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A bill to be entitled  
 An act relating to motor vehicle dealers; amending s.  
 501.212, F.S.; exempting certain claims against a motor  
 vehicle dealer from the provisions of the Florida  
 Deceptive and Unfair Trade Practices Act; amending s.  
 501.976, F.S.; removing a provision that certain acts by a  
 dealer are actionable under that act; revising acts by a  
 dealer that constitute unfair or deceptive acts or  
 practices; providing a restriction on certain civil  
 actions; providing complaint procedures; requiring a  
 presuit notice to the dealer; providing a form for the  
 notice; providing for satisfaction of complaint; providing  
 for award of certain costs to the prevailing party;  
 providing for posting of bond under certain circumstances;  
 defining "actual damages"; providing for application;  
 revising provisions for award of attorney's fees;  
 providing an effective date.

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

Section 1. Subsection (8) is added to section 501.212,  
 Florida Statutes, to read:

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

(8) A claim against a motor vehicle dealer as defined in  
 s. 320.27, except as described in s. 501.976.

Section 2. Section 501.976, Florida Statutes, is amended  
 to read:

28           501.976 Motor vehicle dealers; actionable, unfair, or  
 29 deceptive acts or practices.--

30           (1) It is an unfair or deceptive act or practice,  
 31 ~~actionable under the Florida Deceptive and Unfair Trade~~  
 32 ~~Practices Act,~~ for a dealer to:

33           (a)(1) Represent directly or indirectly that a motor  
 34 vehicle is a factory executive vehicle or executive vehicle  
 35 unless such vehicle was purchased directly from the manufacturer  
 36 or a subsidiary or distributor of the manufacturer and the  
 37 vehicle was used exclusively by the manufacturer, its subsidiary  
 38 or distributor, or a dealer for the commercial or personal use  
 39 of the manufacturer's, subsidiary's, or dealer's employees or  
 40 owners.

41           (b)(2) Represent directly or indirectly that a vehicle is  
 42 a demonstrator unless the vehicle complies with the definition  
 43 of a demonstrator in s. 320.60(3).

44           (c)(3) Represent the previous usage or status of a vehicle  
 45 to be something that it was not, or make usage or status  
 46 representations unless the representation is made in good faith  
 47 and the dealer has obtained ~~correct~~ information regarding the  
 48 history of the vehicle to support the representations the dealer  
 49 believes to be correct.

50           (d)(4) Represent the quality of care, regularity of  
 51 servicing, or general condition of a vehicle unless the  
 52 representation is made in good faith and the dealer has obtained  
 53 information to support the representation the dealer believes to  
 54 be correct ~~known by the dealer to be true and supportable by~~  
 55 ~~material fact~~.

56        (e)~~(5)~~ Represent orally or in writing that a particular  
57 vehicle has not sustained structural or substantial skin damage  
58 unless the statement is made in good faith and the vehicle has  
59 been inspected by the dealer or his or her agent to determine  
60 whether the vehicle has incurred such damage.

61        (f)~~(6)~~ Sell a vehicle without fully and conspicuously  
62 disclosing in writing at or before the consummation of sale any  
63 warranty or guarantee terms, obligations, or conditions that the  
64 dealer or manufacturer has given to the buyer. If the warranty  
65 obligations are to be shared by the dealer and the buyer, the  
66 method of determining the percentage of repair costs to be  
67 assumed by each party must be disclosed. If the dealer intends  
68 to disclaim or limit any expressed or implied warranty, the  
69 disclaimer must be in writing in a conspicuous manner and in lay  
70 terms in accordance with chapter 672 and the Magnuson-Moss  
71 Warranty--Federal Trade Commission Improvement Act.

72        (g)~~(7)~~ Provide an express or implied warranty and fail to  
73 honor such warranty unless properly disclaimed pursuant to  
74 paragraph (f) subsection (6).

75        (h)~~(8)~~ Misrepresent warranty coverage, application period,  
76 or any warranty transfer cost or conditions to a customer.

77        (i)~~(9)~~ Obtain signatures from a customer on contracts that  
78 are not fully completed at the time the customer signs ~~or which~~  
79 ~~do not reflect accurately the negotiations and agreement between~~  
80 ~~the customer and the dealer.~~

81        (j)~~(10)~~ Require or accept a deposit from a prospective  
82 customer prior to entering into a binding contract for the  
83 purchase and sale of a vehicle unless the customer is given a

84 written receipt that states how long the dealer will hold the  
 85 vehicle from other sale and the amount of the deposit, and  
 86 clearly and conspicuously states whether and upon what  
 87 conditions the deposit is refundable or nonrefundable.

88 (k)~~(11)~~ Add to the cash price of a vehicle as defined in  
 89 s. 520.02(2) any fee or charge other than those provided in that  
 90 section and in rule 3D-50.001, Florida Administrative Code. All  
 91 fees or charges permitted to be added to the cash price by rule  
 92 3D-50.001, Florida Administrative Code, must be fully disclosed  
 93 to customers in all binding contracts concerning the vehicle's  
 94 selling price.

95 (l)~~(12)~~ Alter or change the odometer mileage of a vehicle  
 96 except in accordance with 49 U.S.C. s. 32704.

97 (m)~~(13)~~ Sell a vehicle without disclosing to the customer  
 98 the actual year and model of the vehicle.

99 (n)~~(14)~~ File a lien against a new vehicle purchased with a  
 100 check unless the dealer fully discloses to the purchaser that a  
 101 lien will be filed if purchase is made by check and fully  
 102 discloses to the buyer the procedures and cost to the buyer for  
 103 gaining title to the vehicle after the lien is filed.

104 (o)~~(15)~~ Increase the price of the vehicle after having  
 105 accepted an order of purchase or a contract from a buyer,  
 106 notwithstanding subsequent receipt of an official price change  
 107 notification. The price of a vehicle may be increased after a  
 108 dealer accepts an order of purchase or a contract from a buyer  
 109 if:

110 1.(a) A trade-in vehicle is reappraised because it  
 111 subsequently is damaged, or parts or accessories are removed;

112        2.~~(b)~~ The price increase is caused by the addition of new  
113 equipment, as required by state or federal law;

114        3.~~(e)~~ The price increase is caused by the revaluation of  
115 the United States dollar by the Federal Government, in the case  
116 of a foreign-made vehicle;

117        4.~~(d)~~ The price increase is caused by state or federal tax  
118 rate changes; or

119        5.~~(e)~~ Price protection is not provided by the  
120 manufacturer, importer, or distributor.

121        (p)~~(16)~~ Advertise the price of a vehicle unless the  
122 vehicle is identified by year, make, model, and a commonly  
123 accepted trade, brand, or style name. The advertised price must  
124 include all fees or charges that the customer must pay,  
125 including freight or destination charge, dealer preparation  
126 charge, and charges for undercoating or rustproofing. State and  
127 local taxes, tags, registration fees, and title fees, unless  
128 otherwise required by local law or standard, need not be  
129 disclosed in the advertisement. When two or more dealers  
130 advertise jointly, with or without participation of the  
131 franchisor, the advertised price need not include fees and  
132 charges that are variable among the individual dealers  
133 cooperating in the advertisement, but the nature of all charges  
134 that are not included in the advertised price must be disclosed  
135 in the advertisement.

136        (q)~~(17)~~ Charge a customer for any predelivery service  
137 required by the manufacturer, distributor, or importer for which  
138 the dealer is reimbursed by the manufacturer, distributor, or  
139 importer.

140        ~~(r)(18)~~ Charge a customer for any predelivery service  
 141 without having printed on all documents that include a line item  
 142 for predelivery service the following disclosure: "This charge  
 143 represents costs and profit to the dealer for items such as  
 144 inspecting, cleaning, and adjusting vehicles, and preparing  
 145 documents related to the sale."

146        ~~(s)(19)~~ Fail to disclose damage to a new motor vehicle, as  
 147 defined in s. 319.001(8), of which the dealer had actual  
 148 knowledge, if the dealer's actual cost of repairs exceeds the  
 149 threshold amount, excluding replacement items.

150        (t) Engage in other unfair or deceptive acts or practices  
 151 in the sale, leasing, or servicing of motor vehicles.

152        (2) No civil action against a motor vehicle dealer, as  
 153 defined in s. 320.27, shall be filed except pursuant to this  
 154 section.

155        (3) As a condition precedent the filing of a complaint for  
 156 a violation of this section, the complainant must have lawful  
 157 possession of the vehicle involved in the transaction complaint.

158        (a) At least 40 days before filing a complaint resulting  
 159 from a transaction with a dealer, the claimant shall send a  
 160 written notice as described in paragraph (b) to the prospective  
 161 defendant via certified mail, return receipt requested,  
 162 overnight courier, or hand delivery addressed to the dealer's  
 163 general manager or registered agent for service of process. Any  
 164 notice under this subsection shall be made in good faith and  
 165 shall:

166        1. Specifically reference the transaction and attach a  
 167 copy of documentation relating to the transaction.

168        2. Describe the alleged violations of this section.  
 169        3. Specifically describe the amount and nature of the  
 170 actual damages alleged by the claimant to be recoverable under  
 171 this section.

172        (b) The notice required under paragraph (a) shall be in  
 173 substantially the following form:

174                STATUTORY FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICE  
 175                        PRE-SUIT NOTICE TO MOTOR VEHICLE DEALER  
 176                                (Section 501.976, Florida Statutes)

177  
 178 Claimant Name: .....

179 Claimant Address: .....

180 .....

181 Claimant Telephone Numbers:

182 Business: ....

183 Mobile: ....

184 Home: ....

185 Claimant E-mail Address: ....

186 Motor Vehicle Dealer Name: .....

187

188 Motor Vehicle Dealer Address: .....

189 .....

190 Description of the Vehicle Involved:

191 Year: ....Make: ....Model: ....

192 Vehicle Identification Number: ....

193

194 Date of Transaction/Occurrence/Event: ....

195

196 The documents in connection with the  
 197 transaction/occurrence/event upon which the claim is based are:  
 198 ....(example: purchase contract, lease, finance agreement,  
 199 repair order, advertisement, invoice, etc.).....  
 200 (You must attach a copy of each document.)

201  
 202 The following is a detailed factual explanation of why the  
 203 claimant is making this claim:

204  
 205 Dealer violated section 501.976, Florida Statutes, by:

206  
 207 (Attach additional pages if necessary.)

208  
 209 NOTE TO CLAIMANT: Under Florida's Deceptive and Unfair Trade  
 210 Practices Act, an aggrieved person is entitled to recover actual  
 211 damages. Actual damages are defined as the amount of your out-  
 212 of-pocket costs or losses you claim to have incurred as a direct  
 213 result of the motor vehicle dealer's conduct in violation of  
 214 this law, not including legal fees. Actual damages do not  
 215 include consequential damages such as, but not limited to,  
 216 emotional distress, time missed from work, inconvenience, pain  
 217 and suffering, etc.

218  
 219 My actual damages total: \$....

220  
 221 Provide the description and amount of each item that makes up  
 222 the amount you claim. (example: replacement bumper, \$100)

223



- 224        1. .... \$....
- 225        2. .... \$....
- 226        3. .... \$....
- 227        4. .... \$....
- 228        5. .... \$....
- 229        (Attach additional pages if necessary.)

231        This notice must be sent to the motor vehicle dealer via  
 232        certified mail, return receipt requested, overnight courier, or  
 233        hand delivery and must be addressed either "Attn: General  
 234        Manager" or to the Registered Agent for Service of Process of  
 235        the motor vehicle dealer.

237        The motor vehicle dealer has 40 days within which to respond to  
 238        the damages demand set forth in this notice. If the motor  
 239        vehicle dealer accepts the damages demand, it must provide you  
 240        with the settlement proceeds within 10 days after the date of  
 241        acceptance. Alternately, the motor vehicle dealer may offer to  
 242        rescind a motor vehicle sale or lease transaction or otherwise  
 243        return you to the financial position you were in prior to the  
 244        transaction that is the basis of your complaint. Such acceptance  
 245        and payment or rescission shall be deemed a final settlement and  
 246        a release of all your claims against the motor vehicle dealer  
 247        under all Florida laws in connection with or arising out of the  
 248        transaction described above.

250        I declare under penalty of perjury under the laws of the State  
 251        of Florida that the foregoing is true and correct.

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Executed on (month)/(day)/(year)

Claimant Signature: .....

Print Name: .....

(c) No complaint shall be filed against a dealer seeking relief for a violation of this section if the motor vehicle dealer alleged to have violated this section has, within the 40-day notice period:

1. Agreed in writing to pay the actual damages described in the notice and paid the complainant such damages within 10 days after such agreement; or

2. Offered in writing to rescind the transaction and return the claimant to his, her, or its prior financial position by:

a. Obtaining a discharge of any of the claimant's obligations under any finance or lease agreement and other contracts signed by the claimant at the time of the transaction referred to in the notice; and

b. Returning to the claimant any cash deposited plus either the return of any motor vehicle traded in or the agreed trade-in amount allowed for such trade-in as part of the vehicle sale or lease transaction, plus the documented cost of accessories added to the vehicle by the complainant after the date of the vehicle sale or lease transaction with the dealer, minus, with respect to the motor vehicle described in the

280 notice, an amount equal to the cost of repair for any physical  
281 damage to that motor vehicle, which motor vehicle the claimant  
282 shall return to the motor vehicle dealer. In the absence of  
283 agreement between the parties on the cost of repair, that amount  
284 shall be determined by a motor vehicle repair shop not  
285 associated with the dealer. The motor vehicle repair shop shall  
286 be selected by the insurance company providing  
287 comprehensive/collision insurance for the motor vehicle, if any,  
288 or jointly by the parties or, in the absence of agreement, the  
289 claimant and the dealer shall each obtain an estimate from an  
290 independent motor vehicle repair shop and the cost of repair  
291 shall be the average of the two estimates received.

292  
293 The time for completing the payment or rescission shall be  
294 extended until the cost of repair has been determined and, if  
295 applicable, the execution, acknowledgement, and delivery of all  
296 documents necessary to return free and clear title and  
297 possession of the purchased or leased motor vehicle to the motor  
298 vehicle dealer or its designee.

299 (d) Payment of the actual damages or rescission shall not  
300 constitute an admission by the alleged violator of any  
301 wrongdoing or a violation of this section or chapter and shall  
302 serve to release and discharge the violator from any suit,  
303 action, or other proceeding that could be brought under this  
304 section or chapter arising out of or in connection with the  
305 transaction described in the notice and from any other claim  
306 cognizable under any state law in connection with the  
307 transaction.

308       (e) In the event the dealer elects to rescind a  
 309 transaction pursuant to this section, the Department of Revenue  
 310 shall refund to the dealer any sales tax the dealer refunded to  
 311 the claimant under this section.

312       (4)(a) If no complaint is filed, the claimant shall be  
 313 entitled to receive reasonable attorney's fees and costs, to the  
 314 extent both were actually incurred, through the date of the  
 315 payment or rescission. In the absence of an agreement as to such  
 316 amount, the court shall determine and award such fees and costs,  
 317 upon the filing of a proper petition, on the basis of time  
 318 necessarily and reasonably spent by the claimant's counsel. No  
 319 multiplier amount shall be applied by the court to any award of  
 320 attorney's fees under this section.

321       (b) In any civil litigation resulting from an act or  
 322 practice involving a violation of this part:

323       1. The prevailing party, after judgment in the trial court  
 324 and exhaustion of all appeals, if any, may receive his or her  
 325 reasonable attorney's fees and costs from the nonprevailing  
 326 party.

327       2. The attorney for the prevailing party shall submit a  
 328 sworn affidavit of his or her time spent on the case and his or  
 329 her costs incurred for all motions, hearings, and appeals to the  
 330 trial judge who presided over the civil case.

331       3. The trial judge may award the prevailing party the sum  
 332 of costs necessary and reasonable in the action, plus a  
 333 reasonable legal fee for the hours reasonably spent on the case  
 334 as sworn to in the affidavit. In determining the reasonableness  
 335 of hours claimed in the affidavit, the court shall not award any

336 fees or expenses for any hours the court determines, after a  
 337 hearing, to have been spent preparing or taking any discovery  
 338 that is determined to have been:

339 a. Harassing, oppressive, unduly burdensome, unnecessary,  
 340 or immaterial to the action;

341 b. Propounded in bad faith or without the aim of proving  
 342 the justiciable issues of law or fact set forth in the complaint  
 343 or answer; or

344 c. Propounded for the purpose of unreasonably extending  
 345 the existence of the action.

346  
 347 In awarding attorney's fees, the court shall give great weight  
 348 to the nature of the damages claimed in the notice and the  
 349 amount of actual damages awarded. No multiplier amount shall be  
 350 applied by the court to any award or attorney's fees under this  
 351 section.

352 (5) In any civil action brought under this section, upon  
 353 motion of the party against whom such action is filed alleging  
 354 that the action is frivolous, without legal or factual merit, or  
 355 brought or continued without compliance with this section or  
 356 unnecessarily or for the purpose of harassment, the court, after  
 357 hearing evidence with respect to such allegations, shall require  
 358 the party instituting or continuing the action to post a bond in  
 359 an amount that the court finds reasonable to indemnify the  
 360 defendant for any damages incurred, including reasonable  
 361 attorney's fees and costs.

362 (6) As used in this section, the term "actual damages"  
 363 means those reasonable out-of-pocket costs or pecuniary losses

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364 to the claimant that are directly caused by the alleged  
365 violations of this section. Such items shall be detailed in the  
366 notice pursuant to paragraph (3)(b).

367 (7) This section shall not apply to any action filed by  
368 the enforcing authority.

369  
370 ~~In any civil litigation resulting from a violation of this~~  
371 ~~section, when evaluating the reasonableness of an award of~~  
372 ~~attorney's fees to a private person, the trial court shall~~  
373 ~~consider the amount of actual damages in relation to the time~~  
374 ~~spent.~~

375 Section 3. This act shall take effect October 1, 2005.