

Bill No. SB 802

Barcode 780086

CHAMBER ACTION

Senate

House

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The Committee on Judiciary (Webster) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Section 501.975, Florida Statutes, is amended to read:

501.975 Definitions.--As used in this part ~~s. 501.976~~, the following terms shall have the following meanings:

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

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

(3) "Replacement item" means a tire, bumper, bumper fascia, glass, in-dashboard equipment, seat or upholstery cover or trim, exterior illumination unit, grill, sunroof, external mirror and external body cladding. The replacement of up to three of these items does not constitute repair of damage if each item is replaced because of a product defect or

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1 | damaged due to vandalism while the new motor vehicle is under
2 | the control of the dealer and the items are replaced with
3 | original manufacturer equipment, unless an item is replaced
4 | due to a crash, collision, or accident.

5 | (4) "Threshold amount" means 3 percent of the
6 | manufacturer's suggested retail price of a motor vehicle or
7 | \$650, whichever is less.

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

13 | (6) "Enforcing authority" has the same meaning as
14 | provided in s. 501.203.

15 | (7) "Violation of this part" has the same meaning as
16 | provided in s. 501.203.

17 | (8) "Interested party or person" means any person
18 | affected by a violation of this part or any person affected by
19 | an order of the enforcing authority.

20 | (9) "Consumer" has the same meaning as provided in s.
21 | 501.203.

22 | (10) "Trade or commerce" has the same meaning as
23 | provided in s. 501.203.

24 | (11) "Thing of value" has the same meaning as provided
25 | in s. 501.203.

26 | Section 2. Section 501.9751, Florida Statutes, is
27 | created to read:

28 | 501.9751 Purposes; rules of construction.--This part
29 | shall be the exclusive remedy for unfair and deceptive trade
30 | practice actions filed against motor vehicle dealers as
31 | defined in s. 320.27(1)(c)1. and s. 320.27(1)(c)2., except

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1 that actions brought by any enforcing authority are not
2 limited to this part. This part shall be construed liberally
3 to promote the following policies with respect to motor
4 vehicle dealers:

5 (1) To simplify, clarify, and modernize the law
6 governing consumer protection, unfair methods of competition,
7 and unconscionable, deceptive, and unfair trade practices.

8 (2) To protect the consuming public and legitimate
9 business enterprises from those who engage in unfair methods
10 of competition or unconscionable, deceptive, or unfair acts or
11 practices in the conduct of any trade or commerce.

12 (3) To make state consumer protection and enforcement
13 consistent with established policies of federal law relating
14 to consumer protection.

15 Section 3. Section 501.9752, Florida Statutes, is
16 created to read:

17 501.9752 Effect on other remedies.--

18 (1) The remedies of this part are in addition to
19 remedies otherwise available for the same conduct under state
20 or local law.

21 (2) This part is supplemental to and does not preempt
22 local consumer protection ordinances not inconsistent with
23 this part.

24 Section 4. Section 501.976, Florida Statutes, is
25 amended to read:

26 501.976 Actionable, unfair, or deceptive acts or
27 practices.--Unfair methods of competition, unconscionable acts
28 or practices, and unfair or deceptive acts or practices in the
29 conduct of any trade or commerce are declared unlawful. It is
30 the intent of the Legislature in construing this section that
31 due consideration and great weight be given to the

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1 interpretations of the Federal Trade Commission and the
 2 federal courts relating to s. 5(a)(1) of the Federal Trade
 3 Commission Act, 15 U.S.C. s. 45(a)(1) as of July 1, 2005. It
 4 is an unfair or deceptive act or practice, actionable under
 5 the Florida Deceptive and Unfair Trade Practices Act, for a
 6 dealer to:

7 (1) Represent directly or indirectly that a motor
 8 vehicle is a factory executive vehicle or executive vehicle
 9 unless such vehicle was purchased directly from the
 10 manufacturer or a subsidiary or distributor of the
 11 manufacturer and the vehicle was used exclusively by the
 12 manufacturer, its subsidiary or distributor, or a dealer for
 13 the commercial or personal use of the manufacturer's,
 14 subsidiary's or distributor's, or dealer's employees or
 15 owners.

16 (2) Represent directly or indirectly that a vehicle is
 17 a demonstrator unless the vehicle complies with the definition
 18 of a demonstrator in s. 320.60(3).

19 (3) Represent the previous usage or status of a
 20 vehicle to be something that it was not, or make usage or
 21 status representations unless the dealer has correct
 22 information regarding the history of the vehicle to support
 23 the representations.

24 (4) Represent the quality of care, regularity of
 25 servicing, or general condition of a vehicle unless known by
 26 the dealer to be true and supportable by material fact.

27 (5) Represent orally or in writing that a particular
 28 vehicle has not sustained structural or substantial skin
 29 damage unless the statement is made in good faith and the
 30 vehicle has been inspected by the dealer or his or her agent
 31 to determine whether the vehicle has incurred such damage.

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1 (6) Sell a vehicle without fully and conspicuously
 2 disclosing in writing at or before the consummation of sale
 3 any warranty or guarantee terms, obligations, or conditions
 4 that the dealer or manufacturer has given to the buyer. If the
 5 warranty obligations are to be shared by the dealer and the
 6 buyer, the method of determining the percentage of repair
 7 costs to be assumed by each party must be disclosed. If the
 8 dealer intends to disclaim or limit any expressed or implied
 9 warranty, the disclaimer must be in writing in a conspicuous
 10 manner and in lay terms in accordance with chapter 672 and the
 11 Magnuson-Moss Warranty--Federal Trade Commission Improvement
 12 Act.

13 (7) Provide an express or implied warranty and fail to
 14 honor such warranty unless properly disclaimed under ~~pursuant~~
 15 ~~to~~ subsection (6).

16 (8) Misrepresent warranty coverage, application
 17 period, or any warranty transfer cost or conditions to a
 18 customer.

19 (9) Obtain signatures from a customer on contracts
 20 that are not fully completed at the time the customer signs or
 21 which do not reflect accurately the negotiations and agreement
 22 between the customer and the dealer.

23 (10) Require or accept a deposit from a prospective
 24 customer prior to entering into a binding contract for the
 25 purchase and sale of a vehicle unless the customer is given a
 26 written receipt that states how long the dealer will hold the
 27 vehicle from other sale and the amount of the deposit, and
 28 clearly and conspicuously states whether and upon what
 29 conditions the deposit is refundable or nonrefundable.

30 (11) Add to the cash price of a vehicle as defined in
 31 s. 520.02(2) any fee or charge other than those provided in

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1 that section and in rule 3D-50.001, Florida Administrative
 2 Code. All fees or charges permitted to be added to the cash
 3 price by rule 3D-50.001, Florida Administrative Code, must be
 4 fully disclosed to customers in all binding contracts
 5 concerning the vehicle's selling price.

6 (12) Alter or change the odometer mileage of a
 7 vehicle, except in accordance with 49 U.S.C. s. 32704.

8 (13) Sell a vehicle without disclosing to the customer
 9 the actual year and model of the vehicle.

10 (14) File a lien against a new vehicle purchased with
 11 a check unless the dealer fully discloses to the purchaser
 12 that a lien will be filed if purchase is made by check and
 13 fully discloses to the buyer the procedures and cost to the
 14 buyer for gaining title to the vehicle after the lien is
 15 filed.

16 (15) Increase the price of the vehicle after having
 17 accepted an order of purchase or a contract from a buyer,
 18 notwithstanding subsequent receipt of an official price change
 19 notification. The price of a vehicle may be increased after a
 20 dealer accepts an order of purchase or a contract from a buyer
 21 if:

22 (a) A trade-in vehicle is reappraised because it
 23 subsequently is damaged, or parts or accessories are removed;

24 (b) The price increase is caused by the addition of
 25 new equipment, as required by state or federal law;

26 (c) The price increase is caused by the revaluation of
 27 the United States dollar by the Federal Government, in the
 28 case of a foreign-made vehicle;

29 (d) The price increase is caused by state or federal
 30 tax rate changes; or

31 (e) Price protection is not provided by the

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1 manufacturer, importer, or distributor.

2 (16) Advertise the price of a vehicle unless the
3 vehicle is identified by year, make, model, and a commonly
4 accepted trade, brand, or style name. The advertised price
5 must include all fees or charges that the customer must pay,
6 including freight or destination charge, dealer preparation
7 charge, and charges for undercoating or rustproofing. State
8 and local taxes, tags, registration fees, and title fees,
9 unless otherwise required by local law or standard, need not
10 be disclosed in the advertisement. When two or more dealers
11 advertise jointly, with or without participation of the
12 franchisor, the advertised price need not include fees and
13 charges that are variable among the individual dealers
14 cooperating in the advertisement, but the nature of all
15 charges that are not included in the advertised price must be
16 disclosed in the advertisement.

17 (17) Charge a customer for any predelivery service
18 required by the manufacturer, distributor, or importer for
19 which the dealer is reimbursed by the manufacturer,
20 distributor, or importer.

21 (18) Charge a customer for any predelivery service
22 without having printed on all documents that include a line
23 item for predelivery service the following disclosure: "This
24 charge represents costs and profit to the dealer for items
25 such as inspecting, cleaning, and adjusting vehicles, and
26 preparing documents related to the sale."

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

31 (20) Violate the provisions of s. 501.2077. Liability

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1 under this subsection shall be imposed according to s.
2 501.2077.

3
4 In any civil litigation resulting from a violation of this
5 part section, the prevailing party shall be entitled to an
6 award of attorney's fees and costs in accordance with s.
7 501.2105. When evaluating the reasonableness of an award of
8 attorney's fees to a private person, the trial court shall
9 consider the amount of actual damages in relation to the time
10 spent.

11 Section 5. Section 501.977, Florida Statutes, is
12 created to read:

13 501.977 Obligation of dealer.--

14 (1) Every motor vehicle dealer, as defined under s.
15 320.60(11), has the affirmative obligation to provide to any
16 purchaser or lessor of any new motor vehicle, as defined under
17 s. 320.60(10), a written statement, signed by an authorized
18 representative of the dealer, stating that the motor vehicle
19 has not previously been sold or leased to any other purchaser
20 or lessor and stating that the provisions of s. 501.976 have
21 not been violated.

22 (2) Every motor vehicle dealer, as defined under s.
23 320.60(11), has the affirmative obligation to provide to any
24 purchaser or lessor of any used motor vehicle, as defined
25 under s. 320.60(13), a written statement, signed by an
26 authorized representative of the dealer, stating that the
27 provisions of s. 501.976 have not been violated.

28 (3) In any civil action brought under this part by a
29 purchaser or lessor of any new or used vehicle, if the
30 plaintiff shows that the representations made by the dealer
31 under the notice required under subsections (1) and (2) were

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1 not accurate when made, there shall be a rebuttable
2 presumption, as defined under s. 90.302, of a violation of
3 this part. A failure to provide the statement required under
4 subsections (1) and (2) creates a rebuttable presumption of a
5 violation of this part.

6 Section 6. Section 501.978, Florida Statutes, is
7 created to read:

8 501.978 Other individual remedies.--

9 (1) Without regard to any other remedy or relief to
10 which a person is entitled, anyone aggrieved by a violation of
11 this part may bring an action to obtain a declaratory judgment
12 that an act or practice violates this part and to enjoin a
13 person who has violated, is violating, or is otherwise likely
14 to violate this part.

15 (2) In any action brought by a person who has suffered
16 a loss as a result of a violation of this part, the person may
17 recover actual damages, plus attorney's fees and court costs
18 as provided in s. 501.2105. However, damages, fees, or costs
19 are not recoverable under this section against a retailer who
20 has, in good faith, engaged in the dissemination of claims of
21 a manufacturer or wholesaler without actual knowledge that it
22 violated this part.

23 (3) In any action brought under this section, upon
24 motion of the party against whom the action is filed alleging
25 that the action is frivolous, without legal or factual merit,
26 or brought for the purpose of harassment, the court may, after
27 hearing evidence as to the necessity therefore, require the
28 party instituting the action to post a bond in the amount
29 which the court finds reasonable to indemnify the defendant
30 for any damages incurred, including reasonable attorney's
31 fees. This subsection does not apply to any action initiated

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1 by the enforcing authority.

2 Section 7. Section 501.979, Florida Statutes, is
3 created to read:

4 501.979 Notice; contract; satisfaction of claims.--

5 (1) As a condition precedent to filing any action for
6 any violation of this part, the dealer must be provided with
7 written notice of an intent to initiate litigation.

8 (2) The notice required shall state that it is a
9 "demand letter for a violation of the Florida Deceptive and
10 Unfair Trade Practices Act" and shall state with specificity:

11 (a) The name and contact information of all claimants.

12 (b) The name of the dealer and the names of the
13 dealer's employees or agents who were involved with the
14 alleged unfair and deceptive act, if known to the claimant.

15 (c) The facts and circumstances giving rise to the
16 alleged unfair and deceptive act. The claimant shall attach a
17 copy of all documentation relating to the transaction in the
18 claimant's possession, including, but not limited to, the
19 purchase contract lease, finance agreement, and advertisement.

20 (d) The amount and nature of actual damages alleged by
21 the claimant to be recoverable under this section. The term
22 actual damages means out-of-pocket costs and pecuniary loss to
23 the claimant which are directly caused by the alleged
24 violations of this section and does not include legal fees or
25 consequential or other damages.

26 (e) A statement that the notice is given in order to
27 perfect the right to pursue the civil remedy authorized by
28 this section.

29 (3) Each notice required by this section must be
30 delivered to the dealer by the United States Postal Service by
31 certified or registered mail. Such postal costs shall be

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1 reimbursed by the dealer if so requested by the claimant in
2 the notice, if the dealer pays the claim or provides the
3 relief requested in the notice.

4 (4) If, within 15 days after receipt of notice by the
5 dealer, the alleged claim specified in the notice is paid by
6 the dealer, along with reasonable attorney's fees and costs,
7 no action may be brought against the dealer. For purposes of
8 this section, payment or the dealer's agreement to remedy any
9 nonmonetary relief shall be treated as being made on the date
10 a draft or other valid instrument that is equivalent to
11 payment, or the dealer's written statement of envelope, or if
12 not so posted, on the date of delivery of the notice.

13 (5) The applicable statute of limitations for an
14 action under this section shall be tolled for a period of 15
15 business days by the mailing of the notice required by this
16 section.

17 (6) This section does not apply to any action brought
18 by the enforcing authority.

19 Section 8. Present subsections (3) and (4) of section
20 501.2077, Florida Statutes, are redesignated as subsections
21 (4) and (5), respectively, and a new subsection (3) is added
22 to that section, to read:

23 501.2077 Violations involving senior citizen or
24 handicapped person; civil penalties; presumption.--

25 (3) It is presumed to be substantively and
26 procedurally unconscionable and an unfair or deceptive trade
27 act in violation of this part for any person to cause a
28 handicapped person or a senior citizen who is at least 70
29 years of age and whose ability to perform the normal
30 activities of daily living is impaired, or the designee or
31 legal representative of the handicapped person or senior

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1 citizen, to:

2 (a) Waive or limit any benefit or right conferred by
3 any statute intended to provide protection to such persons; or

4 (b) Waive the person's right of access to a jury
5 trial,

6
7 unless the waiver is acknowledged in writing to be knowing and
8 voluntary by an attorney representing the senior citizen or
9 handicapped person.

10 Section 9. This act shall take effect July 1, 2005,
11 and applies to causes of action accruing on or after that
12 date.

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15 ===== T I T L E A M E N D M E N T =====

16 And the title is amended as follows:

17 Delete everything before the enacting clause

18

19 and insert:

20 A bill to be entitled
21 An act relating to unfair and deceptive trade
22 practices; amending s. 501.975, F.S.; providing
23 definitions; creating s. 501.9751, F.S.;
24 providing an exclusive remedy for unfair and
25 deceptive trade practice actions against motor
26 vehicle dealers and providing purposes;
27 creating s. 501.9752, F.S.; clarifying that
28 these remedies are in addition to those
29 authorized under state or local law; amending
30 s. 501.976, F.S.; providing legislative intent;
31 revising actions that are unfair or deceptive

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1 acts or practices; creating s. 501.977, F.S.;

2 requiring motor vehicle dealers to provide

3 certain written statements to purchasers or

4 lessors; creating a rebuttable presumption;

5 creating s. 501.978, F.S.; authorizing

6 declaratory judgments and injunctions;

7 providing for recovery; providing a good-faith

8 exception; authorizing the court to require the

9 posting of a bond; creating s. 501.979, F.S.;

10 requiring a demand notice in an action against

11 a motor vehicle dealer and providing a

12 procedure; amending s. 501.2077, F.S.;

13 providing that it is an unfair or deceptive act

14 to cause handicapped persons or certain senior

15 citizens to waive certain benefits or rights;

16 providing an exception; providing an effective

17 date.

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