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1 A bill to be entitled

2 An act relating to deceptive and unfair trade practices;
3 creating s. 501.2115, F.S.; requiring a demand letter as a
4 condition precedent to filing specified actions for
5 deceptive and unfair trade practices; providing
6 requirements for such demand letters; providing for
7 delivery of such letters; providing that if specified
8 payment of damages and premium is made within a specified
9 period then no action may be brought against the alleged
10 violator and the alleged violator shall not be obligated
11 to pay any attorney's fees to the claimant; providing
12 circumstances under which an alleged violator is excused
13 from paying attorney's fees in specified actions;
14 providing for specified treatment of payment of the actual
15 damages or an offer to pay actual damages by an alleged
16 violator; providing for application of demand letter
17 provisions to class actions; providing for tolling statute
18 of limitations periods for specified periods upon mailing
19 of demand letter; excluding actions brought by the
20 enforcing authority from the requirements of this act;
21 requiring the Department of Legal Affairs to prepare a
22 specified sample form and make it available to the public;
23 providing applicability; 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. Section 501.2115, Florida Statutes, is created
28 to read:

29 501.2115 Demand letter.--
 30 (1) As a condition precedent to filing any action under
 31 this part or part VI of this chapter, an alleged violator must
 32 be provided with 30 days' prior written notice of the claimant's
 33 intent to initiate litigation.
 34 (2) The notice must be completed in good faith and shall:
 35 (a) State in substantially the following language: "This
 36 notice is a demand letter under s. 501.2115, Florida Statutes."
 37 (b) State the name, address, and telephone number of the
 38 claimant.
 39 (c) State the name and address of the alleged violator.
 40 (d) Provide the date and a description of the transaction,
 41 event, or circumstance giving rise to the claim.
 42 (e) To the extent applicable, be accompanied by all
 43 transaction documents or other documents upon which the claim is
 44 based or upon which the claimant is relying to assert the claim.
 45 (f) Describe with specificity each alleged violation of
 46 this part or part VI of this chapter.
 47 (g) Include a statement describing and providing the
 48 amount of each item of actual damages demanded by the claimant
 49 and recoverable under this part or part VI of this chapter.
 50 (3) The notice required by this section must be delivered
 51 to the alleged violator by certified or registered mail, return
 52 receipt requested. Such postal costs shall be reimbursed by the
 53 alleged violator when the alleged violator pays the claim if so
 54 requested by the claimant in the notice. If the alleged violator
 55 is a business entity, notice must be sent to the business
 56 entity's registered agent on file with the Secretary of State

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57 or, in the absence of a registered agent, anyone listed in s.
58 48.081(1).

59 (4) If, within 30 days after receipt of the notice, the
60 alleged violator pays the claim specified in the notice,
61 together with a surcharge of 10 percent of the alleged actual
62 damages paid, which surcharge may not exceed \$250, no action may
63 be brought against the alleged violator, and the alleged
64 violator shall not be obligated to pay any attorney's fees to
65 the claimant. The surcharge shall not be available in any action
66 brought under this part or part VI of this chapter after the
67 demand is rejected or ignored. For purposes of this section,
68 payment shall be treated as being made on the date a draft or
69 other valid instrument that is equivalent to payment is placed
70 in the United States mail in a properly addressed, postpaid
71 envelope, or, if not so posted, on the date of delivery.

72 (5) The alleged violator shall not be required to pay
73 claimant's attorney's fees in a subsequent action brought under
74 this part or part VI of this chapter if:

75 (a) The alleged violator, within 30 days after receiving
76 the notice, notifies the claimant in writing, and a court or
77 arbitrator in a subsequent action agrees, that the claimant is
78 either seeking to recover damages not properly recoverable under
79 this part or part VI of this chapter or is seeking to recover an
80 excessive amount for such recoverable actual damages, but the
81 violator offers to pay the claimant all damages that are
82 properly recoverable and itemized in the notice plus the
83 surcharge described in subsection (4); or

84 (b) The claimant fails to comply with this section.

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85 (6) Payment of the actual damages or an offer to pay
86 actual damages as set forth in subsection (5) shall:

87 (a) Not constitute an admission by the alleged violator of
88 any wrongdoing.

89 (b) Be afforded the protection of s. 90.408.

90 (c) Serve to release the alleged violator from any suit or
91 other action that could be brought under this part or part VI of
92 this chapter arising out of or in connection with the
93 transaction, event, or occurrence described in the notice.

94 (d) To the extent of the damages, inclusive of any
95 surcharge paid by the alleged violator, serve as a defense in
96 any action for damages not brought under this part or part VI of
97 this chapter against the alleged violator in connection with the
98 same set of operative facts as described in the notice.

99 (7) This section shall apply to class action claims,
100 subject to the following variations:

101 (a) In addition to describing the claimant's individual
102 claim as required by subsection (2), the notice shall also
103 include:

104 1. The definition of the class of claimants for whom
105 relief is sought.

106 2. A description of the alleged violations of this part or
107 part VI of this chapter that have allegedly damaged the class.

108 3. A statement describing and providing the amount of each
109 item of actual damages demanded by the claimant on behalf of the
110 class under this part or part VI of this chapter.

111 (b) The surcharge set forth in subsection (4) shall not
112 apply.

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113 (c) All time periods described in this section shall be 90
114 days.

115 (d) If the alleged violator agrees to pay the actual class
116 action damages sought in the class action notice, the alleged
117 violator must notify the claimant of the decision in writing
118 within 90 days. Within 90 days after receiving such notice, the
119 claimant shall file an action to enforce the agreement, the
120 purpose of which action is to conduct proceedings to determine
121 the fairness of the agreement to the class, to administer the
122 agreed-upon resolution of the class claim, to carry out the
123 notification and the opt-out processes, and to award reasonable
124 attorney's fees to the claimant's counsel only for actual time
125 spent in connection with this proceeding. If the claimant fails
126 to timely file this action or if the court determines that the
127 agreement is not fair to the class, both the notice and the
128 alleged violator's response shall be deemed void.

129 (e) The alleged violator shall not be obligated to pay
130 claimant's attorney's fees in a subsequent action if the alleged
131 violator notifies the claimant in writing within 90 days and a
132 court or arbitrator in a subsequent action agrees:

133 1. That the claimant is seeking to recover damages for the
134 class not properly recoverable under this part or part VI of
135 this chapter or is seeking to recover for the class an excessive
136 amount for such properly recoverable actual damages, but still
137 offers to pay the class all damages properly recoverable and
138 listed in the notice; or

139 2. That the claim or class is not a valid class claim and
140 is not properly certified as a class, but still offers to pay

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141 the claimant individually all actual damages listed in the
142 notice that are properly recoverable by the individual claimant,
143 plus the surcharge described in subsection (4).

144 (8) The applicable statute of limitations period for an
145 action under this part or part VI of this chapter shall be
146 tolled by the mailing of the notice required by this section for
147 a period of 30 days for an individual claim or 90 days for a
148 class action claim.

149 (9) This section does not apply to actions brought by the
150 enforcing authority.

151 (10) The Department of Legal Affairs shall prepare a
152 sample notice to comply with subsection (2) for individual
153 claims and shall make it available to the public.

154 Section 2. This act shall take effect October 1, 2006.