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A bill to be entitled
 An act relating to deceptive and unfair trade practices;
 amending s. 501.212, F.S.; expanding certain
 nonapplication provisions relating to certain real estate
 practices to include persons or private parties seeking
 certain relief under certain circumstances; providing an
 exception; amending s. 501.975, F.S.; expanding
 application of certain definitions; creating s. 501.977,
 F.S.; specifying procedures and requirements for bringing
 certain actions against dealers by entities other than the
 enforcing authority under certain circumstances; limiting
 actions for damages or declaratory or injunctive relief
 under certain circumstances; limiting awards of attorney's
 fees and costs under certain circumstances; providing
 procedures and requirements for consents by dealers under
 certain circumstances; providing for determinations of
 certain damages under such consents; providing
 limitations; specifying effects of such consents;
 providing for awarding attorney's fees and costs under
 certain circumstances; providing limitations; providing an
 effective date.

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

Section 1. Subsection (6) of section 501.212, Florida
 Statutes, is amended to read:

501.212 Application.--This part does not apply to:

(6) An act or practice involving the sale, lease, rental,
 or appraisal of real estate by a person licensed, certified, or

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30 registered pursuant to chapter 475, which act or practice
 31 violates s. 475.42 or s. 475.626, or to persons or private
 32 parties seeking relief for actions pertaining to the ownership,
 33 use, maintenance, development, or possession of, or a lien of
 34 record upon, real property located in this state if the parties
 35 to the action executed a written contract or agreement that
 36 expressly provides for the process of resolution of any dispute
 37 or the award of damages, attorney's fees, and costs, if any, or
 38 if the real property contract, agreement, or undertaking which is
 39 the subject of a dispute is otherwise specifically covered or
 40 regulated by the laws of this state. However, nothing in this
 41 subsection is intended to prohibit the enforcing authority from
 42 retaining exclusive jurisdiction to bring any cause of action
 43 authorized under s. 501.207, and to seek any civil penalties
 44 authorized under s. 501.2075, for actions pertaining to the
 45 ownership, use, maintenance, development, or possession of, or a
 46 lien of record upon, real property located in this state.

47 Section 2. Section 501.975, Florida Statutes, is amended
 48 to read:

49 501.975 Definitions.--As used in ss. ~~s.~~ 501.976 and
 50 501.977, the following terms shall have the following meanings:

- 51 (1) "Customer" includes a customer's designated agent.
- 52 (2) "Dealer" means a motor vehicle dealer as defined in s.
 53 320.27, but does not include a motor vehicle auction as defined
 54 in s. 320.27(1)(c)4.
- 55 (3) "Replacement item" means a tire, bumper, bumper
 56 fascia, glass, in-dashboard equipment, seat or upholstery cover
 57 or trim, exterior illumination unit, grill, sunroof, external
 58 mirror and external body cladding. The replacement of up to

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59 three of these items does not constitute repair of damage if
 60 each item is replaced because of a product defect or damaged due
 61 to vandalism while the new motor vehicle is under the control of
 62 the dealer and the items are replaced with original manufacturer
 63 equipment, unless an item is replaced due to a crash, collision,
 64 or accident.

65 (4) "Threshold amount" means 3 percent of the
 66 manufacturer's suggested retail price of a motor vehicle or
 67 \$650, whichever is less.

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

73 Section 3. Section 501.977, Florida Statutes, is created to
 74 read:

75 501.977 Claimant's early recovery; speedy resolution.--With
 76 respect to any action brought under this part by an entity other
 77 than the enforcing authority against a dealer and notwithstanding
 78 any other provision of law:

79 (1) At least 30 days before filing an action under this
 80 part, the party initiating the action must serve, via certified
 81 mail, a written demand upon the dealer.

82 (a) Such demand must in good faith:

83 1. Indicate that the demand is being made pursuant to this
 84 part.

85 2. Specifically describe the alleged violation.

86 3. If damages are being sought, state the actual damages
 87 recoverable under this part and suffered as a result of the

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88 alleged violation, with an explanation for the computation
 89 thereof, and afford the dealer 30 days within which to pay the
 90 aggrieved person such damages.

91 4. If injunctive relief is being sought, specifically state
 92 the practice sought to be enjoined and afford the dealer 30 days
 93 within which to agree to cease and desist from further engaging
 94 in such practice.

95 (b) No action for damages shall be brought against a dealer
 96 under this part if the dealer has, within the 30-day time period,
 97 paid the damages sought by an aggrieved person pursuant to a
 98 demand made pursuant to paragraph (a). Such payment shall not
 99 serve as an admission by the dealer of any wrongdoing or
 100 violation of this part and shall serve to release the dealer from
 101 any damage claim of the aggrieved person under this part in
 102 connection with the transaction described in the demand.

103 (c) No action for declaratory or injunctive relief shall be
 104 brought under this part if the dealer has, within the 30-day time
 105 period, agreed to cease and desist from further engaging in the
 106 practice complained of in a demand made pursuant to paragraph
 107 (a). The agreement by the dealer to cease and desist shall:

108 1. Not serve as an admission by the dealer of any
 109 wrongdoing or violation of this part.

110 2. Be served on the aggrieved person within the 30-day time
 111 period.

112 3. Be forwarded by the dealer to the Department of Legal
 113 Affairs, together with a copy of the demand, and have the same
 114 effect and be enforced by the enforcing authority as if the
 115 agreement were an order under s. 501.208.

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116 (d) If the dealer rejects the demand, the party initiating
 117 the claim shall not be entitled to recover his or her reasonable
 118 attorney's fees and costs if:

119 1. The demand made under this part was not made in good
 120 faith; or

121 2. The judgment obtained for actual damages, not including
 122 attorney's fees and costs, is not at least 75 percent of the
 123 actual damages sought in the demand.

124 (2) Any time after the filing of an action under this
 125 part, but no later than 60 days before trial, the dealer may
 126 file a consent to the relief sought in such action.

127 (a) The consent may be directed to any one or more claims
 128 of a violation of this part asserted by the aggrieved party but
 129 need not be made as to all claims of violation of this part.

130 (b) With the filing of the consent, the consenting party
 131 shall:

132 1. With respect to any damage claim, pay the aggrieved
 133 party, contemporaneously with the filing of the consent, the
 134 actual damages described in the demand in subsection (1) or any
 135 lesser amount stated by the aggrieved party via interrogatory or
 136 deposition or, if the consenting party disputes the amount of
 137 actual damages sought under this part, the consenting party may
 138 request a summary procedure with respect to the issue of damages
 139 only in which the court shall, on an expedited basis, determine
 140 the actual damages recoverable under this part.

141 2. With respect to any claim for declaratory or injunctive
 142 relief, agree to such relief as specifically requested in the
 143 complaint or, if the consenting party disputes the scope of such
 144 requested relief, request a summary procedure in which the court

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145 shall, without further discovery, determine and impose the
146 appropriate and specific relief available under this part.

147 (c) In connection with a requested summary procedure to
148 determine actual damages, the court shall:

149 1. Establish what limited discovery, if any, is to be
150 taken, if not already taken, recognizing the limited purpose of
151 the proceeding.

152 2. After an evidentiary hearing, enter an order finding,
153 based on a preponderance of the evidence, the amount of actual
154 damages suffered under this part as if a violation had occurred.

155 3. Afford the dealer 30 days after the date of such order
156 within which to pay the actual damages determined. While a
157 dealer may file more than one consent during the course of the
158 proceedings and during such summary procedures more than one
159 consent may be heard, the dealer may only make one request for a
160 summary procedure in the course of litigating an action brought
161 pursuant to this part.

162 (d) A consent shall not serve as an admission by the
163 dealer of any wrongdoing or violation of this part and shall
164 serve to release the dealer from any claim of the aggrieved
165 person under this part in connection with the transaction
166 described in the complaint. However, if the consent was limited
167 to less than all claims of the asserted violations of this part,
168 the release shall be limited to the specific violation described
169 in the consent. If the dealer fails to pay the actual damages as
170 provided in paragraph (c), judgment shall be entered against the
171 consenting party for such actual damages and such consent shall
172 be deemed an admission of wrongdoing and a violation of this
173 part.

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174 (e) The party in whose favor a consent is filed shall
 175 receive his or her reasonable attorney's fees and costs from the
 176 dealer. However, such fees and costs shall not be recoverable if:
 177 1. The demand in subsection (1) was not made in good faith;
 178 or
 179 2. The amount paid pursuant to subsection (2), not
 180 including attorney's fees and costs, is not at least 75 percent
 181 of the actual damages sought in the demand made pursuant to
 182 subsection (1).

183 Section 4. This act shall take effect July 1, 2004.