

By Senator Richter

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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.; 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 requirements for the
11 demand letter; providing that a dealer and its
12 employees, agents, principals, sureties, and insurers
13 are not required to pay attorney fees in certain
14 circumstances; providing that payment or offer of
15 payment of the damages does not constitute an
16 admission of wrongdoing or liability, is protected
17 from introduction as evidence in a civil litigation,
18 and releases the dealer from any claim, suit, and
19 action; providing for applicability; requiring that a
20 specified notice be provided to consumers before
21 provisions may apply; providing an effective date.

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

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

27 501.975 Definitions.—As used in this part ~~s. 501.976~~, the
28 term ~~following terms shall have the following meanings:~~

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

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30 (2) "Dealer" means a motor vehicle dealer as defined in s.
31 320.27, but does not include a motor vehicle auction as defined
32 in s. 320.27(1)(c)4.

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

43 (4) "Threshold amount" means 3 percent of the
44 manufacturer's suggested retail price of a motor vehicle or
45 \$650, whichever is less.

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

51 Section 2. Section 501.98, Florida Statutes, is created to
52 read:

53 501.98 Demand letter.-

54 (1) As a condition precedent to initiating any civil
55 litigation arising under this chapter against a motor vehicle
56 dealer, which may also include its employees, agents,
57 principals, sureties, and insurers, a claimant must give the
58 dealer written notice of the claimant's intent to initiate such

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59 litigation at least 30 days before initiating the litigation.

60 (2) The demand letter, which must be completed in good
61 faith, must:

62 (a) State the name, address, and telephone number of the
63 claimant.

64 (b) State the name, address, and telephone number of the
65 dealer.

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

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

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

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

82 (4) Notwithstanding any provision of this chapter:

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

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88 demand letter, the dealer pays the claimant the amount sought in
89 the demand letter, plus a surcharge equal to the lesser of \$500
90 or 10 percent of the amount contained in the demand letter.

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

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

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

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

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

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

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

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

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

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

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

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