



1 attorney's fees; authorizing the Department of  
2 Legal Affairs or the office of the state  
3 attorney to receive attorney's fees and costs  
4 under certain circumstances; creating s.  
5 501.98, F.S.; requiring that, as a condition  
6 precedent to initiating civil litigation  
7 arising under part VI of ch. 501, F.S., a  
8 claimant give the motor vehicle dealer written  
9 notice of the claimant's intent to initiate  
10 litigation within a specified period before  
11 initiating the litigation; providing for the  
12 content of the notice and the method of  
13 delivery of the notice; providing that if the  
14 claim is paid by the dealer within a specified  
15 period after receiving the notice, with a  
16 specified surcharge, the claimant may not  
17 initiate litigation against the dealer, and the  
18 dealer is obligated to pay only a set amount  
19 for the claimant's attorney's fees; providing a  
20 cap on the surcharge; providing that a claimant  
21 is not entitled to a surcharge under certain  
22 circumstances; providing that a dealer is not  
23 obligated to pay the claimant's attorney's fees  
24 under certain circumstances; providing for the  
25 effect of payment of actual damages or an offer  
26 to pay actual damages for specified purposes;  
27 providing that the statute of limitations is  
28 tolled for a certain period upon the mailing of  
29 a specified notice; requiring the Department of  
30 Legal Affairs to prepare a specified sample  
31 demand letter and make it available to the

1 public; permitting a court to abate litigation,  
2 without prejudice, until the claimant has  
3 complied with the required procedures and the  
4 dealer has opportunity to respond to demand;  
5 creating s. 501.99, F.S.; providing application  
6 of certain provisions; amending s. 501.212,  
7 F.S.; exempting certain claims against motor  
8 vehicle dealers from the provisions of part II  
9 of ch. 501, F.S.; providing an effective date.

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

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

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

- (1) "Customer" includes a customer's designated agent.
- (2) "Dealer" means a motor vehicle dealer as defined in s. 320.27, but does not include a motor vehicle auction as defined in s. 320.27(1)(c)4.
- (3) "Replacement item" means a tire, bumper, bumper fascia, glass, in-dashboard equipment, seat or upholstery cover or trim, exterior illumination unit, grill, sunroof, external mirror and external body cladding. The replacement of up to three of these items does not constitute repair of damage if each item is replaced because of a product defect or damaged due to vandalism while the new motor vehicle is under the control of the dealer and the items are replaced with original manufacturer equipment, unless an item is replaced due to a crash, collision, or accident.

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

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

9           Section 2. Section 501.9755, Florida Statutes, is  
10 created to read:

11           501.9755 Unlawful acts and practices.--

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

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

21           Section 3. Section 501.976, Florida Statutes, is  
22 amended to read:

23           501.976 Actionable, unfair, or deceptive acts or  
24 practices.--In addition to acts and practices actionable under  
25 s. 501.9755, it is an unfair or deceptive act or practice,  
26 actionable under the Florida Deceptive and Unfair Trade  
27 Practices Act, for a dealer to:

28           (1) Represent directly or indirectly that a motor  
29 vehicle is a factory executive vehicle or executive vehicle  
30 unless the ~~such~~ vehicle was purchased directly from the  
31 manufacturer or a subsidiary of the manufacturer and the

1 | vehicle was used exclusively by the manufacturer, its  
2 | subsidiary, or a dealer for the commercial or personal use of  
3 | the manufacturer's, subsidiary's, or dealer's employees.

4 |       (2) Represent directly or indirectly that a vehicle is  
5 | a demonstrator unless the vehicle complies with the definition  
6 | of a demonstrator in s. 320.60(3).

7 |       (3) Represent the previous usage or status of a  
8 | vehicle to be something that it was not, or make usage or  
9 | status representations unless the dealer has correct  
10 | information regarding the history of the vehicle to support  
11 | the representations.

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

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

20 |       (6) Sell a vehicle without fully and conspicuously  
21 | disclosing in writing at or before the consummation of sale  
22 | any warranty or guarantee terms, obligations, or conditions  
23 | that the dealer or manufacturer has given to the buyer. If the  
24 | warranty obligations are to be shared by the dealer and the  
25 | buyer, the method of determining the percentage of repair  
26 | costs to be assumed by each party must be disclosed. If the  
27 | dealer intends to disclaim or limit any expressed or implied  
28 | warranty, the disclaimer must be in writing in a conspicuous  
29 | manner and in lay terms in accordance with chapter 672 and the  
30 | Magnuson-Moss Warranty--Federal Trade Commission Improvement  
31 | Act.

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

4           (8) Misrepresent warranty coverage, application  
5 period, or any warranty transfer cost or conditions to a  
6 customer.

7           (9) Obtain signatures from a customer on contracts  
8 that are not fully completed at the time the customer signs or  
9 which do not reflect accurately the negotiations and agreement  
10 between the customer and the dealer.

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

18           (11) Add to the cash price of a vehicle as defined in  
19 s. 520.02(2) any fee or charge other than those provided in  
20 that section and in rule 69V-50.001 ~~3D-50.001~~, Florida  
21 Administrative Code. All fees or charges permitted to be added  
22 to the cash price by rule 69V-50.001 ~~3D-50.001~~, Florida  
23 Administrative Code, must be fully disclosed to customers in  
24 all binding contracts concerning the vehicle's selling price.

25           (12) Alter or change the odometer mileage of a  
26 vehicle.

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

29           (14) File a lien against a new vehicle purchased with  
30 a check unless the dealer fully discloses to the purchaser  
31 that a lien will be filed if purchase is made by check and

1 fully discloses to the buyer the procedures and cost to the  
2 buyer for gaining title to the vehicle after the lien is  
3 filed.

4 (15) Increase the price of the vehicle after having  
5 accepted an order of purchase or a contract from a buyer,  
6 notwithstanding subsequent receipt of an official price change  
7 notification. The price of a vehicle may be increased after a  
8 dealer accepts an order of purchase or a contract from a buyer  
9 if:

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

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

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

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

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

21 (16) Advertise the price of a vehicle unless the  
22 vehicle is identified by year, make, model, and a commonly  
23 accepted trade, brand, or style name. The advertised price  
24 must include all fees or charges that the customer must pay,  
25 including freight or destination charge, dealer preparation  
26 charge, and charges for undercoating or rustproofing. State  
27 and local taxes, tags, registration fees, and title fees,  
28 unless otherwise required by local law or standard, need not  
29 be disclosed in the advertisement. When two or more dealers  
30 advertise jointly, with or without participation of the  
31 franchisor, the advertised price need not include fees and

1 | charges that are variable among the individual dealers  
2 | cooperating in the advertisement, but the nature of all  
3 | charges that are not included in the advertised price must be  
4 | disclosed in the advertisement.

5 |         (17) Charge a customer for any predelivery service  
6 | required by the manufacturer, distributor, or importer for  
7 | which the dealer is reimbursed by the manufacturer,  
8 | distributor, or importer.

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

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

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20 | In any civil litigation resulting from a violation of this  
21 | section, when evaluating the reasonableness of an award of  
22 | attorney's fees to a private person, the trial court shall  
23 | consider the amount of actual damages in relation to the time  
24 | spent.

25 |         Section 4. Section 501.9765, Florida Statutes, is  
26 | created to read:

27 |         501.9765 Violations involving a senior citizen or  
28 | handicapped person; civil penalties; presumption.--

29 |         (1) As used in this section, the term:  
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1           (a) "Handicapped person" means any person who has a  
2 mental or educational impairment that substantially limits one  
3 or more major life activities.

4           (b) "Major life activities" means functions associated  
5 with the normal activities of independent daily living, such  
6 as caring for oneself, performing manual tasks, walking,  
7 seeing, hearing, speaking, breathing, learning, and working.

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

9           1. Any mental or psychological disorder or specific  
10 learning disability.

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

14           (d) "Senior citizen" means a person who is 60 years of  
15 age or older.

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

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

28           (4) Civil penalties collected under this section shall  
29 be deposited into the Legal Affairs Revolving Trust Fund of  
30 the Department of Legal Affairs and allocated to the  
31 Department of Legal Affairs solely for the purpose of

1 preparing and distributing consumer education materials,  
2 programs, and seminars to benefit senior citizens and  
3 handicapped persons or to enhance efforts to enforce this  
4 section.

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

7 501.977 Other individual remedies.--

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

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

23 (3) In any action brought under this section, if,  
24 after the filing of a motion by the dealer, the court finds  
25 that the action is frivolous, without legal or factual merit,  
26 or brought for the purpose of harassment, the court may, after  
27 hearing evidence as to the necessity for a bond, require the  
28 party instituting the action to post a bond in the amount that  
29 the court finds reasonable to indemnify the defendant for any  
30 costs incurred, or to be incurred, including reasonable

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1 attorney's fees, in defending the claim. This subsection does  
2 not apply to any action initiated by the enforcing authority.

3 Section 6. Section 501.978, Florida Statutes, is  
4 created to read:

5 501.978 Effect on other remedies.--

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

9 (2) This part is supplemental to, and does not  
10 preempt, local consumer protection ordinances not inconsistent  
11 with this part.

12 Section 7. Section 501.979, Florida Statutes, is  
13 created to read:

14 501.979 Attorney's fees.--

15 (1) In any civil litigation resulting from an act or  
16 practice involving a violation of this part, except as  
17 provided in subsection (5) and s. 501.98, the prevailing  
18 party, after judgment in the trial court and exhaustion of all  
19 appeals, if any, shall receive his or her reasonable  
20 attorney's fees and costs from the nonprevailing party. When  
21 evaluating the reasonableness of an award of attorney's fees  
22 to a private person, the trial court shall consider the actual  
23 damages in relation to the time spent.

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

28 (3) The trial judge may award the prevailing party the  
29 sum of reasonable costs incurred in the action and reasonable  
30 attorney's fees for the hours actually spent on the case as  
31 sworn to in an affidavit.

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

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

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

21           Section 8. Section 501.98, Florida Statutes, is  
22 created to read:

23           501.98 Demand letter.--

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

29           (2) The notice, which must be completed in good faith,  
30 must:

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- 1        (a) State that it is a demand letter under "s. 501.98,  
2 Florida Statutes";
- 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 date and a description of the  
7 transaction, event, or circumstance that is the basis of the  
8 claim;
- 9        (e) Describe with specificity the underlying facts and  
10 how they give rise to an alleged violation of this part;
- 11        (f) To the extent applicable, be accompanied by all  
12 transaction or other documents upon which the claim is based  
13 or upon which the claimant is relying to assert the claim; and
- 14        (g) Include a comprehensive and detailed statement  
15 describing each item of actual damage demanded by the claimant  
16 and recoverable under this part and the amount claimed for  
17 each item of damage, including, if applicable, the formula or  
18 basis by which each item of damage was calculated.
- 19        (3)(a) The notice of the claim must be delivered to  
20 the dealer by certified or registered United States mail,  
21 return receipt requested. The postal costs shall be reimbursed  
22 to the claimant by the dealer if the dealer pays the claim and  
23 if the claimant requests reimbursement of the postal costs in  
24 the notice of claim.
- 25        (b) If the dealer is a corporate entity, the notice of  
26 claim must be sent to the registered agent of the dealer as  
27 recorded with the Department of State and, in the absence of a  
28 registered agent, any person listed in s. 48.081(1).
- 29        (4) Notwithstanding any provision of this part to the  
30 contrary, a claimant may not initiate litigation against a  
31 dealer for a claim arising under this part related to, or in

1 connection with, the transaction or event described in the  
2 notice of claim if the dealer pays the claimant within 30 days  
3 after receiving the notice of claim:

4 (a) The amount requested in the demand letter as  
5 specified in paragraph (2)(g); and

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

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

14 (6) The claimant is not entitled to a surcharge in any  
15 proceeding initiated against a dealer under this part if the  
16 dealer rejects or ignores the notice of claim.

17 (7) Notwithstanding any provision of this part to the  
18 contrary, a dealer is not required to pay the attorney's fees  
19 of the claimant in any civil action brought under this part  
20 if:

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

28 (b) The claimant fails to substantially comply with  
29 this section.

30 (8) Payment of the actual damages or an offer to pay  
31 actual damages as set forth in this section:

1           (a) Does not constitute an admission of any wrongdoing  
2 by the dealer;

3           (b) Is protected by s. 90.408; and

4           (c) Serves to release the dealer from any suit,  
5 action, or other action that could be brought arising out of  
6 or in connection with the transaction, event, or occurrence  
7 described in the notice of claim.

8           (9) The applicable statute of limitations for an  
9 action under this part is tolled for 30 days, or such other  
10 period of time as agreed to by the parties in writing, by the  
11 mailing of the notice required by this section.

12           (10) This section does not apply to:

13           (a) Any claim for actual damages brought and certified  
14 as a maintainable class action; or

15           (b) Any action brought by the enforcing authority.

16           (11) The Department of Legal Affairs shall prepare a  
17 form demand letter to incorporate the information required by  
18 subsection (2) and make it available to the public.

19           (12) If a claimant initiates civil litigation under  
20 this part without first complying with the requirements of  
21 this section, the court, upon a motion by the claimant, may  
22 abate the litigation, without prejudice, to permit the  
23 claimant to comply with the provisions of this part and allow  
24 the dealer the opportunity to accept or reject the demand in  
25 accordance with subsection (4).

26           Section 9. Section 501.99, Florida Statutes, is  
27 created to read:

28           501.99 Application.--This part does not apply to:

29           (1) An act or practice required or specifically  
30 permitted by federal or state law.

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1           (2) A claim for personal injury or death or a claim  
2 for damage to property other than the property that is the  
3 subject of the consumer transaction.

4           (3) Any person or activity regulated under laws  
5 administered by the Office of Insurance Regulation of the  
6 Financial Services Commission.

7           (4) Any person or activity regulated under laws  
8 administered by the former Department of Insurance that are  
9 now administered by the Department of Financial Services.

10           Section 10. Subsection (8) is added to section  
11 501.212, Florida Statutes, to read:

12           501.212 Application.--This part does not apply to:

13           (8) A claim brought by a person other than the  
14 enforcing authority against a dealer as defined in s.  
15 501.975(2).

16           Section 11. This act shall take effect upon becoming a  
17 law.