

CHAMBER ACTION

1 The Civil Justice 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 deceptive and unfair trade practices;
7 amending s. 501.975, F.S.; providing definitions for part
8 VI of ch. 501, F.S.; creating s. 501.9755, F.S.; declaring
9 that unfair methods of competition, unconscionable acts or
10 practices, and unfair or deceptive acts or practices used
11 by motor vehicle dealers are unlawful; providing
12 legislative intent; amending s. 501.976, F.S.; providing
13 an exception to the requirement that a contract be fully
14 complete before a customer signs a motor vehicle dealer's
15 contract; providing a required contractual notice;
16 deleting a provision regarding award of attorney's fees;
17 creating s. 501.9765, F.S.; providing definitions;
18 providing that a motor vehicle dealer who willfully uses a
19 method or practice that victimizes or attempts to
20 victimize senior citizens or handicapped persons commits
21 an unfair or deceptive trade practice; providing a civil
22 penalty; providing for reimbursement or restitution;
23 creating s. 501.977, F.S.; providing additional remedies

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24 | against a motor vehicle dealer; creating s. 501.978, F.S.;

25 | providing that the remedies of part VI of ch. 501, F.S.,

26 | are in addition to remedies otherwise available for the

27 | same conduct under state or local law and do not preempt

28 | local consumer-protection ordinances not in conflict with

29 | part VI of ch. 501, F.S.; creating s. 501.979, F.S.;

30 | providing for attorney's fees for a prevailing party;

31 | providing procedures for receiving attorney's fees;

32 | authorizing the Department of Legal Affairs or the office

33 | of the state attorney to receive attorney's fees under

34 | certain circumstances; creating s. 501.980, F.S.;

35 | requiring that, as a condition precedent to initiating

36 | civil litigation arising under part VI of ch. 501, F.S., a

37 | claimant give the motor vehicle dealer written notice of

38 | the claimant's intent to initiate litigation against the

39 | motor vehicle dealer not less than 30 days before

40 | initiating the litigation; providing for the content of

41 | the notice of claim and the method by which the notice of

42 | claim is given to the motor vehicle dealer; providing that

43 | if the claim is paid by the motor vehicle dealer within 30

44 | days after receiving the notice of claim, together with a

45 | surcharge of 10 percent of the alleged actual damages, the

46 | claimant may not initiate litigation against the motor

47 | vehicle dealer, and the motor vehicle dealer is obligated

48 | to pay only \$500 for the attorney's fees of the claimant;

49 | providing that the surcharge not exceed \$500; providing

50 | procedures for damage claims that are nonquantifiable;

51 | providing expedited procedures when the claimant is

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52 without access to a motor vehicle; providing that a
 53 claimant is not entitled to a surcharge under certain
 54 circumstances; providing that a motor vehicle dealer is
 55 not obligated to pay the claimant's attorney's fees under
 56 certain circumstances; providing that the presuit-
 57 notification procedures apply to class actions; providing
 58 that any applicable statute of limitations is tolled for
 59 30 days for individual claims and 90 days for class action
 60 claims; providing that the act does not affect the
 61 statutory responsibilities of the Attorney General or the
 62 office of the state attorney; requiring the Department of
 63 Legal Affairs to prepare a specified sample demand letter
 64 and make it available to the public; requiring a court to
 65 abate litigation, without prejudice, until the claimant
 66 has complied with the required procedures; amending s.
 67 501.212, F.S.; exempting motor vehicle dealers from the
 68 provisions of part II of ch. 501, F.S.; providing an
 69 exception for the enforcing authority; providing an
 70 effective date.

71
 72 Be It Enacted by the Legislature of the State of Florida:

73
 74 Section 1. Section 501.975, Florida Statutes, is amended
 75 to read:

76 501.975 Definitions.--As used in this part ~~s. 501.976~~, the
 77 term ~~following terms shall have the following meanings:~~

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

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79 (2) "Dealer" means a motor vehicle dealer as defined in s.
80 320.27, but does not include a motor vehicle auction as defined
81 in s. 320.27(1)(c)4.

82 (3) "Replacement item" means a tire, bumper, bumper
83 fascia, glass, in-dashboard equipment, seat or upholstery cover
84 or trim, exterior illumination unit, grill, sunroof, external
85 mirror and external body cladding. The replacement of up to
86 three of these items does not constitute repair of damage if
87 each item is replaced because of a product defect or damage
88 ~~damaged~~ due to vandalism, lot damage, or an act of God while the
89 new motor vehicle is under the control of the dealer and the
90 items are replaced with original manufacturer equipment, ~~unless~~
91 ~~an item is replaced due to a crash, collision, or accident.~~

92 (4) "Threshold amount" means 3 percent of the
93 manufacturer's suggested retail price of a motor vehicle or
94 \$650, whichever is less.

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

100 Section 2. Section 501.9755, Florida Statutes, is created
101 to read:

102 501.9755 Unlawful acts and practices.--

103 (1) Unfair methods of competition, unconscionable acts or
104 practices, and unfair or deceptive acts or practices in the
105 conduct of any trade or commerce by a dealer are unlawful.

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106 (2) It is the intent of the Legislature that, in
 107 construing subsection (1), due consideration and great weight be
 108 given to the interpretations of the Federal Trade Commission and
 109 the federal courts relating to s. 5(a)(1) of the Federal Trade
 110 Commission Act, 15 U.S.C. s. 45(a)(1).

111 Section 3. Section 501.976, Florida Statutes, is amended
 112 to read:

113 501.976 Actionable, unfair, or deceptive acts or
 114 practices.--In addition to acts and practices actionable under
 115 s. 501.9755, it is an unfair or deceptive act or practice,
 116 actionable under the Florida Deceptive and Unfair Trade
 117 Practices Act, for a dealer to:

118 (1) Represent directly or indirectly that a motor vehicle
 119 is a factory executive vehicle or executive vehicle unless the
 120 ~~such~~ vehicle was purchased directly from the manufacturer or a
 121 subsidiary of the manufacturer and the vehicle was used
 122 exclusively by the manufacturer, its subsidiary, or a dealer for
 123 the commercial or personal use of the manufacturer's,
 124 subsidiary's, or dealer's employees.

125 (2) Represent directly or indirectly that a vehicle is a
 126 demonstrator unless the vehicle complies with the definition of
 127 a demonstrator in s. 320.60(3).

128 (3) Represent the previous usage or status of a vehicle to
 129 be something that it was not, or make usage or status
 130 representations unless the dealer has correct information
 131 regarding the history of the vehicle to support the
 132 representations.

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

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

141 (6) Sell a vehicle without fully and conspicuously
142 disclosing in writing at or before the consummation of sale any
143 warranty or guarantee terms, obligations, or conditions that the
144 dealer or manufacturer has given to the buyer. If the warranty
145 obligations are to be shared by the dealer and the buyer, the
146 method of determining the percentage of repair costs to be
147 assumed by each party must be disclosed. If the dealer intends
148 to disclaim or limit any expressed or implied warranty, the
149 disclaimer must be in writing in a conspicuous manner and in lay
150 terms in accordance with chapter 672 and the Magnuson-Moss
151 Warranty--Federal Trade Commission Improvement Act.

152 (7) Provide an express or implied warranty and fail to
153 honor such warranty unless properly disclaimed pursuant to
154 subsection (6).

155 (8) Misrepresent warranty coverage, application period, or
156 any warranty transfer cost or conditions to a customer.

157 (9) Obtain signatures from a customer on contracts that
158 are not fully completed as to all material terms at the time the
159 customer signs or which do not reflect accurately the
160 negotiations and agreement between the customer and the dealer.

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161 However, this subsection does not apply if, at the time of the
162 transaction, the customer acknowledges in writing, separate from
163 any other text, having read substantially the following notice:

164 STATUTORY CONSUMER NOTICE: A vehicle purchase or lease
165 is a substantial transaction. Do not execute any sale
166 or lease document if it is not fully completed or does
167 not accurately reflect your agreement with the motor
168 vehicle dealer. If you suffer any damages as a result
169 of improper actions of the motor vehicle dealer,
170 relief may be available to you under the laws of this
171 state, including part VI of chapter 501, Florida
172 Statutes.

173 (10) Require or accept a deposit from a prospective
174 customer prior to entering into a binding contract for the
175 purchase and sale of a vehicle unless the customer is given a
176 written receipt that states how long the dealer will hold the
177 vehicle from other sale and the amount of the deposit, and
178 clearly and conspicuously states whether and upon what
179 conditions the deposit is refundable or nonrefundable.

180 (11) Add to the cash price of a vehicle as defined in s.
181 520.02(2) any fee or charge other than those provided in that
182 section and in rule 3D-50.001, Florida Administrative Code. All
183 fees or charges permitted to be added to the cash price by rule
184 3D-50.001, Florida Administrative Code, must be fully disclosed
185 to customers in all binding contracts concerning the vehicle's
186 selling price.

187 (12) Alter or change the odometer mileage of a vehicle
188 except in compliance with 49 U.S.C. s. 32704.

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

191 (14) File a lien against a new vehicle purchased with a
192 check unless the dealer fully discloses to the purchaser that a
193 lien will be filed if purchase is made by check and fully
194 discloses to the buyer the procedures and cost to the buyer for
195 gaining title to the vehicle after the lien is filed.

196 (15) Increase the price of the vehicle after having
197 accepted an order of purchase or a contract from a buyer,
198 notwithstanding subsequent receipt of an official price change
199 notification. The price of a vehicle may be increased after a
200 dealer accepts an order of purchase or a contract from a buyer
201 if:

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

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

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

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

211 (e) Price protection is not provided by the manufacturer,
212 importer, or distributor.

213 (16) Advertise the price of a vehicle unless the vehicle
214 is identified by year, make, model, and a commonly accepted
215 trade, brand, or style name. The advertised price must include
216 all fees or charges that the customer must pay, including

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217 freight or destination charge, dealer preparation charge, and
218 charges for undercoating or rustproofing. State and local taxes,
219 tags, registration fees, and title fees, unless otherwise
220 required by local law or standard, need not be disclosed in the
221 advertisement. When two or more dealers advertise jointly, with
222 or without participation of the franchisor, the advertised price
223 need not include fees and charges that are variable among the
224 individual dealers cooperating in the advertisement, but the
225 nature of all charges that are not included in the advertised
226 price must be disclosed in the advertisement.

227 (17) Charge a customer for any predelivery service
228 required by the manufacturer, distributor, or importer for which
229 the dealer is reimbursed by the manufacturer, distributor, or
230 importer.

231 (18) Charge a customer for any predelivery service without
232 having printed on all documents that include a line item for
233 predelivery service the following disclosure: "This charge
234 represents costs and profit to the dealer for items such as
235 inspecting, cleaning, and adjusting vehicles, and preparing
236 documents related to the sale."

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

241
242 ~~In any civil litigation resulting from a violation of this~~
243 ~~section, when evaluating the reasonableness of an award of~~
244 ~~attorney's fees to a private person, the trial court shall~~

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245 ~~consider the amount of actual damages in relation to the time~~
246 ~~spent.~~

247 Section 4. Section 501.9765, Florida Statutes, is created
248 to read:

249 501.9765 Violations involving a senior citizen or
250 handicapped person; civil penalties; presumption.--

251 (1) As used in this section, the term:

252 (a) "Senior citizen" means a person who is 60 years of age
253 or older.

254 (b) "Handicapped person" means any person who has a mental
255 or educational impairment that substantially limits one or more
256 major life activities.

257 (c) "Mental or educational impairment" means:

258 1. Any mental or psychological disorder or specific
259 learning disability.

260 2. Any educational deficiency that substantially affects a
261 person's ability to read and comprehend the terms of any
262 contractual agreement entered into.

263 (d) "Major life activities" means functions associated
264 with the normal activities of independent daily living such as
265 caring for oneself, performing manual tasks, walking, seeing,
266 hearing, speaking, breathing, learning, and working.

267 (2) Any person who willfully uses, or has willfully used,
268 a method, act, or practice in violation of this part, which
269 method, act, or practice victimizes or attempts to victimize a
270 senior citizen or handicapped person, and commits such violation
271 when he or she knew or should have known that his or her conduct

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272 was unfair or deceptive, is liable for a civil penalty of not
273 more than \$15,000 for each such violation.

274 (3) Any order of restitution or reimbursement based on a
275 violation of this part committed against a senior citizen or
276 handicapped person has priority over the imposition of civil
277 penalties for violations of this section.

278 (4) Civil penalties collected under this section shall be
279 deposited into the Legal Affairs Revolving Trust Fund of the
280 Department of Legal Affairs and allocated to the Department of
281 Legal Affairs solely for the purpose of preparing and
282 distributing consumer-education materials, programs, and
283 seminars to benefit senior citizens and handicapped persons or
284 to enhance efforts to enforce this section.

285 Section 5. Section 501.977, Florida Statutes, is created
286 to read:

287 501.977 Other individual remedies.--

288 (1) Without regard to any other remedy or relief to which
289 a person is entitled, anyone aggrieved by a violation of this
290 part by a dealer may bring an action against the dealer in order
291 to obtain a declaratory judgment that an act or practice
292 violates this part and to enjoin a dealer who has violated, is
293 violating, or is otherwise likely to violate, this part.

294 (2) In any action brought by a person who has suffered a
295 loss as a result of a violation of this part, the person may
296 recover actual damages, plus attorney's fees and court costs as
297 provided in s. 501.979. However, damages, fees, or costs are not
298 recoverable under this section against a dealer who has, in good
299 faith, engaged in the dissemination of claims of a manufacturer,

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300 distributor, importer, or wholesaler without actual knowledge
301 that doing so violates this part.

302 (3) In any action brought under this section, if, after
303 the filing of a motion by the dealer, the court finds that the
304 action is frivolous, without legal or factual merit, or brought
305 for the purpose of harassment, the court may, after hearing
306 evidence as to the necessity therefor, require the party
307 instituting the action to post a bond in the amount that the
308 court finds reasonable to indemnify the defendant for any costs
309 incurred, or to be incurred, including reasonable attorney's
310 fees in defending the claim. This subsection does not apply to
311 any action initiated by the enforcing authority.

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

314 501.978 Effect on other remedies.--

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

318 (2) This part is supplemental to, and does not preempt,
319 local consumer-protection ordinances not inconsistent with this
320 part.

321 Section 7. Section 501.979, Florida Statutes, is created
322 to read:

323 501.979 Attorney's fees.--

324 (1) In any civil litigation resulting from an act or
325 practice involving a violation of this part, except as provided
326 in subsection (5) and s. 501.980, the prevailing party, after
327 judgment in the trial court and exhaustion of all appeals, if

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328 any, shall receive his or her reasonable attorney's fees and
329 costs from the nonprevailing party. When evaluating the
330 reasonableness of an award of attorney's fees to a private
331 person, the trial court shall consider the actual damages in
332 relation to the time spent.

333 (2) The attorney for the prevailing party shall submit a
334 sworn affidavit of his or her time spent on the case and his or
335 her costs incurred for all the motions, hearings, and appeals to
336 the trial judge who presided over the civil case.

337 (3) The trial judge may award the prevailing party the sum
338 of reasonable costs incurred in the action, plus reasonable
339 attorney's fees for the hours actually spent on the case as
340 sworn to in an affidavit.

341 (4) Any award of attorney's fees or costs becomes a part
342 of the judgment and is subject to execution as the law allows.

343 (5) In any civil litigation initiated by the enforcing
344 authority, the court may award to the prevailing party
345 reasonable attorney's fees and costs if the court finds that
346 there was a complete absence of a justiciable issue of law or
347 fact raised by the losing party or if the court finds bad faith
348 on the part of the losing party.

349 (6) In any administrative proceeding or other nonjudicial
350 action initiated by an enforcing authority, the attorney for the
351 enforcing authority may certify by sworn affidavit the number of
352 hours and the cost thereof to the enforcing authority for the
353 time spent in the investigation and litigation of the case, plus
354 costs reasonably incurred in the action. Payment to the
355 enforcing authority of the sum of the costs may, by stipulation

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356 of the parties, be made a part of the final order or decree
357 disposing of the matter. The affidavit shall be attached to and
358 become a part of the order or decree.

359 Section 8. Section 501.980, Florida Statutes, is created
360 to read:

361 501.980 Demand letter.--

362 (1) As a condition precedent to initiating any civil
363 litigation arising under this part, a claimant must give the
364 dealer written notice of the claimant's intent to initiate
365 litigation against the dealer not less than 30 days before
366 initiating the litigation.

367 (2) The notice, which must be completed in good faith,
368 must:

369 (a) State that it is a demand letter under s. 501.980;

370 (b) State the name, address, and telephone number of the
371 claimant;

372 (c) State the name and address of the dealer;

373 (d) Provide the date and a description of the transaction,
374 event, or circumstance that is the basis of the claim;

375 (e) Describe with specificity the underlying facts and how
376 they give rise to an alleged violation of this part;

377 (f) To the extent applicable, be accompanied by all
378 transaction or other documents upon which the claim is based or
379 upon which the claimant is relying to assert the claim;

380 (g) Include a statement describing and providing the
381 amount of each item of actual damages demanded by the claimant
382 and recoverable under this part. However, to the extent the
383 claimant cannot in good faith quantify any item of actual damage

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384 as required, the claimant shall provide a comprehensive
385 description of the item of damage or a formula or basis by which
386 the dealer may calculate the damage; and

387 (h) Include a description of reasonable attorney's fees
388 incurred, if any, for which reimbursement, not to exceed \$500,
389 is sought.

390 (3) (a) The notice of the claim must be delivered to the
391 dealer by certified mail, return receipt requested. The postal
392 costs shall be reimbursed to the claimant by the dealer if the
393 dealer pays the claim and if the claimant requests reimbursement
394 of the postal costs in the notice of claim.

395 (b) If the dealer is a corporate entity, the notice of
396 claim must be sent to the registered agent of the dealer as
397 recorded with the Department of State and, in the absence of a
398 registered agent, any person listed in s. 48.081(1).

399 (4) Notwithstanding any provision of this part to the
400 contrary, a claimant may not initiate litigation against a
401 dealer for a claim arising under this part related to, or in
402 connection with, the transaction or event described in the
403 notice of claim if the dealer pays the claimant within 30 days
404 after receiving the notice of claim:

405 (a) The amount requested in the demand letter as specified
406 in paragraph (2) (g);

407 (b) A surcharge of 10 percent of the amount requested in
408 the demand letter, not to exceed \$500; and

409 (c) The attorney's fees of the claimant as specified in
410 paragraph (2) (h), not to exceed \$500.

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411 (5) (a) Subsection (4) does not apply if the notice of
412 claim specifies nonquantified items of damage. However, the
413 dealer may notify the claimant in writing within 30 days after
414 receiving the notice of claim that the dealer proposes to pay
415 the claim with modifications. The dealer must inform the
416 claimant that he or she has placed a value on the nonquantified
417 items of damage and intends to pay that amount in addition to
418 the payments described in paragraphs (4) (a) and (b).

419 (b) The claimant must accept or reject, in writing, the
420 offer of the dealer within 10 business days after receiving the
421 offer.

422 (c) Upon receipt of the notice of acceptance, the dealer
423 must pay the claimant the amount set forth in the proposal
424 within 10 business days after receiving the notice of
425 acceptance.

426 (d) A claimant may not initiate litigation against the
427 dealer for a claim under this part that is related to, or in
428 connection with, the transaction or event described in the
429 notice of claim unless:

430 1. The dealer ignores, rejects, or fails to timely respond
431 to the claimant's demand, or fails to pay within 10 business
432 days the amount accepted by claimant; or

433 2. The claimant does not accept the proposal of the
434 dealer.

435 (6) If the notice of claim includes damages that arise
436 from the claimant's not having access to a motor vehicle due to
437 the alleged conduct of the dealer, the time set forth in

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438 subsections (4) and (5) for the dealer to respond are reduced
439 from 30 days to 10 business days.

440 (7) For the purpose of this section, payment by a dealer
441 is deemed paid on the date a draft or other valid instrument
442 that is equivalent to payment is placed in the United States
443 mail, or other nationally recognized carrier, in a properly
444 addressed, postpaid envelope, or, if not so posted, on the date
445 of delivery.

446 (8) The claimant is not entitled to a surcharge in any
447 proceeding initiated against a dealer under this part if the
448 dealer rejects or ignores the notice of claim or the claimant
449 rejects or ignores the dealer's proposal described in subsection
450 (5).

451 (9) Notwithstanding any provision of this part to the
452 contrary, a dealer is not required to pay the attorney's fees of
453 the claimant in any civil action brought under this part if:

454 (a) The dealer, within 30 days after receiving the
455 claimant's notice of claim, notifies the claimant in writing,
456 and a court or arbitrator agrees, that the amount claimed is not
457 supported by the facts of the transaction or event described in
458 the notice of claim or by generally accepted accounting
459 principles, or includes items not properly recoverable under
460 this part, but nevertheless offers to pay to the claimant the
461 actual damages that are supported by the facts of the
462 transaction or event described in the notice of claim and
463 properly recoverable under this part, and the surcharge and
464 attorney's fees, if any, described in subsection (4);

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465 (b) The claimant's basis for rejecting or ignoring the
466 dealer's proposal described in subsection (5) is not supported
467 by the facts described in the notice of claim, generally
468 accepted accounting principles, or the law; or

469 (c) The claimant fails to substantially comply with this
470 section.

471 (10) This section shall apply to class action claims,
472 subject to the following conditions:

473 (a) In addition to describing the claimant's individual
474 claim as required by subsection (2), the class action notice of
475 claim to the dealer must also include:

476 1. The definition of the class of claimants for whom
477 relief is sought;

478 2. A description of the alleged violations of this part
479 that have allegedly damaged the class; and

480 3. A statement describing and providing the amount of each
481 item of actual damages demanded by the claimant on behalf of the
482 class under this part or, if the claimant cannot in good faith
483 quantify an item of actual damages, a comprehensive description
484 of the item of damages and a formula or basis by which the
485 dealer may calculate the damages.

486 (b) The surcharge set forth in subsection (4) shall not
487 apply.

488 (c) All time periods described in other subsections of
489 this section shall be 45 days in length for class actions unless
490 further extended by a written agreement of the parties.

491 (d) If the dealer agrees to pay the damages demanded in
492 the class action notice of claim, the dealer must notify the

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493 claimant of the decision in writing within 90 days after
494 receiving the class action notice of claim. Within 90 days after
495 receiving the dealer's notice of agreement, the claimant, on
496 behalf of the class, must file a civil action to enforce the
497 agreement, the purpose of which is to conduct proceedings to
498 determine the fairness of the agreement to the class, to
499 administer the agreed resolution of the class action, to provide
500 for notification and opt-out procedures applicable in a class
501 action, to ensure compliance with the rules of civil procedure,
502 and to award reasonable attorney's fees to the claimant's
503 counsel for actual time spent in connection with the proceeding.
504 If the claimant fails to timely file the civil action within 90
505 days or if the court determines that the agreement is not fair
506 to the class, the class action notice and the dealer's response
507 are void.

508 (e) A dealer is not be obligated to pay attorney's fees
509 for the claimant in a class action proceeding if the dealer,
510 within 45 days after receiving the class action notification,
511 informs the claimant in writing, and a court or arbitrator in a
512 subsequent action agrees, that:

513 1. The claimant is seeking to recover damages for the
514 class that are not properly recoverable under this part or is
515 seeking to recover damages that are not supported by the facts
516 of the transaction or event described in the class action notice
517 of claim or by generally accepted accounting principles, but
518 still offers to pay the class all damages properly recoverable
519 and listed in the notice of claim; or

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520 2. The claim or class is not a valid class claim or the
521 class is not properly certified as a class, but the dealer still
522 offers to pay all actual damages properly recoverable by the
523 claimant under this part as an individual that are supported by
524 the facts of the transaction or event described in the class
525 action notice of claim, in addition to the payments described in
526 paragraphs (4) (b) and (c).

527 (11) Payment of the actual damages or an offer to pay
528 actual damages as set forth in this section:

529 (a) Does not constitute an admission of any wrongdoing by
530 the dealer;

531 (b) Is protected by s. 90.408;

532 (c) Serves to release the dealer from any suit, action, or
533 other action that could be brought under this part arising out
534 of or in connection with the transaction, event, or occurrence
535 described in the notice of claim;

536 (d) Serves as a defense in any action brought by the same
537 claimant to the extent of the damages, inclusive of any
538 surcharge, paid by the dealer; and

539 (e) Serves as a defense in any subsequent action brought
540 by any member of the class who did not opt out in connection
541 with the same set of operative facts as described in the class
542 action notice of claim if the action was settled on a classwide
543 basis.

544 (12) The applicable statute of limitations period for an
545 action under this part is tolled for 30 days for individual
546 claims and 45 days for class action claims, or such other period

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547 of time as agreed to by the parties in writing, by the mailing
548 of the notice required by this section.

549 (13) This section does not apply to actions brought by the
550 enforcing authority. Notwithstanding the foregoing, the
551 Department of Legal Affairs shall prepare a sample demand letter
552 to incorporate the information required by subsection (2) for
553 individual notice of claims and shall make it available to the
554 public.

555 (14) If a claimant initiates civil litigation under this
556 part without first complying with the requirements of this
557 section, the court, upon a motion of a dealer, shall abate the
558 litigation, without prejudice, until the claimant has complied
559 with the provisions of this part.

560 Section 9. Subsection (8) is added to section 501.212,
561 Florida Statutes, to read:

562 501.212 Application.--This part does not apply to:

563 (8) A claim brought by a person other than the enforcing
564 authority against a dealer as defined in s. 501.975(2).

565 Section 10. This act shall take effect upon becoming a
566 law.