

By Senator Bennett

21-1350A-04

See HB 1181

1                                   A bill to be entitled

2           An act relating to deceptive and unfair trade

3           practices; amending s. 501.212, F.S.; expanding

4           certain nonapplication provisions relating to

5           certain real estate practices to include

6           persons or private parties seeking certain

7           relief under certain circumstances; providing

8           an exception; amending s. 501.975, F.S.;

9           expanding application of certain definitions;

10          creating s. 501.977, F.S.; specifying

11          procedures and requirements for bringing

12          certain actions against dealers by entities

13          other than the enforcing authority under

14          certain circumstances; limiting actions for

15          damages or declaratory or injunctive relief

16          under certain circumstances; limiting awards of

17          attorney's fees and costs under certain

18          circumstances; providing procedures and

19          requirements for consents by dealers under

20          certain circumstances; providing for

21          determinations of certain damages under such

22          consents; providing limitations; specifying

23          effects of such consents; providing for

24          awarding attorney's fees and costs under

25          certain circumstances; providing limitations;

26          providing an effective date.

27

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

29

30           Section 1. Subsection (6) of section 501.212, Florida

31 Statutes, is amended to read:

1           501.212 Application.--This part does not apply to:  
2           (6) An act or practice involving the sale, lease,  
3 rental, or appraisal of real estate by a person licensed,  
4 certified, or registered pursuant to chapter 475, which act or  
5 practice violates s. 475.42 or s. 475.626, or to persons or  
6 private parties seeking relief for actions pertaining to the  
7 ownership, use, maintenance, development, or possession of, or  
8 a lien of record upon, real property located in this state if  
9 the parties to the action executed a written contract or  
10 agreement that expressly provides for the process of  
11 resolution of any dispute or the award of damages, attorney's  
12 fees, and costs, if any, or if the real property contract,  
13 agreement, or undertaking which is the subject of a dispute is  
14 otherwise specifically covered or regulated by the laws of  
15 this state. However, nothing in this subsection is intended to  
16 prohibit the enforcing authority from retaining exclusive  
17 jurisdiction to bring any cause of action authorized under s.  
18 501.207, and to seek any civil penalties authorized under s.  
19 501.2075, for actions pertaining to the ownership, use,  
20 maintenance, development, or possession of, or a lien of  
21 record upon, real property located in this state.

22           Section 2. Section 501.975, Florida Statutes, is  
23 amended to read:

24           501.975 Definitions.--As used in ~~ss.~~s.501.976 and  
25 501.977, the following terms shall have the following  
26 meanings:

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

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

31

1           (3) "Replacement item" means a tire, bumper, bumper  
2 fascia, glass, in-dashboard equipment, seat or upholstery  
3 cover or trim, exterior illumination unit, grill, sunroof,  
4 external mirror and external body cladding. The replacement of  
5 up to three of these items does not constitute repair of  
6 damage if each item is replaced because of a product defect or  
7 damaged due to vandalism while the new motor vehicle is under  
8 the control of the dealer and the items are replaced with  
9 original manufacturer equipment, unless an item is replaced  
10 due to a crash, collision, or accident.

11           (4) "Threshold amount" means 3 percent of the  
12 manufacturer's suggested retail price of a motor vehicle or  
13 \$650, whichever is less.

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

19           Section 3. Section 501.977, Florida Statutes, is  
20 created to read:

21           501.977 Claimant's early recovery; speedy  
22 resolution.--With respect to any action brought under this  
23 part by an entity other than the enforcing authority against a  
24 dealer and notwithstanding any other provision of law:

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

28           (a) Such demand must in good faith:

29           1. Indicate that the demand is being made pursuant to  
30 this part.

31           2. Specifically describe the alleged violation.

1           3. If damages are being sought, state the actual  
2 damages recoverable under this part and suffered as a result  
3 of the alleged violation, with an explanation for the  
4 computation thereof, and afford the dealer 30 days within  
5 which to pay the aggrieved person such damages.

6           4. If injunctive relief is being sought, specifically  
7 state the practice sought to be enjoined and afford the dealer  
8 30 days within which to agree to cease and desist from further  
9 engaging in such practice.

10           (b) No action for damages shall be brought against a  
11 dealer under this part if the dealer has, within the 30-day  
12 time period, paid the damages sought by an aggrieved person  
13 pursuant to a demand made pursuant to paragraph (a). Such  
14 payment shall not serve as an admission by the dealer of any  
15 wrongdoing or violation of this part and shall serve to  
16 release the dealer from any damage claim of the aggrieved  
17 person under this part in connection with the transaction  
18 described in the demand.

19           (c) No action for declaratory or injunctive relief  
20 shall be brought under this part if the dealer has, within the  
21 30-day time period, agreed to cease and desist from further  
22 engaging in the practice complained of in a demand made  
23 pursuant to paragraph (a). The agreement by the dealer to  
24 cease and desist shall:

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

27           2. Be served on the aggrieved person within the 30-day  
28 time period.

29           3. Be forwarded by the dealer to the Department of  
30 Legal Affairs, together with a copy of the demand, and have

31

1 the same effect and be enforced by the enforcing authority as  
2 if the agreement were an order under s. 501.208.

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

6 1. The demand made under this part was not made in  
7 good faith; or

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

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

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

18 (b) With the filing of the consent, the consenting  
19 party shall:

20 1. With respect to any damage claim, pay the aggrieved  
21 party, contemporaneously with the filing of the consent, the  
22 actual damages described in the demand in subsection (1) or  
23 any lesser amount stated by the aggrieved party via  
24 interrogatory or deposition or, if the consenting party  
25 disputes the amount of actual damages sought under this part,  
26 the consenting party may request a summary procedure with  
27 respect to the issue of damages only in which the court shall,  
28 on an expedited basis, determine the actual damages  
29 recoverable under this part.

30 2. With respect to any claim for declaratory or  
31 injunctive relief, agree to such relief as specifically

1 requested in the complaint or, if the consenting party  
2 disputes the scope of such requested relief, request a summary  
3 procedure in which the court shall, without further discovery,  
4 determine and impose the appropriate and specific relief  
5 available under this part.

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

8 1. Establish what limited discovery, if any, is to be  
9 taken, if not already taken, recognizing the limited purpose  
10 of the proceeding.

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

15 3. Afford the dealer 30 days after the date of such  
16 order within which to pay the actual damages determined. While  
17 a dealer may file more than one consent during the course of  
18 the proceedings and during such summary procedures more than  
19 one consent may be heard, the dealer may only make one request  
20 for a summary procedure in the course of litigating an action  
21 brought pursuant to this part.

22 (d) A consent shall not serve as an admission by the  
23 dealer of any wrongdoing or violation of this part and shall  
24 serve to release the dealer from any claim of the aggrieved  
25 person under this part in connection with the transaction  
26 described in the complaint. However, if the consent was  
27 limited to less than all claims of the asserted violations of  
28 this part, the release shall be limited to the specific  
29 violation described in the consent. If the dealer fails to pay  
30 the actual damages as provided in paragraph (c), judgment  
31 shall be entered against the consenting party for such actual

1 damages and such consent shall be deemed an admission of  
2 wrongdoing and a violation of this part.

3 (e) The party in whose favor a consent is filed shall  
4 receive his or her reasonable attorney's fees and costs from  
5 the dealer. However, such fees and costs shall not be  
6 recoverable if:

7 1. The demand in subsection (1) was not made in good  
8 faith; or

9 2. The amount paid pursuant to subsection (2), not  
10 including attorney's fees and costs, is not at least 75  
11 percent of the actual damages sought in the demand made  
12 pursuant to subsection (1).

13 Section 4. This act shall take effect July 1, 2004.  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31