

By Senator Aronberg

27-1278A-06

1                                 A bill to be entitled  
2             An act relating to deceptive and unfair trade  
3             practices; amending s. 501.975, F.S.; providing  
4             definitions for part VI of ch. 501, F.S.;  
5             creating s. 501.9755, F.S.; declaring that  
6             unfair methods of competition, unconscionable  
7             acts or practices, and unfair or deceptive acts  
8             or practices used by motor vehicle dealers are  
9             unlawful; providing legislative intent;  
10            amending s. 501.976, F.S.; providing an  
11            exception to the requirement that a contract be  
12            fully complete before a customer signs a motor  
13            vehicle dealer's contract; creating s.  
14            501.9765, F.S.; providing that a motor vehicle  
15            dealer who willfully uses a method or practice  
16            that victimizes or attempts to victimize senior  
17            citizens or handicapped persons commits an  
18            unfair or deceptive trade practice; providing a  
19            civil penalty; providing for reimbursement or  
20            restitution; creating s. 501.977, F.S.;  
21            providing additional remedies against a motor  
22            vehicle dealer; creating s. 501.978, F.S.;  
23            providing that the remedies of part VI of ch.  
24            501, F.S., are in addition to remedies  
25            otherwise available for the same conduct under  
26            state or local law and do not preempt local  
27            consumer-protection ordinances not in conflict  
28            with part VI of ch. 501, F.S.; creating s.  
29            501.979, F.S.; providing for attorney's fees  
30            for a prevailing party; providing procedures  
31            for receiving attorney's fees; authorizing the

1 Department of Legal Affairs or the office of  
2 the state attorney to receive attorney's fees  
3 under certain circumstances; creating s.  
4 501.980, F.S.; requiring that, as a condition  
5 precedent to initiating civil litigation  
6 arising under part VI of ch. 501, F.S., a  
7 claimant give the motor vehicle dealer written  
8 notice of the claimant's intent to initiate  
9 litigation against the motor vehicle dealer not  
10 less than 30 days before initiating the  
11 litigation; providing for the content of the  
12 notice of claim and the method by which the  
13 notice of claim is given to the motor vehicle  
14 dealer; providing that if the claim is paid by  
15 the motor vehicle dealer within 30 days after  
16 receiving the notice of claim, together with a  
17 surcharge of 10 percent of the alleged actual  
18 damages, the claimant may not initiate  
19 litigation against the motor vehicle dealer,  
20 and the motor vehicle dealer is obligated to  
21 pay only \$500 for the attorney's fees of the  
22 claimant; providing that the surcharge not  
23 exceed \$500; providing procedures for damage  
24 claims that are nonquantifiable; providing  
25 expedited procedures when the claimant is  
26 without access to a motor vehicle; providing  
27 that a claimant is not entitled to a surcharge  
28 under certain circumstances; providing that a  
29 motor vehicle dealer is not obligated to pay  
30 the claimant's attorney's fees under certain  
31 circumstances; providing that the

1 presuit-notification procedures apply to class  
2 actions; providing that any applicable statute  
3 of limitations is tolled for 30 days for  
4 individual claims and 90 days for class action  
5 claims; providing that the act does not affect  
6 the statutory responsibilities of the Attorney  
7 General or the office of the state attorney;  
8 requiring a court to abate litigation, without  
9 prejudice, until the claimant has complied with  
10 the required procedures; amending s. 501.212,  
11 F.S.; exempting motor vehicle dealers from the  
12 provisions of part II of ch. 501, F.S. ;  
13 providing an exception for the enforcing  
14 authority; providing an effective date.

15  
16 Be It Enacted by the Legislature of the State of Florida:

17  
18 Section 1. Section 501.975, Florida Statutes, is  
19 amended to read:

20 501.975 Definitions.--As used in this part ~~s. 501.976,~~  
21 ~~the term following terms shall have the following meanings:~~

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

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

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

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 |         Section 2. Section 501.9755, Florida Statutes, is  
14 | created to read:

15 |         501.9755 Unlawful acts and practices.--

16 |         (1) Unfair methods of competition, unconscionable acts  
17 | or practices, and unfair or deceptive acts or practices in the  
18 | conduct of any trade or commerce by a dealer are unlawful.

19 |         (2) It is the intent of the Legislature that, in  
20 | construing subsection (1), due consideration and great weight  
21 | be given to the interpretations of the Federal Trade  
22 | Commission and the federal courts relating to s. 5(a)(1) of  
23 | the Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1).

24 |         Section 3. Section 501.976, Florida Statutes, is  
25 | amended to read:

26 |         501.976 Actionable, unfair, or deceptive acts or  
27 | practices.--In addition to acts and practices actionable under  
28 | s. 501.9755, it is an unfair or deceptive act or practice,  
29 | actionable under the Florida Deceptive and Unfair Trade  
30 | Practices Act, for a dealer to:  
31 |

1           (1) Represent directly or indirectly that a motor  
2 vehicle is a factory executive vehicle or executive vehicle  
3 unless the ~~such~~ vehicle was purchased directly from the  
4 manufacturer or a subsidiary of the manufacturer and the  
5 vehicle was used exclusively by the manufacturer, its  
6 subsidiary, or a dealer for the commercial or personal use of  
7 the manufacturer's, subsidiary's, or dealer's employees.

8           (2) Represent directly or indirectly that a vehicle is  
9 a demonstrator unless the vehicle complies with the definition  
10 of a demonstrator in s. 320.60(3).

11           (3) Represent the previous usage or status of a  
12 vehicle to be something that it was not, or make usage or  
13 status representations unless the dealer has correct  
14 information regarding the history of the vehicle to support  
15 the representations.

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

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

24           (6) Sell a vehicle without fully and conspicuously  
25 disclosing in writing at or before the consummation of sale  
26 any warranty or guarantee terms, obligations, or conditions  
27 that the dealer or manufacturer has given to the buyer. If the  
28 warranty obligations are to be shared by the dealer and the  
29 buyer, the method of determining the percentage of repair  
30 costs to be assumed by each party must be disclosed. If the  
31 dealer intends to disclaim or limit any expressed or implied

1 warranty, the disclaimer must be in writing in a conspicuous  
2 manner and in lay terms in accordance with chapter 672 and the  
3 Magnuson-Moss Warranty--Federal Trade Commission Improvement  
4 Act.

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

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

11 (9) Obtain signatures from a customer on contracts  
12 that are not fully completed at the time the customer signs or  
13 which do not reflect accurately the negotiations and agreement  
14 between the customer and the dealer. However, this subsection  
15 does not apply if, at the time of the transaction, the  
16 customer acknowledges in writing, separate from any other  
17 text, having read substantially the following notice:

18 STATUTORY CONSUMER NOTICE: A vehicle  
19 purchase or lease is a substantial transaction.  
20 Do not execute any sale or lease document if it  
21 is not fully completed or does not accurately  
22 reflect your agreement with the motor vehicle  
23 dealer. If you suffer any damages as a result  
24 of improper actions of the motor vehicle  
25 dealer, relief may be available to you under  
26 the laws of this state including part VI of  
27 chapter 501, Florida Statutes.

28 (10) Require or accept a deposit from a prospective  
29 customer prior to entering into a binding contract for the  
30 purchase and sale of a vehicle unless the customer is given a  
31 written receipt that states how long the dealer will hold the

1 | vehicle from other sale and the amount of the deposit, and  
2 | clearly and conspicuously states whether and upon what  
3 | conditions the deposit is refundable or nonrefundable.

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

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

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

15 |       (14) File a lien against a new vehicle purchased with  
16 | a check unless the dealer fully discloses to the purchaser  
17 | that a lien will be filed if purchase is made by check and  
18 | fully discloses to the buyer the procedures and cost to the  
19 | buyer for gaining title to the vehicle after the lien is  
20 | filed.

21 |       (15) Increase the price of the vehicle after having  
22 | accepted an order of purchase or a contract from a buyer,  
23 | notwithstanding subsequent receipt of an official price change  
24 | notification. The price of a vehicle may be increased after a  
25 | dealer accepts an order of purchase or a contract from a buyer  
26 | if:

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

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

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

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

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

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

23           (17) Charge a customer for any predelivery service  
24 required by the manufacturer, distributor, or importer for  
25 which the dealer is reimbursed by the manufacturer,  
26 distributor, or importer.

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

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

7  
8 ~~In any civil litigation resulting from a violation of this~~  
9 ~~section, when evaluating the reasonableness of an award of~~  
10 ~~attorney's fees to a private person, the trial court shall~~  
11 ~~consider the amount of actual damages in relation to the time~~  
12 ~~spent.~~

13 Section 4. Section 501.9765, Florida Statutes, is  
14 created to read:

15 501.9765 Violations involving a senior citizen or  
16 handicapped person; civil penalties; presumption.--

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

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

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

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

24 1. Any mental or psychological disorder or specific  
25 learning disability.

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

29 (d) "Major life activities" means functions associated  
30 with the normal activities of independent daily living such as  
31

1 caring for oneself, performing manual tasks, walking, seeing,  
2 hearing, speaking, breathing, learning, and working.

3 (2) Any person who willfully uses, or has willfully  
4 used, a method, act, or practice in violation of this part,  
5 which method, act, or practice victimizes or attempts to  
6 victimize a senior citizen or handicapped person, and commits  
7 such violation when she or he knew or should have known that  
8 her or his conduct was unfair or deceptive, is liable for a  
9 civil penalty of not more than \$15,000 for each such  
10 violation.

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

15 (4) Civil penalties collected under this section shall  
16 be deposited into the Legal Affairs Revolving Trust Fund of  
17 the Department of Legal Affairs and allocated to the  
18 Department of Legal Affairs solely for the purpose of  
19 preparing and distributing consumer-education materials,  
20 programs, and seminars to benefit senior citizens and  
21 handicapped persons or to enhance efforts to enforce this  
22 section.

23 Section 5. Section 501.977, Florida Statutes, is  
24 created to read:

25 501.977 Other individual remedies.--

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

3 (2) In any action brought by a person who has suffered  
4 a loss as a result of a violation of this part, the person may  
5 recover actual damages, plus attorney's fees and court costs  
6 as provided in s. 501.979. However, damages, fees, or costs  
7 are not recoverable under this section against a dealer who  
8 has, in good faith, engaged in the dissemination of claims of  
9 a manufacturer or wholesaler without actual knowledge that  
10 doing so violates this part.

11 (3) In any action brought under this section, if,  
12 after the filing of a motion by the dealer, the court finds  
13 that the action is frivolous, without legal or factual merit,  
14 or brought for the purpose of harassment, the court may, after  
15 hearing evidence as to the necessity therefor, require the  
16 party instituting the action to post a bond in the amount that  
17 the court finds reasonable to indemnify the defendant for any  
18 costs incurred, or to be incurred, including reasonable  
19 attorney's fees in defending the claim. This subsection does  
20 not apply to any action initiated by the enforcing authority.

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

23 501.978 Effect on other remedies.--

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

27 (2) This part is supplemental to, and does not  
28 preempt, local consumer-protection ordinances not inconsistent  
29 with this part.

30 Section 7. Section 501.979, Florida Statutes, is  
31 created to read:

1           501.979 Attorney's fees.--

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

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

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

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

19           (5) In any civil litigation initiated by the enforcing  
20 authority, the court may award to the prevailing party  
21 reasonable attorney's fees and costs if the court finds that  
22 there was a complete absence of a justiciable issue of law or  
23 fact raised by the losing party or if the court finds bad  
24 faith on the part of the losing party.

25           (6) In any administrative proceeding or other  
26 nonjudicial action initiated by an enforcing authority, the  
27 attorney for the enforcing authority may certify by sworn  
28 affidavit the number of hours and the cost thereof to the  
29 enforcing authority for the time spent in the investigation  
30 and litigation of the case, plus costs reasonably incurred in  
31 the action. Payment to the enforcing authority of the sum of

1 the costs may be made, by stipulation of the parties a part,  
2 of the final order or decree disposing of the matter. The  
3 affidavit shall be attached to and become a part of the order  
4 or decree.

5 Section 8. Section 501.980, Florida Statutes, is  
6 created to read:

7 501.980 Demand letter.--

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

13 (2) The notice, which must be completed in good faith,  
14 must:

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

16 (b) State the name, address, and telephone number of  
17 the claimant;

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

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

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

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

27 (g) Include a statement describing and providing the  
28 amount of each item of actual damages demanded by the claimant  
29 and recoverable under this part. However, to the extent the  
30 claimant cannot in good faith quantify any item of actual  
31 damage as required, the claimant shall provide a comprehensive

1 description of the item of damage or a formula or basis by  
2 which the dealer may calculate the damage; and

3 (h) Include a description of reasonable attorney's  
4 fees incurred, if any, for which reimbursement, not to exceed  
5 \$500, is sought.

6 (3)(a) The notice of the claim must be delivered to  
7 the dealer by certified or registered United States mail,  
8 return receipt requested. The postal costs shall be reimbursed  
9 to the claimant by the dealer if the dealer pays the claim and  
10 if the claimant requests reimbursement of the postal costs in  
11 the notice of claim.

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

16 (4) A claimant may not initiate litigation against a  
17 dealer for a claim arising under this part related to the  
18 transaction or event described in the notice of claim if the  
19 dealer pays the claimant within 30 days after receiving the  
20 notice of claim:

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

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

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

27 (5)(a) Subsection (4) does not apply if the notice of  
28 claim specifies nonquantified items of damage. However, the  
29 dealer may notify the claimant in writing within 30 days after  
30 receiving the notice of claim that the dealer proposes to pay  
31 the claim with modifications. The dealer must inform the

1 claimant that he or she has placed a value on the  
2 nonquantified items of damage and intends to pay that amount  
3 in addition to the payments described in subsection (4).

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

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

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

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

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

16 (6) If the notice of claim includes damages that arise  
17 from the claimant not having access to a motor vehicle due to  
18 the conduct of the dealer, the time set forth in subsections  
19 (4) and (5) for the dealer to respond are reduced from 30 days  
20 to 10 business days.

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

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

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

4           (a) The dealer, within 30 days after receiving the  
5 claimant's notice of claim, notifies the claimant in writing,  
6 and a court or arbitrator agrees, that the amount claimed is  
7 not supported by the facts of the transaction or event  
8 described in the notice of claim or by generally accepted  
9 accounting principles, or includes items not properly  
10 recoverable under this part, but, nevertheless, offers to pay  
11 to the claimant the actual damages that are supported by the  
12 facts of the transaction or event described in the notice of  
13 claim and properly recoverable under this part, and the  
14 surcharge and attorney's fees, if any, described in subsection  
15 (4);

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

20           (c) The claimant fails to substantially comply with  
21 this section.

22           (10) This section applies to class action claims  
23 subject to the following conditions:

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

27           1. The definition of the class of claimants for whom  
28 relief is being sought;

29           2. A description of the alleged violations of this  
30 part which have allegedly damaged the class; and

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1           3. A statement describing and providing the amount of  
2 each item of actual damages demanded by the claimant on behalf  
3 of the class under this part or, if the claimant cannot in  
4 good faith quantify an item of actual damages, the claimant  
5 providing a comprehensive description of the item of damages  
6 and a formula or basis by which the dealer may calculate the  
7 damages.

8           (b) The surcharge set forth in subsection (4) does not  
9 apply.

10           (c) All time periods described in this section shall  
11 be 45 days in length for class actions unless further extended  
12 by a written agreement of the parties.

13           (d) If the dealer agrees to pay the damages demanded  
14 in the class action notice of claim, the dealer must notify  
15 the claimant in writing within 90 days after receiving the  
16 class action notice of claim. Within 90 days after receiving  
17 the dealer's notice of agreement, the claimant, on behalf of  
18 the class, must file a civil action to enforce the agreement,  
19 the purposes of which are to conduct proceedings to determine  
20 the fairness of the agreement to the class, to administer the  
21 agreed resolution of the class action, to provide for  
22 notification and opt-out procedures applicable in a class  
23 action to ensure compliance with the rules of civil procedure,  
24 and to award reasonable attorney's fees to the claimant's  
25 counsel for actual time spent in connection with the  
26 proceeding. If the claimant fails to file the civil action  
27 within 90 days or if the court determines that the agreement  
28 is not fair to the class, the class action notice and the  
29 dealer's response are void.

30           (e) A dealer is not required to pay attorney's fees  
31 for the claimant in a class action proceeding if the dealer,

1 within 45 days after receiving the class action notification,  
2 informs the claimant in writing, and a court or arbitrator in  
3 a subsequent action agrees, that:

4 1. The claimant is seeking to recover damages for the  
5 class which are not properly recoverable under this part or is  
6 seeking to recover damages that are not supported by the facts  
7 of the transaction or event described in the class action  
8 notice of claim or by generally accepted accounting

9 principles, but still offers to pay the class all damages  
10 properly recoverable and listed in the notice of claim; or

11 2. The claim is not a valid class claim or the class  
12 is not properly certified as a class, but the dealer offers to  
13 pay all actual damages properly recoverable by the claimant  
14 under this part as an individual which are supported by the  
15 facts of the transaction or event described in the class  
16 action notice of claim, in addition to the payments described  
17 in subsection (4).

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

20 (a) Does not constitute an admission of any wrongdoing  
21 by the dealer;

22 (b) Is protected by s. 90.408;

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

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

30 (e) Serves as a defense in any subsequent action  
31 brought by any member of the class who did not opt out in

1 connection with the same set of operative facts as described  
2 in the class action notice of claim or, if the action was  
3 settled on a class-wide basis, to the extent of the damages  
4 paid by the dealer or otherwise established by the court.

5 (12) The applicable statute of limitations for an  
6 action under this part is tolled for 30 days for individual  
7 claims and 45 days for class action claims, or such other  
8 period of time as agreed to by the parties in writing, by the  
9 mailing of the notice required by this section.

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

15 (14) If a claimant initiates civil litigation under  
16 this part without first complying with the requirements of  
17 this section, the court, upon a motion of a dealer, shall  
18 abate the litigation, without prejudice, until the claimant  
19 has complied with the provisions of this part.

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

22 501.212 Application.--This part does not apply to:

23 (8) A claim brought by a person other than the  
24 enforcing authority against a dealer as defined in s.  
25 501.975(2).

26  
27 However, this subsection does not affect any action or remedy  
28 concerning residential tenancies covered under part II of  
29 chapter 83, nor does it prohibit the enforcing authority from  
30 maintaining exclusive jurisdiction to bring any cause of  
31 action authorized under this part.

1           Section 10. This act shall take effect upon becoming a  
2 law.

3  
4           \*\*\*\*\*

5                           SENATE SUMMARY

6       Declares that unfair methods of competition,  
7       unconscionable acts or practices, and unfair or deceptive  
8       acts or practices by motor vehicle dealers are unlawful.  
9       Provides that a motor vehicle dealer who willfully uses a  
10      method or practice that victimizes or attempts to  
11      victimize senior citizens or handicapped persons commits  
12      an unfair or deceptive trade practice. Provides a civil  
13      penalty and provides for reimbursement or restitution.  
14      Provides that the remedies of part VI of ch. 501, F.S.,  
15      are in addition to remedies otherwise available for the  
16      same conduct under state or local law and do not preempt  
17      local consumer-protection ordinances not in conflict with  
18      part VI. Provides that, as a condition precedent to  
19      initiating civil litigation arising under part VI of ch.  
20      501, F.S., a claimant must give the motor vehicle dealer  
21      written notice of the claimant's intent to initiate  
22      litigation against the motor vehicle dealer not less than  
23      30 days before initiating the litigation. Provides for  
24      the content of the notice of claim and the method by  
25      which the notice of claim is given to the motor vehicle  
26      dealer. Provides that if the claim is paid by the motor  
27      vehicle dealer within 30 days after receiving the notice  
28      of claim, together with a surcharge of 10 percent of the  
29      alleged actual damages, the claimant may not initiate  
30      litigation against the motor vehicle dealer and the motor  
31      vehicle dealer is obligated to pay only \$500 for the  
32      attorney's fees of the claimant. Provides that the  
33      surcharge not exceed \$500. Provides expedited procedures  
34      when the claimant is without access to a motor vehicle.  
35      Provides that a claimant is not entitled to a surcharge  
36      under certain circumstances. Provides that  
37      presuit-notification procedures apply to class actions.  
38      Provides that the act does not affect the statutory  
39      responsibilities of the Attorney General or the office of  
40      the state attorney. Requires a court to abate litigation,  
41      without prejudice, until the claimant has complied with  
42      the required procedures.