

CHAMBER ACTION

1 The Committee on Judiciary recommends the following:

2
3 **Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to deceptive and unfair trade practices;
7 amending s. 501.212, F.S.; expanding certain
8 nonapplication provisions relating to certain real estate
9 practices to include persons or private parties seeking
10 certain relief under certain circumstances; providing an
11 exception; amending s. 501.975, F.S.; expanding
12 application of certain definitions; creating s. 501.977,
13 F.S.; specifying procedures and requirements for bringing
14 certain actions against motor vehicle dealers by persons
15 other than the enforcing authority under certain
16 circumstances; limiting actions for damages or declaratory
17 or injunctive relief under certain circumstances; limiting
18 awards of attorney's fees and costs under certain
19 circumstances; providing procedures and requirements for a
20 dealer's acceptance of a demand under certain
21 circumstances; providing for determinations of certain
22 damages under such accepted demands; providing
23 limitations; specifying effects of accepting such demands;

HB 1181

2004
CS

24 providing for awarding attorney's fees and costs under
 25 certain circumstances; providing limitations; providing
 26 for application to class actions; providing limitations;
 27 providing an effective date.

28

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

30

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

33 501.212 Application.--This part does not apply to:

34 (6) An act or practice involving the sale, lease, rental,
 35 or appraisal of real estate by a person licensed, certified, or
 36 registered pursuant to chapter 475, which act or practice
 37 violates s. 475.42 or s. 475.626, or to persons or private
 38 parties seeking relief for actions pertaining to the commercial
 39 ownership, use, maintenance, development, or possession of, or a
 40 lien of record upon, real property located in this state if the
 41 parties to the action executed a written contract or agreement
 42 that expressly provides for the process of resolution of any
 43 dispute and the award of damages, attorney's fees, and costs, if
 44 any, or if the action is one that concerns maintenance of
 45 property and there are provisions of law that specifically
 46 require the owner of the property to comply with applicable
 47 building, housing, and health codes and maintain common areas in
 48 a good state of repair, appearance, safety, and cleanliness, and
 49 if the owner's failure to comply may result in legal or
 50 equitable remedies, including the award of attorney's fees.
 51 However, nothing in this subsection is intended to prohibit the

52 enforcing authority from retaining exclusive jurisdiction to
 53 bring any cause of action authorized under s. 501.207, and to
 54 seek any civil penalties authorized under s. 501.2075, for
 55 actions pertaining to the ownership, use, maintenance,
 56 development, or possession of, or a lien of record upon, real
 57 property located in this state.

58 Section 2. Section 501.975, Florida Statutes, is amended
 59 to read:

60 501.975 Definitions.--As used in ss. ~~s.~~ 501.976 and
 61 501.977, the following terms shall have the following meanings:

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

63 (2) "Dealer" means a motor vehicle dealer as defined in s.
 64 320.27, but does not include a motor vehicle auction as defined
 65 in s. 320.27(1)(c)4.

66 (3) "Replacement item" means a tire, bumper, bumper
 67 fascia, glass, in-dashboard equipment, seat or upholstery cover
 68 or trim, exterior illumination unit, grill, sunroof, external
 69 mirror and external body cladding. The replacement of up to
 70 three of these items does not constitute repair of damage if
 71 each item is replaced because of a product defect or damaged due
 72 to vandalism while the new motor vehicle is under the control of
 73 the dealer and the items are replaced with original manufacturer
 74 equipment, unless an item is replaced due to a crash, collision,
 75 or accident.

76 (4) "Threshold amount" means 3 percent of the
 77 manufacturer's suggested retail price of a motor vehicle or
 78 \$650, whichever is less.

HB 1181

2004
CS

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

84 Section 3. Section 501.977, Florida Statutes, is created
85 to read:

86 501.977 Claimant's early recovery; speedy
87 resolution.--With respect to any action brought under this part
88 by a person other than the enforcing authority against a dealer
89 and notwithstanding any other provision of law:

90 (1) At least 30 days before filing an action under this
91 part, the party initiating the action must serve, via certified
92 mail, a written demand upon the dealer. Such demand must:

93 (a) Be made in good faith.

94 (b) Indicate that the demand is being made pursuant to
95 this part.

96 (c) Specifically describe the alleged violation.

97 (d) If damages are being sought, state the actual damages
98 recoverable under this part and suffered as a result of the
99 alleged violation, with an explanation for the computation
100 thereof.

101 (e) If injunctive relief is being sought, specifically
102 state the practice sought to be enjoined and afford the dealer
103 30 days within which to agree to cease and desist from further
104 engaging in such practice.

105 (2) No action for damages shall be brought against a
106 dealer under this part if the dealer, within 30 days after

107 receiving the demand made pursuant to subsection (1), pays the
 108 damages sought by a claimant pursuant to the demand. Such
 109 payment shall not serve as an admission by the dealer of any
 110 wrongdoing or violation of this part and shall serve to release
 111 the dealer from any damage claim of the claimant under this part
 112 in connection with the specific violation described in the
 113 demand.

114 (3) No action for declaratory or injunctive relief shall
 115 be brought under this part if the dealer, within 30 days after
 116 receiving the demand made pursuant to subsection (1), agrees to
 117 cease and desist from further engaging in the practice
 118 complained of in the demand. The agreement by the dealer to
 119 cease and desist shall:

120 (a) Not serve as an admission by the dealer of any
 121 wrongdoing or violation of this part.

122 (b) Be forwarded by the dealer to the Department of Legal
 123 Affairs, together with a copy of the demand, and have the same
 124 effect and be enforced by the enforcing authority as if the
 125 agreement were an order under s. 501.208.

126 (4) At any time prior to the dealer accepting a demand
 127 served by a claimant pursuant to subsection (1), but not later
 128 than 90 days prior to the date of trial, the claimant may serve
 129 the dealer with an amended demand.

130 (5) With respect to an action for damages that has been
 131 instituted seeking relief under this part, a dealer may accept
 132 the latest demand at any time prior to 60 days before trial by
 133 paying the amount demanded. The effect of such payment shall be
 134 the same as if the payment had been made in accordance with

HB 1181

2004
CS

135 subsection (2). With respect to an action for injunctive relief
136 under this part, a dealer may accept the latest demand at any
137 time prior to 60 days before trial by agreeing to cease and
138 desist from further engaging in the practice complained of in
139 the latest demand. Such agreement to cease and desist shall be
140 treated and be the same as if it had been made in accordance
141 with subsection (3). Upon acceptance by the dealer of the latest
142 demand, the complainant shall be entitled to recover reasonable
143 attorney's fees and costs through the date of acceptance.

144 (6) Notwithstanding any other provision of this section,
145 in a claim for damages, if the dealer does not accept the latest
146 demand served by a claimant and the claimant prevails, the
147 claimant shall be entitled to recover his or her reasonable
148 attorney's fees and costs only if the judgment obtained for
149 actual damages recoverable under this part, excluding attorney's
150 fees, costs, and prejudgment interest after the date of the
151 filing of the action, exceeds 75 percent of the largest monetary
152 demand made in accordance with subsections (1) and (4).

153 (7) Notwithstanding any other provision of law, this
154 section shall apply to class action claims subject to the
155 following limitations:

156 (a) The demand shall be made both as to the named
157 plaintiff or plaintiffs and the putative class, which shall be
158 defined.

159 (b) The dealer cannot accept the demand as to the named
160 plaintiff or plaintiffs alone unless the court enters an order
161 denying the certification of the class action or the class claim
162 is otherwise dismissed.

HB 1181

2004
CS

163 (c) If the dealer accepts the demand as to the entire
164 class within 30 days after the dealer's receipt of the demand,
165 any consideration agreed to be paid by the dealer pursuant to
166 the demand shall not be paid until an action is filed under this
167 part and the settlement is approved by a court of competent
168 jurisdiction. Such action shall be for the sole purpose of
169 administering the agreed-upon class action settlement subject to
170 the court's discretion to assess the reasonableness and fairness
171 of the class settlement. If the court finds the settlement to be
172 unreasonable or unfair to the class, the action shall be
173 dismissed without prejudice. Notwithstanding this paragraph, the
174 dealer shall bear the costs of the action, including the cost of
175 administering the settlement and notification to class members,
176 and the complainant shall be entitled to recover reasonable
177 attorney's fees and costs.

178 (d) If the dealer accepts the demand after the initiation
179 of the action under this part, such acceptance shall have the
180 same effect as a conditional settlement of a class action claim
181 subject to court approval. If the court rejects the conditional
182 settlement, the acceptance shall be considered null and void.
183 Otherwise, the dealer shall bear the costs of the action,
184 including the cost of administering the settlement and
185 notification to class members, and the complainant shall be
186 entitled to recover reasonable attorney's fees and costs.

187 (e) If a class claim is not certified or the class claim
188 is dismissed, the named plaintiff or plaintiffs shall not
189 recover attorney's fees and costs related to the class action
190 component of the claim.

HB 1181

2004
CS

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