

Bill No. SB 344

Amendment No. ____ Barcode 551186

	CHAMBER ACTION	
<u>Senate</u>		<u>House</u>

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Senator Campbell moved the following amendment:

Senate Amendment (with title amendment)

On page 1, line 12,

insert:

Section 1. Section 501.976, Florida Statutes, is amended to read:

501.976 Actionable, unfair, or deceptive acts or practices.--It is an unfair or deceptive act or practice, actionable under the Florida Deceptive and Unfair Trade Practices Act, for a dealer to:

(1) Represent directly or indirectly that a motor vehicle is a factory executive vehicle or executive vehicle unless such vehicle was purchased directly from the manufacturer or a subsidiary of the manufacturer and the vehicle was used exclusively by the manufacturer, its subsidiary, or a dealer for the commercial or personal use of the manufacturer's, subsidiary's, or dealer's employees.

(2) Represent directly or indirectly that a vehicle is a demonstrator unless the vehicle was driven by prospective

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1 customers of a dealership selling the vehicle and such vehicle
2 complies with the definition of a demonstrator in s.
3 320.60(3).

4 (3) Represent the previous usage or status of a
5 vehicle to be something that it was not, or make usage or
6 status representations unless the dealer has correct
7 information regarding the history of the vehicle to support
8 the representations.

9 (4) Represent the quality of care, regularity of
10 servicing, or general condition of a vehicle unless known by
11 the dealer to be true and supportable by material fact.

12 (5) Represent orally or in writing that a particular
13 vehicle has not sustained structural or substantial skin
14 damage unless the statement is made in good faith and the
15 vehicle has been inspected by the dealer or his agent to
16 determine whether the vehicle has incurred such damage.

17 (6) Sell a vehicle without fully and conspicuously
18 disclosing in writing at or before the consummation of sale
19 any warranty or guarantee terms, obligations, or conditions
20 that the dealer or manufacturer has given to the buyer. If the
21 warranty obligations are to be shared by the dealer and the
22 buyer, the method of determining the percentage of repair
23 costs to be assumed by each party must be disclosed. If the
24 dealer intends to disclaim or limit any expressed or implied
25 warranty, the disclaimer must be in writing in a conspicuous
26 manner and in layman's terms in accordance with chapter 672
27 and the Magnuson-Moss Warranty--Federal Trade Commission
28 Improvement Act.

29 (7) Provide an express or implied warranty and fail to
30 honor such warranty unless properly disclaimed pursuant to
31 subsection (6).

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1 (8) Misrepresent warranty coverage, application
2 period, or any warranty transfer cost or conditions to a
3 customer.

4 (9) Obtain signatures from a customer on contracts
5 that are not fully completed at the time the customer signs or
6 which do not reflect accurately the negotiations and agreement
7 between the customer and the dealer.

8 (10) Require or accept a deposit from a prospective
9 customer prior to entering into a binding contract for the
10 purchase and sale of a vehicle unless the customer is given a
11 written receipt that states how long the dealer will hold the
12 vehicle from other sale and the amount of the deposit, and
13 clearly and conspicuously states whether and upon what
14 conditions the deposit is refundable or nonrefundable.

15 (11) Add to the cash price of a vehicle as defined in
16 s. 520.02(2) any fee or charge other than those provided in
17 that section and in rule 3D-50.001, Florida Administrative
18 Code. All fees or charges permitted to be added to the cash
19 price by rule 3D-50.001, Florida Administrative Code, must be
20 fully disclosed to customers in all binding contracts
21 concerning the vehicle's selling price.

22 (12) Alter or change the odometer mileage of a
23 vehicle.

24 (13) Sell a vehicle without disclosing to the customer
25 the actual year and model of the vehicle.

26 (14) File a lien against a new vehicle purchased with
27 a check unless the dealer fully discloses to the purchaser
28 that a lien will be filed if purchase is made by check and
29 fully discloses to the buyer the procedures and cost to the
30 buyer for gaining title to the vehicle after the lien is
31 filed.

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1 (15) Increase the price of the vehicle after having
2 accepted an order of purchase or a contract from a buyer,
3 notwithstanding subsequent receipt of an official price change
4 notification. The price of a vehicle may be increased after a
5 dealer accepts an order of purchase or a contract from a buyer
6 if:

7 (a) A trade-in vehicle is reappraised because it
8 subsequently is damaged, or parts or accessories are removed;

9 (b) The price increase is caused by the addition of
10 new equipment, as required by state or federal law;

11 (c) The price increase is caused by the revaluation of
12 the United States dollar by the Federal Government, in the
13 case of a foreign-made vehicle;

14 (d) The price increase is caused by state or federal
15 tax rate changes; or

16 (e) Price protection is not provided by the
17 manufacturer, importer, or distributor.

18 (16) Advertise the price of a vehicle unless the
19 vehicle is identified by year, make, model, and a commonly
20 accepted trade, brand, or style name. The advertised price
21 must include all fees or charges that the customer must pay,
22 including freight or destination charge, dealer preparation
23 charge, and charges for undercoating or rustproofing. State
24 and local taxes, tags, registration fees, and title fees,
25 unless otherwise required by local law or standard, need not
26 be disclosed in the advertisement. When two or more dealers
27 advertise jointly, with or without participation of the
28 franchiser, the advertised price need not include fees and
29 charges that are variable among the individual dealers
30 cooperating in the advertisement, but the nature of all
31 charges that are not included in the advertised price must be

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1 disclosed in the advertisement.

2 (17) Charge a customer for any predelivery service
3 required by the manufacturer, distributor, or importer for
4 which the dealer is reimbursed by the manufacturer,
5 distributor, or importer.

6 (18) Charge a customer for any predelivery service
7 without having printed on all documents that include a line
8 item for predelivery service the following disclosure: "This
9 charge represents costs and profit to the dealer for items
10 such as inspecting, cleaning, and adjusting vehicles, and
11 preparing documents related to the sale."

12 (19) Add an additional charge for predelivery service
13 other than those shown on a conspicuous label attached to the
14 window of the vehicle specifying any charges for predelivery
15 services and describing the charges as predelivery services,
16 delivery and handling, dealer preparation, or in similar terms
17 the dealer's charge for each dealer-installed option, and a
18 total price line.

19 (20) Fail to disclose damage to a new motor vehicle,
20 as defined in s. 319.001(4), of which the dealer had actual
21 knowledge, if the dealer's actual cost of repairs exceeds the
22 threshold amount, excluding replacement items.

23
24 In any civil litigation resulting from a violation of this
25 section, when evaluating the reasonableness of an award of
26 attorney's fees to a private person, the trial court shall
27 consider the amount of actual damages in relation to the time
28 spent; the time and labor required, the novelty, complexity,
29 and difficulty of the questions involved, and the skill
30 requisite to perform the legal service properly; the
31 likelihood that the acceptance of the particular employment

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1 will preclude other employment by the lawyer; the fee, or rate
2 of fee, customarily charged in the locality for legal services
3 of a comparable or similar nature; the significance of, or
4 amount involved in, the subject matter of the representation;
5 the responsibility involved in the representation and the
6 results obtained; the time limitations imposed by the client
7 or by the circumstances and, as between attorney and client,
8 any additional or special time demands or requests of the
9 attorney by the client; the nature and length of the
10 professional relationship with the client; the experience,
11 reputation, diligence, and ability of the lawyer or lawyers
12 performing the service, and the skill, expertise, or
13 efficiency of the effort reflected in the actual providing of
14 such services; and whether the fee is fixed or contingent and,
15 if fixed as to amount or rate, whether the client's ability to
16 pay rested any significant degree on the outcome of
17 representation.

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19 (Redesignate subsequent sections.)

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21
22 ===== T I T L E A M E N D M E N T =====

23 And the title is amended as follows:

24 On page 1, line 2, delete that line

25
26 and insert:

27 An act relating to deceptive and unfair trade
28 practices; amending s. 501.976, F.S.; providing
29 additional factors for the court to consider in
30 evaluating the reasonableness of an award of
31 attorney's fees in civil litigation involving

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an unfair or deceptive act or practice;
repealing s.