

1                                   A bill to be entitled  
 2           An act relating to deceptive and unfair trade  
 3           practices; amending s. 501.975, F.S.; conforming  
 4           provisions; 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 the tolling of applicable time limitations for  
 10          initiating actions; providing an additional  
 11          opportunity for claimants to comply with specified  
 12          provisions; providing a condition that constitutes  
 13          waiver of notice; providing for applicability;  
 14          requiring that a specified notice be provided to  
 15          consumers before provisions may apply; providing an  
 16          effective date.

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

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

22           501.975   Definitions.—As used in this part ~~s. 501.976~~, the  
 23   term ~~following terms shall have the following meanings:~~

- 24           (1)   "Customer" includes a customer's designated agent.  
 25           (2)   "Dealer" means a motor vehicle dealer as defined in s.  
 26   320.27, but does not include a motor vehicle auction as defined  
 27   in s. 320.27(1)(c)4.  
 28           (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 detailed statement describing each item for which actual  
 63 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 (e) State the amount of damages claimed.

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

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

78 (4) Notwithstanding any provision of this chapter:

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

85 the demand letter, plus a surcharge equal to the lesser of \$500,  
86 or 10 percent of the amount contained in the demand letter.

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

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

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

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

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

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

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

113 described in the demand letter.

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

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

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

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

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141 | the Department of State...)."

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