

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.