s. 501.207(3), F.S., is recommended by the office of the Attorney General to overcome the ruling in Health Care Services, Inc., v. Shevin, 311 So.2d 760 (Fla. 3d DCA 1975), cert. denied, 334 So.2d 608 (Fla. 1976), and conform injunction practice under chapter 501, part II, to ordinary injunction practice. The District Court of Appeal ruled that the scope of an injunctive order is limited to the circuit in which the action is litigated. As a result, the enforcing authority is required to sue a violator separately in each judicial circuit where an alleged violation occurs.

Eliminating the distinction between suppliers and all other alleged violators, the amendments to s. 501.207(4) and s. 501.207(6), F.S., result in equal treatment of all defendants. A "supplier" is defined in the act as a person who engages in consumer transactions, i.e., provides goods or services that are primarily for personal, family, or household purposes.

IV. AMENDMENTS:

V. PREPARED BY

Beryl D. Roberts

VI. STAFF DIRECTOR

Wyatt M. Allen

Committee on Commerce

Bill No. 223

Date of meeting April 9, 1985

Time 1:15 -3:15 p.m.

Place 317 Capitol

FINAL ACTION: x FAVORABLE
 _____ FAVORABLE WITH _____ AMENDMENTS
 _____ FAVORABLE WITH SUBSTITUTE
 _____ UNFAVORABLE

VOTE:

YEA	MEMBER	NAY
	Abrams, Mike	
X	Bankhead, William	
	Bass, Virginia	
	Bell, Samuel P.	
X	Clark, Bill	
X	Crady, George	
X	Gallagher, Tom	
X	Gardner, Winston	
X	Hargrett, James	
	Hawkins, M.E.	
X	Johnson, Ron	
X	Kimmel, Bernard	
	Kutun, Barry	
X	Lawson, Al	
X	Lombard, James	

YEA	MEMBER	NAY
X	McEwan, Bruce	
X	Morgan, Herb	
X	Ogden, Carl	
X	Ros, Ileana	
X	Tobin, Jack	
X	Wetherell, T.K.	
X	Burnsed, B. B.	

Total Yeas 17

Total Nays 0

Burnsed, B. B.
 Chairman

COMMITTEE APPEARANCE RECORD

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

Name	Representing	Address

NOTE: Please indicate by an "X" any State employee appearing at the request of Committee Chairman.

(If additional persons, enter on reverse side and check here)

BILL ACTION RECORD

House of Representatives

COM merce

Sub Committee on General Business
 Meeting Time 8:00
 Place 317 Capitol

Bill No. 223
 Date received _____
 Date Reported _____

Committee Action:
 ___ Temporarily passed
 ___ Reconsidered
 ___ favorable
 ___ favorable with ___ amendments
 ___ favorable with committee substitute
 ___ unfavorable

Referred to Subcommittee on _____

Subcommittee report:
 favorable
 ___ favorable with ___ amendments
 ___ unfavorable

Other action: _____

Final vote on bill												
Yeas	Nays		Yeas	Nays	Yeas	Nays	Yeas	Nays	Yeas	Nays	Yeas	Nays
X		Gardner, William										
X		Hawkins, Mary E.										
		Kutun, Barry										
X		Lombard, James										
X		Bass, Virginia										
		(Chairman)										
4		TOTALS										
Yeas	Nays		Yeas	Nays	Yeas	Nays	Yeas	Nays	Yeas	Nays	Yeas	Nays

SENATE SUMMARY

Clarifies enforcing authorities' investigative powers.
Conforms provision governing immunity to the general
immunity law. Deletes requirement that enforcing
authority determine probable cause pursuant to
administrative hearing prior to certain actions.
Provides statewide effect of certain injunctive orders.
Extends certain defenses and settlement options to all
alleged violators to provide for uniformity.

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