

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

29 | circumstances; creating s. 501.98, F.S.; requiring that,  
30 | as a condition precedent to initiating civil litigation  
31 | arising under part VI of ch. 501, F.S., a claimant give  
32 | the motor vehicle dealer written notice of the claimant's  
33 | intent to initiate litigation within a specified period  
34 | before initiating the litigation; providing for the  
35 | content of the notice and the method of delivery of the  
36 | notice; providing that if the claim is paid by the dealer  
37 | within a specified period after receiving the notice, with  
38 | a specified surcharge, the claimant may not initiate  
39 | litigation against the dealer, and the dealer is obligated  
40 | to pay only a set amount for the claimant's attorney's  
41 | fees; providing a cap on the surcharge; providing that a  
42 | claimant is not entitled to a surcharge under certain  
43 | circumstances; providing that a dealer is not obligated to  
44 | pay the claimant's attorney's fees under certain  
45 | circumstances; providing for the effect of payment of  
46 | actual damages or an offer to pay actual damages for  
47 | specified purposes; providing that the statute of  
48 | limitations is tolled for a certain period upon the  
49 | mailing of a specified notice; requiring the Department of  
50 | Legal Affairs to prepare a specified sample demand letter  
51 | and a described explanation and make the documents  
52 | available to the public; requiring the dealer to provide  
53 | the documents at the time of transaction; permitting a  
54 | court to abate litigation, without prejudice, until the  
55 | claimant has complied with the required procedures and the  
56 | dealer has opportunity to respond to demand; providing

57 that failure to supply the documents at the time of  
 58 transaction constitutes waiver by the dealer of the  
 59 required notice; creating s. 501.99, F.S.; providing  
 60 application of certain provisions; amending s. 501.212,  
 61 F.S.; exempting certain claims against motor vehicle  
 62 dealers from the provisions of part II of ch. 501, F.S.;  
 63 providing an effective date.

64

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

66

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

69 501.975 Definitions.--As used in this part ~~s. 501.976~~, the  
 70 term ~~following terms shall have the following meanings:~~

- 71 (1) "Customer" includes a customer's designated agent.
- 72 (2) "Dealer" means a motor vehicle dealer as defined in s.  
 73 320.27, but does not include a motor vehicle auction as defined  
 74 in s. 320.27(1)(c)4.
- 75 (3) "Replacement item" means a tire, bumper, bumper  
 76 fascia, glass, in-dashboard equipment, seat or upholstery cover  
 77 or trim, exterior illumination unit, grill, sunroof, external  
 78 mirror and external body cladding. The replacement of up to  
 79 three of these items does not constitute repair of damage if  
 80 each item is replaced because of a product defect or damaged due  
 81 to vandalism while the new motor vehicle is under the control of  
 82 the dealer and the items are replaced with original manufacturer  
 83 equipment, unless an item is replaced due to a crash, collision,  
 84 or accident.

HB 7101

2007

85 (4) "Threshold amount" means 3 percent of the  
86 manufacturer's suggested retail price of a motor vehicle or  
87 \$650, whichever is less.

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

93 Section 2. Section 501.9755, Florida Statutes, is created  
94 to read:

95 501.9755 Unlawful acts and practices.--

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

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

104 Section 3. Section 501.976, Florida Statutes, is amended  
105 to read:

106 501.976 Actionable, unfair, or deceptive acts or  
107 practices.--In addition to acts and practices actionable under  
108 s. 501.9755, it is an unfair or deceptive act or practice,  
109 actionable under the Florida Deceptive and Unfair Trade  
110 Practices Act, for a dealer to:

111 (1) Represent directly or indirectly that a motor vehicle  
112 is a factory executive vehicle or executive vehicle unless the

HB 7101

2007

113 ~~such~~ vehicle was purchased directly from the manufacturer or a  
114 subsidiary of the manufacturer and the vehicle was used  
115 exclusively by the manufacturer, its subsidiary, or a dealer for  
116 the commercial or personal use of the manufacturer's,  
117 subsidiary's, or dealer's employees.

118 (2) Represent directly or indirectly that a vehicle is a  
119 demonstrator unless the vehicle complies with the definition of  
120 a demonstrator in s. 320.60(3).

121 (3) Represent the previous usage or status of a vehicle to  
122 be something that it was not, or make usage or status  
123 representations unless the dealer has correct information  
124 regarding the history of the vehicle to support the  
125 representations.

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

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

134 (6) Sell a vehicle without fully and conspicuously  
135 disclosing in writing at or before the consummation of sale any  
136 warranty or guarantee terms, obligations, or conditions that the  
137 dealer or manufacturer has given to the buyer. If the warranty  
138 obligations are to be shared by the dealer and the buyer, the  
139 method of determining the percentage of repair costs to be  
140 assumed by each party must be disclosed. If the dealer intends

HB 7101

2007

141 to disclaim or limit any expressed or implied warranty, the  
 142 disclaimer must be in writing in a conspicuous manner and in lay  
 143 terms in accordance with chapter 672 and the Magnuson-Moss  
 144 Warranty--Federal Trade Commission Improvement Act.

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

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

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

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

161 (11) Add to the cash price of a vehicle as defined in s.  
 162 520.02(2) any fee or charge other than those provided in that  
 163 section and in rule 69V-50.001 ~~3D-50.001~~, Florida Administrative  
 164 Code. All fees or charges permitted to be added to the cash  
 165 price by rule 69V-50.001 ~~3D-50.001~~, Florida Administrative Code,  
 166 must be fully disclosed to customers in all binding contracts  
 167 concerning the vehicle's selling price.

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

HB 7101

2007

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

171 (14) File a lien against a new vehicle purchased with a  
172 check unless the dealer fully discloses to the purchaser that a  
173 lien will be filed if purchase is made by check and fully  
174 discloses to the buyer the procedures and cost to the buyer for  
175 gaining title to the vehicle after the lien is filed.

176 (15) Increase the price of the vehicle after having  
177 accepted an order of purchase or a contract from a buyer,  
178 notwithstanding subsequent receipt of an official price change  
179 notification. The price of a vehicle may be increased after a  
180 dealer accepts an order of purchase or a contract from a buyer  
181 if:

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

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

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

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

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

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

HB 7101

2007

197 freight or destination charge, dealer preparation charge, and  
198 charges for undercoating or rustproofing. State and local taxes,  
199 tags, registration fees, and title fees, unless otherwise  
200 required by local law or standard, need not be disclosed in the  
201 advertisement. When two or more dealers advertise jointly, with  
202 or without participation of the franchisor, the advertised price  
203 need not include fees and charges that are variable among the  
204 individual dealers cooperating in the advertisement, but the  
205 nature of all charges that are not included in the advertised  
206 price must be disclosed in the advertisement.

207 (17) Charge a customer for any predelivery service  
208 required by the manufacturer, distributor, or importer for which  
209 the dealer is reimbursed by the manufacturer, distributor, or  
210 importer.

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

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

221  
222 In any civil litigation resulting from a violation of this  
223 section, when evaluating the reasonableness of an award of  
224 attorney's fees to a private person, the trial court shall



HB 7101

2007

225 consider the amount of actual damages in relation to the time  
226 spent.

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

229 501.9765 Violations involving a senior citizen or  
230 handicapped person; civil penalties; presumption.--

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

232 (a) "Handicapped person" means any person who has a mental  
233 or educational impairment that substantially limits one or more  
234 major life activities.

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

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

240 1. Any mental or psychological disorder or specific  
241 learning disability.

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

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

247 (2) Any person who willfully uses, or has willfully used,  
248 a method, act, or practice in violation of this part, which  
249 method, act, or practice victimizes or attempts to victimize a  
250 senior citizen or handicapped person, and commits such violation  
251 when he or she knew or should have known that his or her conduct  
252 was unfair or deceptive is liable for a civil penalty of not

253 more than \$15,000 for each such violation.

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

258 (4) Civil penalties collected under this section shall be  
 259 deposited into the Legal Affairs Revolving Trust Fund of the  
 260 Department of Legal Affairs and allocated to the Department of  
 261 Legal Affairs solely for the purpose of preparing and  
 262 distributing consumer education materials, programs, and  
 263 seminars to benefit senior citizens and handicapped persons or  
 264 to enhance efforts to enforce this section.

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

267 501.977 Other individual remedies.--

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

274 (2) In any action brought by a person who has suffered a  
 275 loss as a result of a violation of this part, the person may  
 276 recover actual damages plus attorney's fees and court costs as  
 277 provided in s. 501.979. However, damages, fees, or costs are not  
 278 recoverable under this section against a dealer who has, in good  
 279 faith, engaged in the dissemination of claims of a manufacturer,  
 280 distributor, importer, or wholesaler without actual knowledge

281 that doing so violates this part.

282 (3) In any action brought under this section, if, after  
 283 the filing of a motion by the dealer, the court finds that the  
 284 action is frivolous, without legal or factual merit, or brought  
 285 for the purpose of harassment, the court may, after hearing  
 286 evidence as to the necessity for a bond, require the party  
 287 instituting the action to post a bond in the amount that the  
 288 court finds reasonable to indemnify the defendant for any costs  
 289 incurred, or to be incurred, including reasonable attorney's  
 290 fees, in defending the claim. This subsection does not apply to  
 291 any action initiated by the enforcing authority.

292 Section 6. Section 501.978, Florida Statutes, is created  
 293 to read:

294 501.978 Effect on other remedies.--

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

298 (2) This part is supplemental to, and does not preempt,  
 299 local consumer protection ordinances not inconsistent with this  
 300 part.

301 Section 7. Section 501.979, Florida Statutes, is created  
 302 to read:

303 501.979 Attorney's fees.--

304 (1) In any civil litigation resulting from an act or  
 305 practice involving a violation of this part, except as provided  
 306 in subsection (5) and s. 501.98, the prevailing party, after  
 307 judgment in the trial court and exhaustion of all appeals, if  
 308 any, shall receive his or her reasonable attorney's fees and

HB 7101

2007

309 costs from the nonprevailing party. When evaluating the  
310 reasonableness of an award of attorney's fees to a private  
311 person, the trial court shall consider the actual damages in  
312 relation to the time spent.

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

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

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

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

329 (6) In any administrative proceeding or other nonjudicial  
330 action initiated by an enforcing authority, the attorney for the  
331 enforcing authority may certify by sworn affidavit the number of  
332 hours and the cost thereof to the enforcing authority for the  
333 time spent in the investigation and litigation of the case, plus  
334 costs reasonably incurred in the action. Payment to the  
335 enforcing authority of the sum of the costs may, by stipulation  
336 of the parties, be made a part of the final order or decree

337 disposing of the matter. The affidavit shall be attached to and  
 338 become a part of the order or decree.

339 Section 8. Section 501.98, Florida Statutes, is created to  
 340 read:

341 501.98 Demand letter.--

342 (1) As a condition precedent to initiating any civil  
 343 litigation arising under this part, a claimant must give the  
 344 dealer written notice of the claimant's intent to initiate  
 345 litigation against the dealer not less than 15 business days  
 346 before initiating the litigation.

347 (2) The notice, which must be completed in good faith,  
 348 must:

349 (a) State that it is a demand letter under "s. 501.98,  
 350 Florida Statutes";

351 (b) State the name, address, and telephone number of the  
 352 claimant;

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

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

356 (e) Describe the facts and how they give rise to an  
 357 alleged violation of this part;

358 (f) To the extent applicable, be accompanied by all  
 359 transaction or other documents in the claimant's possession upon  
 360 which the claim is based or upon which the claimant is relying  
 361 to assert the claim; and

362 (g) Include a statement describing each item of actual  
 363 damage demanded by the claimant and the amount claimed.

364 (3) The notice of the claim must be delivered to the

365 dealer by certified or registered United States mail, return  
366 receipt requested. The postal costs shall be reimbursed to the  
367 claimant by the dealer if the dealer pays the claim and if the  
368 claimant requests reimbursement of the postal costs in the  
369 notice of claim.

370 (4) Notwithstanding any provision of this part to the  
371 contrary, a claimant may not initiate litigation against a  
372 dealer for a claim arising under this part related to, or in  
373 connection with, the transaction or event described in the  
374 notice of claim if the dealer pays the claimant within 15  
375 business days after receiving the notice of claim:

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

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

380 (5) For the purpose of this section, payment by a dealer  
381 is deemed paid on the date a draft or other valid instrument  
382 that is equivalent to payment is placed in the United States  
383 mail, or other nationally recognized carrier, in a properly  
384 addressed, postpaid envelope, or, if not so posted, on the date  
385 of delivery.

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

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

392 (a) The dealer, within 15 business days after receiving

HB 7101

2007

393 the claimant's notice of claim, notifies the claimant in  
394 writing, and a court or arbitrator agrees, that the amount  
395 claimed is not supported by the facts of the transaction or  
396 event described in the notice of claim or by generally accepted  
397 accounting principles or includes items not properly recoverable  
398 under this part; or

399 (b) The claimant fails to substantially comply with this  
400 section.

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

403 (a) Does not constitute an admission of any wrongdoing by  
404 the dealer;

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

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

410 (9) The applicable statute of limitations for an action  
411 under this part is tolled for 15 business days, or such other  
412 period of time as agreed to by the parties in writing, by the  
413 mailing of the notice required by this section.

414 (10) This section does not apply to:

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

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

418 (11) The Department of Legal Affairs shall prepare a form  
419 demand letter to incorporate the information required by  
420 subsection (2) and shall prepare an explanation of this part.

421 (a) The form and explanation shall be made available to  
 422 the public by the department and shall be provided by the dealer  
 423 to the customer at the time of the transaction.

424 (b) The form provided by the dealer shall include the  
 425 address where the demand letter must be sent.

426 (12) If a claimant initiates civil litigation under this  
 427 part without first complying with the requirements of this  
 428 section, the court, upon a motion by the claimant, may abate the  
 429 litigation, without prejudice, to permit the claimant to comply  
 430 with the provisions of this part and allow the dealer the  
 431 opportunity to accept or reject the demand in accordance with  
 432 subsection (4).

433 (13) Failure to provide the information required in  
 434 subsection (11) by the dealer shall constitute waiver of the  
 435 notice required under this part.

436 Section 9. Section 501.99, Florida Statutes, is created to  
 437 read:

438 501.99 Application.--This part does not apply to:

439 (1) An act or practice required or specifically permitted  
 440 by federal or state law.

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

444 (3) Any person or activity regulated under laws  
 445 administered by the Office of Insurance Regulation of the  
 446 Financial Services Commission.

447 (4) Any person or activity regulated under laws  
 448 administered by the former Department of Insurance that are now



HB 7101

2007

449 administered by the Department of Financial Services.

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

452 501.212 Application.--This part does not apply to:

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

455 Section 11. This act shall take effect upon becoming a  
456 law.