

A bill to be entitled

An act relating to deceptive and unfair trade practices; amending s. 501.975, F.S.; conforming provisions; creating s. 501.98, F.S.; requiring a claimant to provide a demand letter to the motor vehicle dealer as a condition precedent to initiating civil litigation against such dealer under the Florida Deceptive and Unfair Trade Practices Act; providing for the tolling of applicable time limitations for initiating actions; providing an additional opportunity for claimants to comply with specified provisions; providing a condition that constitutes waiver of notice; providing for applicability; requiring that a specified notice be provided to consumers before provisions may apply; providing an effective date.

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

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

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

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

(2) "Dealer" means a motor vehicle dealer as defined in s. 320.27, but does not include a motor vehicle auction as defined in s. 320.27(1)(c)4.

(3) "Replacement item" means a tire, bumper, bumper

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

38 (4) "Threshold amount" means 3 percent of the
 39 manufacturer's suggested retail price of a motor vehicle or
 40 \$650, whichever is less.

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

46 Section 2. Section 501.98, Florida Statutes, is created to
 47 read:

48 501.98 Demand letter.-

49 (1) As a condition precedent to initiating any civil
 50 litigation arising under this chapter against a motor vehicle
 51 dealer, which may also include its employees, agents,
 52 principals, sureties, and insurers, a claimant must give the
 53 dealer written notice of the claimant's intent to initiate such
 54 litigation at least 30 days before initiating the litigation.

55 (2) The demand letter, which must be completed in good
 56 faith, must:

57 (a) State the name, address, and telephone number of the
58 claimant.

59 (b) State the name, address, and telephone number of the
60 dealer.

61 (c) Describe the underlying facts of the claim, including
62 a comprehensive and detailed statement describing each item for
63 which actual damages are claimed.

64 (d) To the extent available, be accompanied by all
65 transaction or other documents upon which the claim is based.

66
67 In any challenge to the claimant's compliance with this
68 subsection, the demand letter shall be deemed satisfactory if it
69 contains sufficient information to adequately put the dealer on
70 notice of the nature of the claim and the relief sought.

71 (3) The demand letter must be delivered to the dealer by
72 the United States Postal Service or by a nationally recognized
73 carrier, return receipt requested. If the dealer is a corporate
74 entity, the demand letter must be sent to any officer, director,
75 or manager of the dealer as reported in the dealer's most recent
76 annual report to the Secretary of State.

77 (4) Notwithstanding any provision of this chapter:

78 (a) A claimant may not initiate civil litigation against a
79 dealer or its employees, agents, principals, sureties, or
80 insurers for a claim arising under this chapter related to, or
81 in connection with, the transaction or event described in the
82 demand letter if, within 30 business days after receipt of the
83 demand letter, the dealer pays the claimant the amount sought in
84 the demand letter, plus a surcharge equal to the lesser of \$500,

85 or 10 percent of the amount contained in the demand letter.

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

90 1. The dealer, within 30 business days after receipt of
 91 the demand letter, notifies the claimant in writing, and a court
 92 agrees, that the amount sought in the demand letter is not
 93 supported by the facts of the transaction or event described in
 94 the demand letter or if the demand letter includes items not
 95 properly recoverable under this chapter; or

96 2. The claimant fails to materially comply with this
 97 section; however, to the extent that there is a challenge to the
 98 sufficiency of the demand letter, the demand letter shall be
 99 deemed satisfactory if it contains sufficient information to
 100 adequately put the dealer on notice of the nature of the claim
 101 and the relief sought such that it could appropriately respond.

102 (5) Payment or offer of payment of the damages claimed in
 103 the demand letter as set forth in this section:

104 (a) Does not constitute an admission of any wrongdoing or
 105 liability by the dealer.

106 (b) Is protected under s. 90.408 from introduction as
 107 evidence during any civil litigation.

108 (c) Releases the dealer and its employees, agents,
 109 principals, sureties, and insurers from any claim, suit, action,
 110 or other action that could be brought arising out of, or in
 111 connection with, the specific transaction, event, or occurrence
 112 described in the demand letter.

113 (6) The applicable time limitations for initiating an
114 action under this chapter are tolled for 30 days after the date
115 of delivery to the dealer pursuant to subsection (3), or such
116 other period agreed to by the parties in writing.

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

120 (8) This section applies only to civil litigation arising
121 out of a transaction for which the dealer has provided the
122 following notice to the consumer:

123
124 "Section 501.98, Florida Statutes, requires that, at least
125 30 days before bringing any claim against a motor vehicle
126 dealer for an unfair or deceptive trade practice, a
127 consumer must provide the dealer with written notice
128 stating the name, address, and telephone number of the
129 consumer; the name and address of the dealer; a description
130 of the facts that serve as the basis for the claim; the
131 amount of damages claimed; and copies of any documents in
132 the possession of the consumer which relate to the claim.
133 Such notice must be delivered by the United State Postal
134 Service or any nationally recognized carrier, return
135 receipt requested. Such notice must be provided to the
136 dealer, or, if the dealer is a corporate entity, an
137 officer, director, or manager of the dealer as reported by
138 the Florida Division of Corporations at: (...insert current
139 Internet website address of the Division of Corporations of
140 the Department of State...)."

HB 55

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