

By the Committee on Commerce and Tourism; and Senators Richter, Flores, Bean, and Brandes

577-01690-13

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1 A bill to be entitled
2 An act relating to deceptive and unfair trade
3 practices; amending s. 501.975, F.S.; making technical
4 changes; creating s. 501.98, F.S.; requiring a
5 claimant to provide a demand letter to the motor
6 vehicle dealer as a condition precedent to initiating
7 civil litigation against such dealer under the Florida
8 Deceptive and Unfair Trade Practices Act; providing
9 for requirements and expiration of the demand letter;
10 providing exceptions for liability for payment of
11 attorney fees; providing for the tolling of applicable
12 time limitations for initiating actions; providing an
13 additional opportunity for claimants to comply with
14 specified provisions; providing that attorney fees and
15 other costs incurred by a claimant before compliance
16 with certain provisions are not recoverable; providing
17 for applicability; requiring that a specified notice
18 be provided to consumers before provisions may apply;
19 providing an effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Section 501.975, Florida Statutes, is amended to
24 read:

25 501.975 Definitions.—As used in this part ~~s. 501.976~~, the
26 term ~~following terms shall have the following meanings:~~

27 (1) "Customer" includes a customer's designated agent.

28 (2) "Dealer" means a motor vehicle dealer as defined in s.
29 320.27, but does not include a motor vehicle auction as defined

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30 in s. 320.27(1)(c)4.

31 (3) "Replacement item" means a tire, bumper, bumper fascia,
32 glass, in-dashboard equipment, seat or upholstery cover or trim,
33 exterior illumination unit, grill, sunroof, external mirror and
34 external body cladding. The replacement of up to three of these
35 items does not constitute repair of damage if each item is
36 replaced because of a product defect or damaged due to vandalism
37 while the new motor vehicle is under the control of the dealer
38 and the items are replaced with original manufacturer equipment,
39 unless an item is replaced due to a crash, collision, or
40 accident.

41 (4) "Threshold amount" means 3 percent of the
42 manufacturer's suggested retail price of a motor vehicle or
43 \$650, whichever is less.

44 (5) "Vehicle" means any automobile, truck, bus,
45 recreational vehicle, or motorcycle required to be licensed
46 under chapter 320 for operation over the roads of Florida, but
47 does not include trailers, mobile homes, travel trailers, or
48 trailer coaches without independent motive power.

49 Section 2. Section 501.98, Florida Statutes, is created to
50 read:

51 501.98 Demand letter.-

52 (1) As a condition precedent to initiating any civil
53 litigation, including arbitration, arising under this chapter
54 against a motor vehicle dealer, which may also include its
55 employees, agents, principals, sureties, and insurers, a
56 claimant must give the dealer a written demand letter at least
57 30 days before initiating the litigation.

58 (2) The demand letter, which must be completed in good

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59 faith, must:

60 (a) State the name, address, and telephone number of the
61 claimant.

62 (b) State the name and address of the dealer.

63 (c) Describe the underlying facts of the claim, including a
64 statement describing each item for which actual damages are
65 claimed.

66 (d) State the amount of damages claimed.

67 (e) To the extent available to the claimant, be accompanied
68 by all transaction or other documents upon which the claim is
69 based.

70
71 In any challenge to the claimant's compliance with this
72 subsection, the demand letter shall be deemed satisfactory if it
73 contains sufficient information to reasonably put the dealer on
74 notice of the nature of the claim and the relief sought.

75 (3) The demand letter must be delivered by the United
76 States Postal Service or by a nationally recognized carrier,
77 return receipt requested, to the address where the subject
78 vehicle was purchased or leased or where the subject transaction
79 occurred, or any address at which the dealer regularly conducts
80 business.

81 (4) Notwithstanding any provision of this chapter:

82 (a) A claimant may not initiate civil litigation, including
83 arbitration, against a dealer or its employees, agents,
84 principals, sureties, or insurers for a claim arising under this
85 chapter related to, or in connection with, the transaction or
86 event described in the demand letter if, within 30 days after
87 receipt of the demand letter, the dealer pays the claimant the

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88 amount sought in the demand letter, plus a surcharge of \$500, if
89 the claimant is represented by an attorney.

90 (b) A dealer and its employees, agents, principals,
91 sureties, and insurers may not be required to pay the attorney
92 fees of the claimant in any action brought under this chapter
93 if:

94 1. The dealer, within 30 days after receipt of the demand
95 letter, notifies the claimant in writing, and a court or
96 arbitrator agrees, that the amount sought in the demand letter
97 is not reasonable in light of the facts of the transaction or
98 event described in the demand letter or if the demand letter
99 includes items and amounts not properly recoverable under this
100 chapter; or

101 2. The claimant fails to sufficiently comply with this
102 section; however, to the extent that there is a challenge to the
103 sufficiency of the demand letter, the demand letter shall be
104 deemed satisfactory if it contains sufficient information to
105 reasonably put the dealer on notice of the nature of the claim
106 and the amount and relief sought such that the dealer could
107 appropriately respond.

108 (5) The demand letter required by this section expires 30
109 days after receipt by the dealer, unless renewed by the
110 claimant, and does not place a limitation on the damages that
111 the claimant may claim in subsequently maintained civil
112 litigation, including arbitration. Payment of the damages
113 claimed in the demand letter and the required surcharge as set
114 forth in this section within 30 days of receipt of the demand
115 letter:

116 (a) Does not constitute an admission of any wrongdoing or

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117 liability by the dealer.

118 (b) Is protected under s. 90.408 from introduction as
119 evidence during any civil litigation, including arbitration.

120 (c) Releases the dealer and its employees, agents,
121 principals, sureties, and insurers from any claim, suit, or
122 other action that could be brought arising out of, or in
123 connection with, the specific transaction, event, or occurrence
124 described in the demand letter; but does not serve as a release
125 as to items of damages that are not included in the demand
126 letter and not recoverable under this chapter.

127 (6) The applicable time limitations for initiating an
128 action under this chapter are tolled for 30 days after the date
129 of delivery of the demand letter to the dealer pursuant to
130 subsection (3), or such other period agreed to in writing and
131 signed by the parties after the demand letter is received by the
132 dealer.

133 (7) This section does not apply to any action brought as a
134 class action that is ultimately certified as a class action or
135 any action brought by the enforcing authority.

136 (8) If a claimant initiates civil litigation, including
137 arbitration, without first complying with the provisions of this
138 section, the court or arbitrator shall stay the action upon
139 timely motion until the claimant complies with this section.
140 Attorney fees and court or arbitration costs incurred by the
141 claimant before compliance with this section are not recoverable
142 under this chapter.

143 (9) This section applies only to civil litigation,
144 including arbitration, arising out of a transaction for which
145 the dealer has provided the following written notice to the

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146 consumer, which must be in a font size no smaller than that of
147 the predominant text on the page in which the claim is
148 disclosed, or if it is disclosed by itself, in a font size of at
149 least 12 points:

151 "Section 501.98, Florida Statutes, requires that, at
152 least 30 days before bringing any claim against a
153 motor vehicle dealer for an unfair or deceptive trade
154 practice, a consumer must provide the dealer with a
155 written demand letter stating the name, address, and
156 telephone number of the consumer; the name and address
157 of the dealer; a description of the facts that serve
158 as the basis for the claim; the amount of damages
159 claimed; and copies of any documents in the possession
160 of the consumer which relate to the claim. Such notice
161 must be delivered by the United States Postal Service
162 or by a nationally recognized carrier, return receipt
163 requested to the address where the subject vehicle was
164 purchased or leased or where the subject transaction
165 occurred, or any address at which the dealer regularly
166 conducts business."

167 Section 3. This act shall take effect July 1, 2013.