

By the Committee on Commerce and Consumer Services; and
Senator Aronberg

577-2357-06

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 specifying additional actions and practices of
11 a dealer actionable under the Florida Deceptive
12 and Unfair Trade Practices Act; amending s.
13 501.976, F.S.; creating s. 501.9765, F.S.;
14 providing that a motor vehicle dealer who
15 willfully uses a method or practice that
16 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 no more than \$500 for the attorney's fees
22 of the claimant; providing that the surcharge
23 not exceed \$500; providing procedures for
24 damage claims that are nonquantifiable;
25 providing expedited procedures when the
26 claimant is without access to a motor vehicle;
27 specifying when a payment by a dealer is deemed
28 paid; providing that a claimant is not entitled
29 to a surcharge under certain circumstances;
30 providing that a motor vehicle dealer is not
31 obligated to pay the claimant's attorney's fees

1 under certain circumstances; providing that the
2 act does not apply to the statutory
3 responsibility of the Attorney General or the
4 state attorney or to certain claims, actions,
5 or proceedings; requiring the Department of
6 Legal Affairs to make a sample demand letter
7 available to the public; providing for the
8 tolling of the applicable statute of
9 limitations; providing that the act does not
10 affect the statutory responsibilities of the
11 Attorney General or the office of the state
12 attorney; requiring a court to abate
13 litigation, without prejudice, until the
14 claimant has complied with the required
15 procedures; amending s. 501.212, F.S.;
16 exempting motor vehicle dealers from the
17 provisions of part II of ch. 501, F.S.;
18 providing an exception for the enforcing
19 authority; providing an effective date.
20

21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Section 501.975, Florida Statutes, is
24 amended to read:

25 501.975 Definitions.--As used in this part ~~s. 501.976,~~
26 the term ~~following terms shall have the following meanings:~~

- 27 (1) "Customer" includes a customer's designated agent.
28 (2) "Dealer" means a motor vehicle dealer as defined
29 in s. 320.27, but does not include a motor vehicle auction as
30 defined in s. 320.27(1)(c)4.
31

1 (3) "Replacement item" means a tire, bumper, bumper
2 fascia, glass, in-dashboard equipment, seat or upholstery
3 cover or trim, exterior illumination unit, grill, sunroof,
4 external mirror and external body cladding. The replacement of
5 up to three of these items does not constitute repair of
6 damage if each item is replaced because of a product defect or
7 damaged due to vandalism while the new motor vehicle is under
8 the control of the dealer and the items are replaced with
9 original manufacturer equipment, unless an item is replaced
10 due to a crash, collision, or accident.

11 (4) "Threshold amount" means 3 percent of the
12 manufacturer's suggested retail price of a motor vehicle or
13 \$650, whichever is less.

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

19 Section 2. Section 501.9755, Florida Statutes, is
20 created to read:

21 501.9755 Unlawful acts and practices.--

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

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

30 Section 3. Section 501.976, Florida Statutes, is
31 amended to read:

1 501.976 Actionable, unfair, or deceptive acts or
2 practices.--In addition to acts and practices actionable under
3 s. 501.9755, it is an unfair or deceptive act or practice,
4 actionable under the Florida Deceptive and Unfair Trade
5 Practices Act, for a dealer to:

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

13 (2) Represent directly or indirectly that a vehicle is
14 a demonstrator unless the vehicle complies with the definition
15 of a demonstrator in s. 320.60(3).

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

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

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

29 (6) Sell a vehicle without fully and conspicuously
30 disclosing in writing at or before the consummation of sale
31 any warranty or guarantee terms, obligations, or conditions

1 | that the dealer or manufacturer has given to the buyer. If the
2 | warranty obligations are to be shared by the dealer and the
3 | buyer, the method of determining the percentage of repair
4 | costs to be assumed by each party must be disclosed. If the
5 | dealer intends to disclaim or limit any expressed or implied
6 | warranty, the disclaimer must be in writing in a conspicuous
7 | manner and in lay terms in accordance with chapter 672 and the
8 | Magnuson-Moss Warranty--Federal Trade Commission Improvement
9 | Act.

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

13 | (8) Misrepresent warranty coverage, application
14 | period, or any warranty transfer cost or conditions to a
15 | customer.

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

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

27 | (11) Add to the cash price of a vehicle as defined in
28 | s. 520.02(2) any fee or charge other than those provided in
29 | that section and in rule 3D-50.001, Florida Administrative
30 | Code. All fees or charges permitted to be added to the cash
31 | price by rule 3D-50.001, Florida Administrative Code, must be

1 fully disclosed to customers in all binding contracts
2 concerning the vehicle's selling price.

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

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

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

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

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

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

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

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

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

30 (16) Advertise the price of a vehicle unless the
31 vehicle is identified by year, make, model, and a commonly

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

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

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

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

28 |
29 | ~~In any civil litigation resulting from a violation of this~~
30 | ~~section, when evaluating the reasonableness of an award of~~
31 | ~~attorney's fees to a private person, the trial court shall~~

1 ~~consider the amount of actual damages in relation to the time~~
2 ~~spent.~~

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

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

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

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

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

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

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

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

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

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

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

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

13 Section 5. Section 501.977, Florida Statutes, is
14 created to read:

15 501.977 Other individual remedies.--

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

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

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1 (3) In any action brought under this section, if,
2 after the filing of a motion by the dealer, the court finds
3 that the action is frivolous, without legal or factual merit,
4 or brought for the purpose of harassment, the court may, after
5 hearing evidence as to the necessity therefor, require the
6 party instituting the action to post a bond in the amount that
7 the court finds reasonable to indemnify the defendant for any
8 costs incurred, or to be incurred, including reasonable
9 attorney's fees in defending the claim. This subsection does
10 not apply to any action initiated by the enforcing authority.

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

13 501.978 Effect on other remedies.--

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

17 (2) This part is supplemental to, and does not
18 preempt, local consumer-protection ordinances not inconsistent
19 with this part.

20 Section 7. Section 501.979, Florida Statutes, is
21 created to read:

22 501.979 Attorney's fees.--

23 (1) In any civil litigation resulting from an act or
24 practice involving a violation of this part, except as
25 provided in subsection (5), the prevailing party, after
26 judgment in the trial court and exhaustion of all appeals, if
27 any, may receive his or her reasonable attorney's fees and
28 costs from the nonprevailing party. When evaluating the
29 reasonableness of an award of attorney's fees to a private
30 person, the trial court shall consider the actual damages in
31 relation to the time spent.

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

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

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

12 (5) In any civil litigation initiated by the enforcing
13 authority, the court may award to the prevailing party
14 reasonable attorney's fees and costs if the court finds that
15 there was a complete absence of a justiciable issue of law or
16 fact raised by the losing party or if the court finds bad
17 faith on the part of the losing party.

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

29 Section 8. Section 501.980, Florida Statutes, is
30 created to read:

31 501.980 Demand letter.--

1 (1) In cases to which this section applies, as a
2 condition precedent to initiating civil litigation arising
3 under this part, a claimant must give the dealer written
4 notice of the claimant's intent to initiate litigation against
5 the dealer not less than 30 days before initiating the
6 litigation.

7 (2) The notice, which must be completed in good faith,
8 must:

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

10 (b) State the name, address, and telephone number of
11 the claimant;

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

13 (d) Provide the approximate date and a description of
14 the transaction, event, or circumstance that is the basis of
15 the claim;

16 (e) Describe the underlying facts; and

17 (f) Include a statement describing and providing the
18 amount of each item of actual damages demanded by the claimant
19 and recoverable under this part. However, to the extent the
20 claimant cannot in good faith quantify any item of actual
21 damage as required, the claimant shall provide a description
22 of the item of damage or a formula or basis by which the
23 dealer may calculate the damage.

24 (3)(a) The notice of the claim must be delivered to
25 the dealer by certified or registered United States mail,
26 return receipt requested, or by a private delivery business
27 providing the sender with comparable written documentation of
28 receipt. Such delivery costs shall be reimbursed to the
29 claimant by the dealer if the dealer pays the claim and if the
30 claimant requests reimbursement of the delivery costs in the
31 notice of claim.

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

5 (4) A claimant may not initiate litigation against a
6 dealer for a claim arising under this part related to the
7 transaction or event described in the notice of claim if the
8 dealer pays the claimant within 30 days after receiving the
9 notice of claim:

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

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

14 (c) The attorney's fees of the claimant, not to exceed
15 \$500.

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

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

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

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

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

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

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

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

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

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

22 (a) The dealer, within 30 days after receiving the
23 claimant's notice of claim, notifies the claimant in writing,
24 and a court or arbitrator agrees, that the amount claimed is
25 not supported by the facts of the transaction or event
26 described in the notice of claim or by generally accepted
27 accounting principles, or includes items not properly
28 recoverable under this part, but, nevertheless, offers to pay
29 to the claimant the actual damages that are supported by the
30 facts of the transaction or event described in the notice of
31 claim and properly recoverable under this part, and the

1 surcharge and attorney's fees, if any, described in subsection
2 (4);

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

7 (c) The claimant fails to substantially comply with
8 this section.

9 (10) This section does not apply to an enforcing
10 authority or to any claim, action, or proceeding brought
11 pursuant to Rule 1.220, Florida Rules of Civil Procedure. The
12 Department of Legal Affairs shall prepare a sample demand
13 letter to incorporate the information required by subsection
14 (2) for individual notice of claims and make it available to
15 the public.

16 (11) The mailing of the notice required by this
17 section tolls the applicable statute of limitations for an
18 action under this part for 30 days or such other period as
19 agreed to by the parties in writing.

20 (12) If a claimant initiates civil litigation under
21 this part without first complying with the requirements of
22 this section, the court, upon a motion of a dealer, shall
23 abate the litigation, without prejudice, until the claimant
24 has complied with the provisions of this part.

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

27 501.212 Application.--This part does not apply to:

28 (8) A claim brought by a person other than the
29 enforcing authority against a dealer as defined in s.
30 501.975(2).

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1 | However, this subsection does not affect any action or remedy
2 | concerning residential tenancies covered under part II of
3 | chapter 83, nor does it prohibit the enforcing authority from
4 | maintaining exclusive jurisdiction to bring any cause of
5 | action authorized under this part.

6 | Section 10. This act shall take effect upon becoming a
7 | law.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 2496

4 This committee substitute differs from the bill as filed in
5 that it:

- 6 - Deletes an exception that it is not an unfair or
7 deceptive act for a vehicle dealer to obtain signatures
8 from a customer on contracts not fully completed at the
9 time the customer signs or which do not reflect
10 accurately the negotiations and agreement between the
11 customer and the dealer if the customer receives a notice
12 and agrees in writing.
- 13 - Removes the requirement for an individual to specifically
14 describe the underlying facts in a demand letter to a
15 motor vehicle dealer and instead provides only that an
16 individual must describe the underlying facts.
- 17 - Removes the requirement for an individual to provide a
18 comprehensive description of the item damaged and instead
19 provides only that an individual must provide a
20 description of the item damages.
- 21 - Removes the requirement to include a description of
22 reasonable attorney's fees to be included in the pre-suit
23 notification to the dealer.
- 24 - Provides an additional method to deliver the demand
25 letter to the dealer.
- 26 - Removes the requirement that if the dealer is a corporate
27 entity that the notice of claim must be sent to the
28 dealer's registered agent and instead provides that it
29 must be sent to the dealer or to the registered agen.
- 30 - Deletes the requirements that class actions must comply
31 the pre-suit notification procedures.
- Deletes the provision that states that the payment of
actual damages by the dealer does not constitute an
admission by the dealer, is protected as a compromise or
offer to compromise under the Florida evidence code, does
not release the dealer against a suit, and does not serve
as a defense against any actions brought against the
dealer involving the action.