

1 attorney for the plaintiff in a class action to
2 be solely and personally liable for all
3 reasonable costs and attorney's fees incurred
4 by the defendant which are otherwise payable by
5 the plaintiff to the defendant if the attorney
6 rejects an offer of settlement; limiting the
7 membership in a class action to those who were
8 residents in this state at the time of the
9 alleged misconduct or injury; requiring the
10 order certifying the class to state how the
11 class claims and issues affecting individual
12 members will be tried in a manageable,
13 time-efficient manner; requiring each class
14 claimant to allege and prove actual damages in
15 order to obtain any monetary relief; providing
16 that a judgment may not be entered until the
17 trier of fact determines the amount of money
18 owed to each class member; requiring that the
19 amount of judgment not exceed the sum of the
20 money owed to all class members; requiring that
21 the judgment order identify each member of the
22 class and his or her individual monetary award;
23 providing an effective date.

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

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27 Section 1. Subsections (4), (5), (6), (7), and (8) are
28 added to section 501.211, Florida Statutes, to read:

29 501.211 Other individual remedies.--

30 (4) Before a person may file an action against a
31 person who is alleged to have violated this part, the person

1 filing the action must give the other person written notice
2 not less than 60 days before filing the action. The notice
3 must advise the person who is alleged to have violated this
4 part the details of the complaint and, if the action seeks
5 damages, the amount of the loss suffered by the person as a
6 result of the violation of this part. If the action seeks any
7 nonmonetary relief, the notice must state the remedial
8 measures that the party is seeking. The person must state in
9 the written notice that the notice is being given under this
10 section to provide the person to whom the complaint is
11 directed with a reasonable opportunity to cure the alleged
12 violation.

13 (5) If the proposed action is a putative class action,
14 the party giving notice must state in the notice that the
15 person is acting on behalf of a class. A putative class action
16 may not be filed unless the person against whom it is filed is
17 given the specific notice required in subsection (4) and this
18 subsection and, if applicable, subsection (6).

19 (6) During the 60-day period the person presented with
20 a demand for a cure may request in writing that the person
21 proposing to file an action allow the person who is alleged to
22 have violated this part an opportunity to inspect the goods or
23 other evidence relevant to the claim in a reasonable manner
24 and at a reasonable time and place. Compliance with the
25 request to inspect is a prerequisite to satisfying the
26 obligation to permit a reasonable opportunity to cure.

27 (7) In an action filed under this part, the person
28 must plead and prove that the person gave the defendant a
29 reasonable opportunity to cure all alleged violations under
30 the terms of subsection (4) and, if applicable, subsections
31 (5) and (6), and that the defendant failed to cure the alleged

1 violations. Failure to plead that the defendant was given a
2 reasonable opportunity to cure all alleged violations is
3 grounds for dismissal of the case for failure to state a
4 claim.

5 (8) It is an absolute defense to an action filed under
6 this part if the defendant proves that the defendant:

7 (a) Did not receive the required written notice
8 provided in subsection (4) and, to the extent applicable,
9 subsection (5);

10 (b) Requested but was denied a reasonable opportunity
11 to inspect under subsection (6); or

12 (c) Tendered to the consumer the damages sought or the
13 remedial measure proposed in response to a request to cure
14 made under this section.

15 Section 2. Subsection (9) is added to section 768.79,
16 Florida Statutes, to read:

17 768.79 Offer of judgment and demand for judgment.--

18 (9) Notwithstanding any other provision of this
19 section, if the plaintiff has filed a civil action for damages
20 as a class action, the attorney for the plaintiff is solely
21 and personally liable for all reasonable costs and attorney's
22 fees incurred by the defendant which are otherwise payable by
23 the plaintiff to the defendant under this section.

24 Section 3. Class actions.--

25 (1) In any civil action asserting the right to
26 class-action status under the Florida Rules of Civil
27 Procedure, the claimant class having standing to sue shall be
28 limited to the residents in this state at the time of the
29 alleged misconduct or injury. The court may expand a class to
30 nonresident claimants who prove, before the court certifies
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1 the class, that they cannot assert their rights in their state
2 of residence.

3 (2) An order certifying the class must state how the
4 class claims, and any issues affecting only individual members
5 and raised by the claims or defenses asserted in the
6 pleadings, will be tried in a manageable, time-efficient
7 manner.

8 (3) Each class-action claimant must allege and prove
9 actual damages in order to obtain any monetary relief. Before
10 entry of a judgment against a defendant, the court shall
11 require each member of the class who claims to be entitled to
12 monetary relief to submit a statement in a form prescribed by
13 the court requesting a specific dollar amount and providing
14 information regarding the nature of his or her loss, injury,
15 claim, or damage. A judgment may not be entered until the
16 trier of fact has determined the amount of money, if any, owed
17 to each class member based upon his or her individual proof.
18 The amount of judgment may not exceed the sum of the money
19 owed to all class members. The judgment shall identify each
20 member of the class and his or her individual monetary award.

21 Section 4. This act shall take effect July 1, 2005.
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SENATE SUMMARY

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3 Requires a person who proposes to file an action against
4 a person who is alleged to have violated the Deceptive
5 and Unfair Trade Practices Act to give the other person
6 written notice 60 days before filing the action. Provides
7 that the person who is alleged to have violated the act
8 be given an opportunity to cure the violations. Requires
9 that notice be given if the proposed action will be a
10 class action. Requires that the person proposing to file
11 an action allow the person who is alleged to have
12 violated the act an opportunity to inspect the goods or
13 other evidence relevant to the claim. Requires the person
14 filing the action to plead and prove that the defendant
15 had a reasonable opportunity to cure all alleged
16 violations and that the defendant failed to do so.
17 Provides that a failure to plead that the defendant had a
18 reasonable opportunity to cure all alleged violations is
19 grounds for dismissal of the case for failing to state a
20 claim. Requires the attorney for the plaintiff in a class
21 action to be solely and personally liable for all
22 reasonable costs and attorney's fees incurred by the
23 defendant which are otherwise payable by the plaintiff to
24 the defendant if the attorney rejects an offer of
25 settlement. Limits the membership in a class action to
26 those who were residents in this state at the time of the
27 alleged misconduct or injury. Requires the order
28 certifying the class to state how the class claims and
29 issues affecting individual members will be tried in a
30 manageable, time-efficient manner. Requires each class
31 claimant to allege and prove actual damages in order to
obtain any monetary relief. Requires that the amount of
judgment not exceed the sum of the money owed to all
class members. Requires the judgment order to identify
each member of the class and his or her individual
monetary award.