

Committee on Commerce and Tourism

CS/CS/HB 55 — Deceptive and Unfair Trade Practices

by Judiciary Committee; Business and Professional Regulation Subcommittee; and Rep. Gaetz and others (CS/CS/SB 292 by Judiciary Committee; Commerce and Tourism Committee; and Senators Richter, Flores, Bean, Brandes, and Grimsley)

The bill creates a pre-suit process for actions against motor vehicle dealers under the Florida Deceptive and Unfair Trade Practice Act. Specifically, it requires a claimant to provide a written demand letter to a motor vehicle dealer at least 30 days prior to filing suit or initiating arbitration.

The demand letter must contain:

- The name, address, and telephone number of the claimant.
- The name and address of the motor vehicle dealer.
- A description of the underlying facts of the claim, including a statement describing each item for which actual damages are claimed.
- A statement of the actual damages or if the claimant does not know the exact amount of damages, a best estimate.
- To the extent available, all transaction or other documents upon which the claim is based.

The demand letter must be delivered to the dealer by the United States Postal Service or other nationally recognized carrier, return receipt requested, at the address where the subject vehicle was purchased or leased, where the transaction occurred, or any address at which the dealer regularly conducts business.

A demand letter is satisfactory if it contains sufficient information to reasonably put the dealer on notice as to the nature of the claim and the relief sought. The demand letter expires 30 days after receipt, unless renewed by the claimant, and does not limit the damages the claimant may claim in a subsequent civil lawsuit or arbitration.

If the dealer, within 30 days after receipt of the demand letter, pays the claimant the amount of actual damages and a surcharge of the lesser of \$500 or 10 percent of the damages claimed, then the claimant is precluded from initiating litigation or arbitration. Upon payment, the dealer is released from liability from future claims relating to the incident referenced in the letter. A dealer's compliance with the demand letter does not constitute an admission of liability or fault, and is not admissible into evidence as an offer to compromise.

The dealer is not required to pay attorney fees if the dealer provides written notification to the claimant, within 30 days of receipt of the demand letter, that the amount sought in the demand letter is not reasonable in light of the facts or that the demand letter includes amounts or items not properly recoverable under the law. The court or arbitrator must agree.

If a claimant files a lawsuit or initiates arbitration prior to complying with the demand letter provisions and the dealer timely objects, the court or arbitrator must stay the action until the

claimant complies. The dealer is not liable for attorney fees and costs incurred prior to compliance.

The bill tolls any applicable statute of limitations for 30 days following delivery of the demand letter or any such period as may be agreed to by the parties.

This pre-suit process does not apply to class action litigation or actions brought by an enforcement authority, such as a State Attorney or the Office of Attorney General.

The bill provides a written form of notice for dealers to provide to consumers advising of the demand letter requirement. The provisions of the bill do not apply if the dealer fails to provide the statutory language to the consumer, and therefore the consumer would be permitted to commence litigation or arbitration without sending the demand letter.

If approved by the Governor, these provisions take effect July 1, 2013.

Vote: Senate 33-4; House 83-29