

CHAMBER ACTION

1 The Transportation Committee recommends the following:

2  
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to motor vehicle dealers; amending s.  
7 501.212, F.S.; exempting certain claims against a motor  
8 vehicle dealer from the provisions of the Florida  
9 Deceptive and Unfair Trade Practices Act; preserving an  
10 enforcing authority's exercise of certain powers; amending  
11 s. 501.976, F.S.; revising acts by a motor vehicle dealer  
12 that constitute unfair or deceptive acts or practices;  
13 providing a restriction on certain civil actions;  
14 providing complaint procedures; requiring a presuit notice  
15 to the motor vehicle dealer; providing a form for the  
16 notice; subjecting a person convicted of perjury to a  
17 penalty; providing for satisfaction of complaint;  
18 providing for award of certain costs to the prevailing  
19 party; providing for posting of bond under certain  
20 circumstances; defining "actual damages"; providing for  
21 application; preserving an enforcing authority's exercise  
22 of certain powers; deleting a reference to factors used to  
23 determine attorney's fees; providing an effective date.

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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 ~~Applications~~ 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. This exemption does not limit or prohibit an enforcing authority from exercising its powers under this part to take action for any violations of law.

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

501.976 Actionable, unfair, or deceptive acts or practices of motor vehicle dealers.--

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

(a)~~(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 or distributor of the manufacturer and the vehicle was used exclusively by the manufacturer, its subsidiary or distributor, or a dealer for the commercial or personal use of the manufacturer's, subsidiary's or distributor's, or dealer's employees or owners.

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51        ~~(b)(2)~~ Represent directly or indirectly that a vehicle is  
52 a demonstrator unless the vehicle complies with the definition  
53 of a demonstrator in s. 320.60(3).

54        ~~(c)(3)~~ Represent the previous usage or status of a vehicle  
55 to be something that it was not, or make usage or status  
56 representations unless the representation was made in good faith  
57 and the motor vehicle dealer has obtained ~~correct~~ information  
58 regarding the history of the vehicle to support the  
59 representations.

60        ~~(d)(4)~~ Represent the quality of care, regularity of  
61 servicing, or general condition of a vehicle unless the  
62 representation was made in good faith and the motor vehicle  
63 dealer has obtained information to support such representation  
64 ~~known by the dealer to be true and supportable by material fact.~~

65        ~~(e)(5)~~ Represent orally or in writing that a particular  
66 vehicle has not sustained structural or substantial skin damage  
67 unless the statement was ~~is~~ made in good faith and the vehicle  
68 has been inspected by the dealer or his or her agent to  
69 determine whether the vehicle has incurred such damage.

70        ~~(f)(6)~~ Sell a vehicle without fully and conspicuously  
71 disclosing in writing at or before the consummation of sale any  
72 warranty or guarantee terms, obligations, or conditions that the  
73 dealer or manufacturer has given to the buyer. If the warranty  
74 obligations are to be shared by the dealer and the buyer, the  
75 method of determining the percentage of repair costs to be  
76 assumed by each party must be disclosed. If the dealer intends  
77 to disclaim or limit any expressed or implied warranty, the  
78 disclaimer must be in writing in a conspicuous manner and in lay

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79 terms in accordance with chapter 672 and the Magnuson-Moss  
80 Warranty--Federal Trade Commission Improvement Act.

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

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

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

90 (j)~~(10)~~ Require or accept a deposit from a prospective  
91 customer prior to entering into a binding contract for the  
92 purchase and sale of a vehicle unless the customer is given a  
93 written receipt that states how long the dealer will hold the  
94 vehicle from other sale and the amount of the deposit, and  
95 clearly and conspicuously states whether and upon what  
96 conditions the deposit is refundable or nonrefundable.

97 (k)~~(11)~~ Add to the cash price of a vehicle as defined in  
98 s. 520.02(2) any fee or charge other than those provided in that  
99 section and in rule 3D-50.001, Florida Administrative Code. All  
100 fees or charges permitted to be added to the cash price by rule  
101 3D-50.001, Florida Administrative Code, must be fully disclosed  
102 to customers in all binding contracts concerning the vehicle's  
103 selling price.

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

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

108        (n)~~(14)~~ File a lien against a new vehicle purchased with a  
109 check unless the dealer fully discloses to the purchaser that a  
110 lien will be filed if purchase is made by check and fully  
111 discloses to the buyer the procedures and cost to the buyer for  
112 gaining title to the vehicle after the lien is filed.

113        (o)~~(15)~~ Increase the price of the vehicle after having  
114 accepted an order of purchase or a contract from a buyer,  
115 notwithstanding subsequent receipt of an official price change  
116 notification. The price of a vehicle may be increased after a  
117 dealer accepts an order of purchase or a contract from a buyer  
118 if:

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

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

123            3.~~(c)~~ The price increase is caused by the revaluation of  
124 the United States dollar by the Federal Government, in the case  
125 of a foreign-made vehicle;

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

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

130        (p)~~(16)~~ Advertise the price of a vehicle unless the  
131 vehicle is identified by year, make, model, and a commonly  
132 accepted trade, brand, or style name. The advertised price must  
133 include all fees or charges that the customer must pay,

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134 including freight or destination charge, dealer preparation  
 135 charge, and charges for undercoating or rustproofing. State and  
 136 local taxes, tags, registration fees, and title fees, unless  
 137 otherwise required by local law or standard, need not be  
 138 disclosed in the advertisement. When two or more dealers  
 139 advertise jointly, with or without participation of the  
 140 franchisor, the advertised price need not include fees and  
 141 charges that are variable among the individual dealers  
 142 cooperating in the advertisement, but the nature of all charges  
 143 that are not included in the advertised price must be disclosed  
 144 in the advertisement.

145 ~~(q)(17)~~ Charge a customer for any predelivery service  
 146 required by the manufacturer, distributor, or importer for which  
 147 the dealer is reimbursed by the manufacturer, distributor, or  
 148 importer.

149 ~~(r)(18)~~ Charge a customer for any predelivery service  
 150 without having printed on all documents that include a line item  
 151 for predelivery service the following disclosure: "This charge  
 152 represents costs and profit to the dealer for items such as  
 153 inspecting, cleaning, and adjusting vehicles, and preparing  
 154 documents related to the sale."

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

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

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161       (2) No civil action seeking relief under the Florida  
 162 Deceptive and Unfair Trade Practices Act shall be filed by a  
 163 prospective customer, customer, buyer, purchaser, or lessee  
 164 against a motor vehicle dealer, as defined in s. 320.27, except  
 165 pursuant to this section.

166       (3) As a condition precedent to the filing of a complaint  
 167 for a violation of this section, the complainant must have  
 168 lawful possession of the vehicle involved in the transaction  
 169 complained of and:

170       (a) At least 40 days before filing a complaint resulting  
 171 from a transaction with a motor vehicle dealer, the claimant  
 172 shall send a statutory written notice as described in paragraph  
 173 (b) to the prospective defendant via certified mail, overnight  
 174 courier, or hand delivery addressed to the motor vehicle  
 175 dealer's general manager or registered agent for service of  
 176 process. Any notice under this subsection shall be made in good  
 177 faith and shall:

178       1. Specifically reference the transaction complained of  
 179 and attach a copy of documentation relating to the transaction.

180       2. Describe the alleged violations of this section.

181       3. Specifically describe the amount and nature of the  
 182 actual damages alleged by the claimant to be recoverable under  
 183 this section.

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

186       STATUTORY FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICE  
 187       PRESUIT NOTICE TO MOTOR VEHICLE DEALER  
 188       (Section 501.976, Florida Statutes)

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190 Claimant's Name: .....

191 Claimant's Address: .....

192 .....

193 Claimant's Telephone Numbers:

194 Business: ....

195 Mobile: ....

196 Home: ....

197 Claimant's E-mail Address: ....

198 Motor Vehicle Dealer's Name: .....

199

200 Motor Vehicle Dealer's Address: .....

201 .....

202 Describe the Vehicle Involved:

203 Year: ....Make: ....Model: ....

204 Vehicle Identification Number: ....

205

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

207

208 The document(s) in connection with the

209 transaction/occurrence/event upon which the claim is based are:

210 ....(Example: purchase contract, lease, finance agreement,

211 repair order, advertisement, invoice, etc.).....

212 (You must attach a copy of each document.)

213

214 The following is a detailed factual explanation of why the

215 claimant is making this claim:

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217 Dealer violated section 501.976, Florida Statutes, by:

218

219 (Attach additional pages if necessary.)

220

221 NOTE TO CLAIMANT: Under Florida's Deceptive and Unfair Trade  
222 Practices Act, an aggrieved person is entitled to recover actual  
223 damages. Actual damages are defined as the amount of your out-  
224 of-pocket costs or losses you claim to have incurred as a direct  
225 result of the motor vehicle dealer's conduct in violation of  
226 this law, not including legal fees. Actual damages do not  
227 include consequential damages such as, but not limited to,  
228 emotional distress, time missed from work, inconvenience, pain  
229 and suffering, etc.

230

231 Your actual damages total: \$....

232

233 Provide the description and amount of each item that makes up  
234 the amount you claim. (Example: replacement bumper, \$100)

235

236 1. .... \$....

237 2. .... \$....

238 3. .... \$....

239 4. .... \$....

240 5. .... \$....

241 (Attach additional pages if necessary.)

242

243 This notice must be sent to the motor vehicle dealer via  
244 certified mail, overnight courier, or hand delivery and must be

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245 addressed "Attn: General Manager" or addressed to the Registered  
246 Agent for Service of Process of the motor vehicle dealer.

247  
248 The motor vehicle dealer has 40 days within which to respond to  
249 the damages demand set forth in this notice. If the motor  
250 vehicle dealer accepts the damages demand, it must provide you  
251 with the settlement proceeds within 10 days after the date of  
252 its acceptance. Alternatively, the motor vehicle dealer may  
253 offer to rescind a motor vehicle sale or lease transaction. Such  
254 acceptance and payment, or rescission, shall be deemed a final  
255 settlement and a release of all of your claims against the motor  
256 vehicle dealer under all Florida laws in connection with or  
257 arising out of the transaction described above.

258  
259 I declare under penalty of perjury under the laws of the State  
260 of Florida that the foregoing is true and correct.

261  
262 Executed on (month)/(day)/(year)

263  
264 Claimant Signature: .....

265  
266 Print Name: .....

267  
268 (c) A person convicted of perjury under paragraph (b)  
269 shall be subject to the penalty provided in s. 837.012 relating  
270 to perjury when not in an official proceeding.

271 (d) No complaint shall be filed against a motor vehicle  
272 dealer seeking relief for a violation of this section if the

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273 motor vehicle dealer alleged to have violated this section has,  
274 within the 40-day notice period:

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

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

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

285 b. Returning to the claimant any cash deposited plus  
286 either the return of any motor vehicle traded in or the agreed  
287 trade-in amount allowed for such trade-in as part of the vehicle  
288 sale or lease transaction, plus the documented cost of  
289 accessories added to the vehicle by the complainant after the  
290 date of the vehicle sale or lease transaction with the motor  
291 vehicle dealer, minus, with respect to the motor vehicle  
292 described in the notice, an amount equal to the depreciation of  
293 the motor vehicle, using the straight-line method over a 4-year  
294 expected life of the motor vehicle from the date of the  
295 transaction through the date rescission is completed, plus the  
296 cost to repair for any physical damage to that motor vehicle,  
297 which motor vehicle the claimant shall return to the motor  
298 vehicle dealer. In the absence of agreement between the parties  
299 about the cost of repair, that amount shall be determined by a  
300 motor vehicle repair shop not associated with the motor vehicle

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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301 dealer. Such motor vehicle repair shop shall be selected by the  
 302 insurance company providing comprehensive/collision insurance  
 303 for the motor vehicle, if any, or jointly by the parties or, in  
 304 the absence of agreement, the claimant and the motor vehicle  
 305 dealer shall each obtain an estimate from an independent motor  
 306 vehicle repair shop and the cost of repair shall be the average  
 307 of the two estimates received.

308  
 309 The time for completing the payment or rescission shall be  
 310 extended until the cost of repair has been so determined and, if  
 311 applicable, to the execution, acknowledgement, and delivery of  
 312 all documents necessary to return free and clear title and  
 313 possession of the purchased or leased motor vehicle to the motor  
 314 vehicle dealer or its nominee.

315 (e) Payment of the actual damages or rescission shall not  
 316 constitute an admission by the alleged violator of any  
 317 wrongdoing or a violation of this section or chapter and shall  
 318 serve to release and discharge the alleged violator from any  
 319 suit, action, or other proceeding that could be brought under  
 320 this section or chapter arising out of or in connection with the  
 321 transaction described in the notice and from any other claim  
 322 cognizable under the law of this state in connection with the  
 323 transaction. Nothing in this paragraph shall limit or prohibit  
 324 an enforcing authority from exercising its powers as provided in  
 325 subsection (7).

326 (f) If the motor vehicle dealer elects to rescind a  
 327 transaction pursuant to this section, the Department of Revenue

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328 shall refund to the motor vehicle dealer any sales tax the motor  
 329 vehicle dealer refunded to the consumer under this section.

330 (4)(a) If no complaint is filed, the claimant shall be  
 331 entitled to receive reasonable attorney's fees for the hours  
 332 reasonably spent and costs, to the extent such fees and costs  
 333 actually were incurred, through the date of the payment or  
 334 rescission.

335 (b) In any civil litigation resulting from an act or  
 336 practice involving a violation of this section:

337 1. After judgment in the trial court and exhaustion of all  
 338 appeals, if any, the prevailing party may receive his or her  
 339 reasonable attorney's fees and costs from the nonprevailing  
 340 party.

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

345 3. The trial judge may award the prevailing party the sum  
 346 of costs necessarily and reasonably incurred in the action, plus  
 347 a reasonable legal fee for the hours reasonably spent on the  
 348 case as sworn to in an affidavit. In determining the  
 349 reasonableness of hours claimed in the affidavit, the court  
 350 shall not award any fees or expenses for any hours the court  
 351 determines, after a hearing, to have been spent preparing or  
 352 taking any discovery that is determined to have been:

353 a. Harassing, oppressive, unduly burdensome, unnecessary,  
 354 or immaterial to the action;

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355 b. Propounded in bad faith or not with the aim of proving  
 356 the justiciable issues of law or fact set forth in the complaint  
 357 or answer; or

358 c. Propounded for the purpose of unreasonably extending  
 359 the existence of the action.

360  
 361 In awarding attorney's fees, the court shall give great weight  
 362 to the nature of the damages claimed in the notice and the  
 363 amount of actual damages awarded. No multiplier amount shall be  
 364 applied by the court to any award or attorney's fees under this  
 365 section.

366 (5) In any civil action brought under this section, upon  
 367 motion of the party against whom such action is filed alleging  
 368 that the action is frivolous, without legal or factual merit, or  
 369 brought or continued without compliance with this section or  
 370 unnecessarily or for the purpose of harassment, the court, after  
 371 hearing evidence with respect to such allegations, shall require  
 372 the party instituting or continuing the action to post a bond in  
 373 the amount the court finds reasonable to indemnify the defendant  
 374 for any damages incurred, including reasonable attorney's fees  
 375 and costs.

376 (6) As used in this section, the term "actual damages"  
 377 means those reasonable out-of-pocket costs or pecuniary loss to  
 378 the claimant that are directly caused by the alleged violations  
 379 of this section. Such items shall be detailed in the notice  
 380 pursuant to paragraph (3)(b).

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381           (7) Nothing in this section shall limit or prohibit an  
382 enforcing authority from exercising its powers under part II of  
383 this chapter to take action for any violations of law.

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385 ~~In any civil litigation resulting from a violation of this~~  
386 ~~section, when evaluating the reasonableness of an award of~~  
387 ~~attorney's fees to a private person, the trial court shall~~  
388 ~~consider the amount of actual damages in relation to the time~~  
389 ~~spent.~~

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