

Bill No. SB 2496

Barcode 503744

CHAMBER ACTION

Senate

House

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The Committee on Commerce and Consumer Services (Aronberg)  
recommended the following amendment:

**Senate Amendment (with title amendment)**

On page 6, line 14, through  
page 19, line 15, delete those lines

and insert: between the customer and the dealer.

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

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

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1 concerning the vehicle's selling price.

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

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

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

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

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

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

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

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

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

29 (16) Advertise the price of a vehicle unless the  
30 vehicle is identified by year, make, model, and a commonly  
31 accepted trade, brand, or style name. The advertised price

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1 must include all fees or charges that the customer must pay,  
 2 including freight or destination charge, dealer preparation  
 3 charge, and charges for undercoating or rustproofing. State  
 4 and local taxes, tags, registration fees, and title fees,  
 5 unless otherwise required by local law or standard, need not  
 6 be disclosed in the advertisement. When two or more dealers  
 7 advertise jointly, with or without participation of the  
 8 franchisor, the advertised price need not include fees and  
 9 charges that are variable among the individual dealers  
 10 cooperating in the advertisement, but the nature of all  
 11 charges that are not included in the advertised price must be  
 12 disclosed in the advertisement.

13 (17) Charge a customer for any predelivery service  
 14 required by the manufacturer, distributor, or importer for  
 15 which the dealer is reimbursed by the manufacturer,  
 16 distributor, or importer.

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

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

27  
 28 ~~In any civil litigation resulting from a violation of this~~  
 29 ~~section, when evaluating the reasonableness of an award of~~  
 30 ~~attorney's fees to a private person, the trial court shall~~  
 31 ~~consider the amount of actual damages in relation to the time~~

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1 ~~spent.~~

2 Section 4. Section 501.9765, Florida Statutes, is  
3 created to read:

4 501.9765 Violations involving a senior citizen or  
5 handicapped person; civil penalties; presumption.--

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

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

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

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

13 1. Any mental or psychological disorder or specific  
14 learning disability.

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

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

22 (2) Any person who willfully uses, or has willfully  
23 used, a method, act, or practice in violation of this part,  
24 which method, act, or practice victimizes or attempts to  
25 victimize a senior citizen or handicapped person, and commits  
26 such violation when she or he knew or should have known that  
27 her or his conduct was unfair or deceptive, is liable for a  
28 civil penalty of not more than \$15,000 for each such  
29 violation.

30 (3) Any order of restitution or reimbursement based on  
31 a violation of this part committed against a senior citizen or

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1 handicapped person has priority over the imposition of civil  
2 penalties for violations of this section.

3 (4) Civil penalties collected under this section shall  
4 be deposited into the Legal Affairs Revolving Trust Fund of  
5 the Department of Legal Affairs and allocated to the  
6 Department of Legal Affairs solely for the purpose of  
7 preparing and distributing consumer-education materials,  
8 programs, and seminars to benefit senior citizens and  
9 handicapped persons or to enhance efforts to enforce this  
10 section.

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

13 501.977 Other individual remedies.--

14 (1) Without regard to any other remedy or relief to  
15 which a person is entitled, anyone aggrieved by a violation of  
16 this part by a dealer may bring an action against the dealer  
17 in order to obtain a declaratory judgment that an act or  
18 practice violates this part and to enjoin a dealer who has  
19 violated, is violating, or is otherwise likely to violate,  
20 this part.

21 (2) In any action brought by a person who has suffered  
22 a loss as a result of a violation of this part, the person may  
23 recover actual damages, plus attorney's fees and court costs  
24 as provided in s. 501.979. However, damages, fees, or costs  
25 are not recoverable under this section against a dealer who  
26 has, in good faith, engaged in the dissemination of claims of  
27 a manufacturer or wholesaler without actual knowledge that  
28 doing so violates this part.

29 (3) In any action brought under this section, if,  
30 after the filing of a motion by the dealer, the court finds  
31 that the action is frivolous, without legal or factual merit,

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1 or brought for the purpose of harassment, the court may, after  
 2 hearing evidence as to the necessity therefor, require the  
 3 party instituting the action to post a bond in the amount that  
 4 the court finds reasonable to indemnify the defendant for any  
 5 costs incurred, or to be incurred, including reasonable  
 6 attorney's fees in defending the claim. This subsection does  
 7 not apply to any action initiated by the enforcing authority.

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

10           501.978 Effect on other remedies.--

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

14           (2) This part is supplemental to, and does not  
 15 preempt, local consumer-protection ordinances not inconsistent  
 16 with this part.

17           Section 7. Section 501.979, Florida Statutes, is  
 18 created to read:

19           501.979 Attorney's fees.--

20           (1) In any civil litigation resulting from an act or  
 21 practice involving a violation of this part, except as  
 22 provided in subsection (5), the prevailing party, after  
 23 judgment in the trial court and exhaustion of all appeals, if  
 24 any, may receive his or her reasonable attorney's fees and  
 25 costs from the nonprevailing party.

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

30           (3) The trial judge may award the prevailing party the  
 31 sum of reasonable costs incurred in the action, plus

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1 reasonable attorney's fees for the hours actually spent on the  
2 case as sworn to in an affidavit.

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

6 (5) In any civil litigation initiated by the enforcing  
7 authority, the court may award to the prevailing party  
8 reasonable attorney's fees and costs if the court finds that  
9 there was a complete absence of a justiciable issue of law or  
10 fact raised by the losing party or if the court finds bad  
11 faith on the part of the losing party.

12 (6) In any administrative proceeding or other  
13 nonjudicial action initiated by an enforcing authority, the  
14 attorney for the enforcing authority may certify by sworn  
15 affidavit the number of hours and the cost thereof to the  
16 enforcing authority for the time spent in the investigation  
17 and litigation of the case, plus costs reasonably incurred in  
18 the action. Payment to the enforcing authority of the sum of  
19 the costs may be made, by stipulation of the parties a part,  
20 of the final order or decree disposing of the matter. The  
21 affidavit shall be attached to and become a part of the order  
22 or decree.

23 Section 8. Section 501.980, Florida Statutes, is  
24 created to read:

25 501.980 Demand letter.--

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

31 (2) The notice, which must be completed in good faith,

1 must:

2       (a) Indicate that it is a demand letter;

3       (b) State the name, address, and telephone number of  
4 the claimant;

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

6       (d) Provide the approximate date and a description of  
7 the transaction, event, or circumstance that is the basis of  
8 the claim;

9       (e) Describe the underlying facts; and

10       (f) Include a statement describing and providing the  
11 amount of each item of actual damages demanded by the claimant  
12 and recoverable under this part. However, to the extent the  
13 claimant cannot in good faith quantify any item of actual  
14 damage as required, the claimant shall provide a description  
15 of the item of damage or a formula or basis by which the  
16 dealer may calculate the damage.

17       (3)(a) The notice of the claim must be delivered to  
18 the dealer by certified or registered United States mail,  
19 return receipt requested, or by a private delivery business  
20 providing the sender with comparable written documentation of  
21 receipt. Such delivery costs shall be reimbursed to the  
22 claimant by the dealer if the dealer pays the claim and if the  
23 claimant requests reimbursement of the delivery costs in the  
24 notice of claim.

25       (b) If the dealer is a corporate entity, the notice of  
26 claim must be sent to the motor vehicle dealer, as defined in  
27 s. 320.27, or the registered agent of the dealer as recorded  
28 with the Department of State.

29       (4) A claimant may not initiate litigation against a  
30 dealer for a claim arising under this part related to the  
31 transaction or event described in the notice of claim if the



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1 dealer pays the claimant within 30 days after receiving the  
2 notice of claim:

3 (a) The amount requested in the demand letter as  
4 specified in paragraph (2)(f);

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

7 (c) The attorney's fees of the claimant, not to exceed  
8 \$500.

9 (5)(a) Subsection (4) does not apply if the notice of  
10 claim specifies nonquantified items of damage. However, the  
11 dealer may notify the claimant in writing within 30 days after  
12 receiving the notice of claim that the dealer proposes to pay  
13 the claim with modifications. The dealer must inform the  
14 claimant that he or she has placed a value on the  
15 nonquantified items of damage and intends to pay that amount  
16 in addition to the payments described in subsection (4).

17 (b) The claimant must accept or reject, in writing,  
18 the offer of the dealer within 10 business days.

19 (c) Upon receipt of the notice of acceptance, the  
20 dealer must pay the claimant the amount set forth in the  
21 proposal within 10 business days.

22 (d) A claimant may not initiate litigation against the  
23 dealer for a claim under this part which is related to the  
24 transaction or event described in the notice of claim unless:

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

28 2. The claimant rejects the proposal of the dealer.

29 (6) If the notice of claim includes damages that arise  
30 from the claimant not having access to a motor vehicle due to  
31 the conduct of the dealer, the time set forth in subsections

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1 (4) and (5) for the dealer to respond are reduced from 30 days  
2 to 10 business days.

3 (7) For the purpose of this section, payment by a  
4 dealer is deemed paid on the date a draft or other valid  
5 instrument that is equivalent to payment is placed in the  
6 United States mail in a properly addressed, postpaid envelope,  
7 or, if not so posted, on the date of delivery.

8 (8) The claimant is not entitled to a surcharge in any  
9 proceeding initiated against a dealer under this part if the  
10 claimant rejects or ignores the dealer's proposal described in  
11 subsection (5).

12 (9) A dealer is not required to pay the attorney's  
13 fees of the claimant in any civil action brought under this  
14 part if:

15 (a) The dealer, within 30 days after receiving the  
16 claimant's notice of claim, notifies the claimant in writing,  
17 and a court or arbitrator agrees, that the amount claimed is  
18 not supported by the facts of the transaction or event  
19 described in the notice of claim or by generally accepted  
20 accounting principles, or includes items not properly  
21 recoverable under this part, but, nevertheless, offers to pay  
22 to the claimant the actual damages that are supported by the  
23 facts of the transaction or event described in the notice of  
24 claim and properly recoverable under this part, and the  
25 surcharge and attorney's fees, if any, described in subsection  
26 (4);

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

31 (c) The claimant fails to substantially comply with

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1 this section.

2       (10) This section does not apply to an enforcing  
3 authority. The Department of Legal Affairs shall prepare a  
4 sample demand letter to incorporate the information required  
5 by subsection (2) for individual notice of claims and make it  
6 available to the public.

7       (11) If a claimant initiates civil litigation under  
8  
9

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

11 And the title is amended as follows:

12           On page 1, line 10, through  
13           page 3, line 5, delete those lines  
14

15 and insert:

16           specifying additional actions and practices of  
17           a dealer actionable under the Florida Deceptive  
18           and Unfair Trade Practices Act; amending s.  
19           501.976, F.S.; creating s. 501.9765, F.S.;  
20           providing that a motor vehicle dealer who  
21           willfully uses a method or practice that  
22           victimizes or attempts to victimize senior  
23           citizens or handicapped persons commits an  
24           unfair or deceptive trade practice; providing a  
25           civil penalty; providing for reimbursement or  
26           restitution; creating s. 501.977, F.S.;  
27           providing additional remedies against a motor  
28           vehicle dealer; creating s. 501.978, F.S.;  
29           providing that the remedies of part VI of ch.  
30           501, F.S., are in addition to remedies  
31           otherwise available for the same conduct under

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1 state or local law and do not preempt local  
2 consumer-protection ordinances not in conflict  
3 with part VI of ch. 501, F.S.; creating s.  
4 501.979, F.S.; providing for attorney's fees  
5 for a prevailing party; providing procedures  
6 for receiving attorney's fees; authorizing the  
7 Department of Legal Affairs or the office of  
8 the state attorney to receive attorney's fees  
9 under certain circumstances; creating s.  
10 501.980, F.S.; requiring that, as a condition  
11 precedent to initiating civil litigation  
12 arising under part VI of ch. 501, F.S., a  
13 claimant give the motor vehicle dealer written  
14 notice of the claimant's intent to initiate  
15 litigation against the motor vehicle dealer not  
16 less than 30 days before initiating the  
17 litigation; providing for the content of the  
18 notice of claim and the method by which the  
19 notice of claim is given to the motor vehicle  
20 dealer; providing that if the claim is paid by  
21 the motor vehicle dealer within 30 days after  
22 receiving the notice of claim, together with a  
23 surcharge of 10 percent of the alleged actual  
24 damages, the claimant may not initiate  
25 litigation against the motor vehicle dealer,  
26 and the motor vehicle dealer is obligated to  
27 pay no more than \$500 for the attorney's fees  
28 of the claimant; providing that the surcharge  
29 not exceed \$500; providing procedures for  
30 damage claims that are nonquantifiable;  
31 providing expedited procedures when the

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1 claimant is without access to a motor vehicle;  
2 specifying when a payment by a dealer is deemed  
3 paid; providing that a claimant is not entitled  
4 to a surcharge under certain circumstances;  
5 providing that a motor vehicle dealer is not  
6 obligated to pay the claimant's attorney's fees  
7 under certain circumstances; providing that the  
8 act does not affect

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