

By the Committee on Commerce; and Senator Diaz de la Portilla

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1 A bill to be entitled

2 An act relating to motor vehicle dealers; amending s.
3 501.975, F.S.; defining the term "advertised price" for
4 purposes of motor vehicle sales; amending s. 501.976,
5 F.S.; requiring that the advertised price include all
6 costs, fees, or charges that the customer must pay, with
7 certain exclusions; requiring a conspicuous label
8 containing a disclosure regarding the predelivery service
9 fee; providing an exception; providing an effective date.

10
11 Be It Enacted by the Legislature of the State of Florida:

12
13 Section 1. Section 501.975, Florida Statutes, is amended to
14 read:

15 501.975 Definitions.--As used in s. 501.976, the following
16 terms shall have the following meanings:

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

18 (2) "Dealer" means a motor vehicle dealer as defined in s.
19 320.27, but does not include a motor vehicle auction as defined
20 in s. 320.27(1)(c)4.

21 (3) "Replacement item" means a tire, bumper, bumper fascia,
22 glass, in-dashboard equipment, seat or upholstery cover or trim,
23 exterior illumination unit, grill, sunroof, external mirror and
24 external body cladding. The replacement of up to three of these
25 items does not constitute repair of damage if each item is
26 replaced because of a product defect or damaged due to vandalism
27 while the new motor vehicle is under the control of the dealer
28 and the items are replaced with original manufacturer equipment,

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29 unless an item is replaced due to a crash, collision, or
30 accident.

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

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

39 (6) "Advertised price" means the price as expressed in any
40 statements that are transmitted orally, through written material,
41 through electronic means, or any illustration that is
42 disseminated to the public or affixed to a motor vehicle, and
43 which is used in selling a motor vehicle or otherwise used to
44 induce a person to enter into any obligation related to the motor
45 vehicle.

46 Section 2. Section 501.976, Florida Statutes, is amended to
47 read:

48 501.976 Actionable, unfair, or deceptive acts or
49 practices.--It is an unfair or deceptive act or practice,
50 actionable under the Florida Deceptive and Unfair Trade Practices
51 Act, for a dealer to:

52 (1) Represent directly or indirectly that a motor vehicle
53 is a factory executive vehicle or executive vehicle unless such
54 vehicle was purchased directly from the manufacturer or a
55 subsidiary of the manufacturer and the vehicle was used
56 exclusively by the manufacturer, its subsidiary, or a dealer for

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57 | the commercial or personal use of the manufacturer's,
58 | subsidiary's, or dealer's employees.

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

62 | (3) Represent the previous usage or status of a vehicle to
63 | be something that it was not, or make usage or status
64 | representations unless the dealer has correct information
65 | regarding the history of the vehicle to support the
66 | representations.

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

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

75 | (6) Sell a vehicle without fully and conspicuously
76 | disclosing in writing at or before the consummation of sale any
77 | warranty or guarantee terms, obligations, or conditions that the
78 | dealer or manufacturer has given to the buyer. If the warranty
79 | obligations are to be shared by the dealer and the buyer, the
80 | method of determining the percentage of repair costs to be
81 | assumed by each party must be disclosed. If the dealer intends to
82 | disclaim or limit any expressed or implied warranty, the
83 | disclaimer must be in writing in a conspicuous manner and in lay
84 | terms in accordance with chapter 672 and the Magnuson-Moss
85 | Warranty--Federal Trade Commission Improvement Act.

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

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

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

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

102 (11) Add to the cash price of a vehicle as defined in s.
103 520.02(2) any fee or charge other than those provided in that
104 section and in rule 3D-50.001, Florida Administrative Code. All
105 fees or charges permitted to be added to the cash price by rule
106 3D-50.001, Florida Administrative Code, must be fully disclosed
107 to customers in all binding contracts concerning the vehicle's
108 selling price.

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

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

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

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115 discloses to the buyer the procedures and cost to the buyer for
116 gaining title to the vehicle after the lien is filed.

117 (15) Increase the price of the vehicle after having
118 accepted an order of purchase or a contract from a buyer,
119 notwithstanding subsequent receipt of an official price change
120 notification. The price of a vehicle may be increased after a
121 dealer accepts an order of purchase or a contract from a buyer
122 if:

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

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

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

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

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

134 (16) Advertise the price of a vehicle unless the vehicle is
135 identified by year, make, model, and a commonly accepted trade,
136 brand, or style name.

137 (a) The advertised price must include all costs, fees, or
138 charges that the customer must pay, excluding ~~including freight~~
139 ~~or destination charge, dealer preparation charge, and charges for~~
140 ~~undercoating or rustproofing.~~ state and local taxes, tag fees
141 tags, registration fees, and title fees, ~~unless otherwise~~
142 ~~required by local law or standard, need not be disclosed in the~~
143 ~~advertisement.~~

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144 (b) When two or more dealers advertise jointly, with or
145 without participation of the franchisor, the advertised price
146 must include the highest price of the vehicles being offered,
147 consistent with paragraph (a), or specify the price for each
148 vehicle, respectively ~~need not include fees and charges that are~~
149 ~~variable among the individual dealers cooperating in the~~
150 ~~advertisement, but the nature of all charges that are not~~
151 ~~included in the advertised price must be disclosed in the~~
152 advertisement.

153 (17) Charge a customer for any predelivery service required
154 by the manufacturer, distributor, or importer for which the
155 dealer is reimbursed by the manufacturer, distributor, or
156 importer.

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

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

167 (20) Fail to attach a conspicuous label to the window of a
168 motor vehicle specifying any charge for predelivery services if
169 the motor vehicle under consideration by a prospective purchaser
170 is available for physical inspection by the purchaser. The label
171 must include the following disclosure: "This charge represents
172 costs and profit to the dealer for items such as inspecting,

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173 cleaning, and adjusting vehicles, and preparing documents related
174 to the sale." This requirement does not apply to the sale of
175 motorcycles.

176

177 In any civil litigation resulting from a violation of this
178 section, when evaluating the reasonableness of an award of
179 attorney's fees to a private person, the trial court shall
180 consider the amount of actual damages in relation to the time
181 spent.

182 Section 3. This act shall take effect July 1, 2008.