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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Commerce and Tourism (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

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.



344094

13 (3) "Replacement item" means a tire, bumper, bumper fascia,
14 glass, in-dashboard equipment, seat or upholstery cover or trim,
15 exterior illumination unit, grill, sunroof, external mirror and
16 external body cladding. The replacement of up to three of these
17 items does not constitute repair of damage if each item is
18 replaced because of a product defect or damaged due to vandalism
19 while the new motor vehicle is under the control of the dealer
20 and the items are replaced with original manufacturer equipment,
21 unless an item is replaced due to a crash, collision, or
22 accident.

23 (4) "Threshold amount" means 3 percent of the
24 manufacturer's suggested retail price of a motor vehicle or
25 \$650, whichever is less.

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

31 Section 2. Section 501.98, Florida Statutes, is created to
32 read:

33 501.98 Notice of claim.—

34 (1) As a condition precedent to initiating any civil
35 litigation or arbitration arising under this part against a
36 motor vehicle dealer, a claimant must give the dealer written
37 notice of the claimant's intent to initiate litigation against
38 the dealer not less than 15 days before initiating the
39 litigation.

40 (2) The notice of claim, which must be completed in good
41 faith, must:



344094

- 42 (a) State the name, address, and telephone number of the
43 claimant;
- 44 (b) Provide the date and a description of the transaction,
45 event, or circumstance that is the basis of the claim;
- 46 (c) Describe the underlying facts of the claim, including a
47 comprehensive and detailed statement describing each item of
48 actual damage or other relief or remedy demanded; and
- 49 (d) To the extent available, be accompanied by all
50 documents upon which the claim is based or upon which the
51 claimant is relying to assert the claim.
- 52 (3) The notice of claim must be delivered to the dealer by
53 United States mail or other nationally recognized carrier,
54 return receipt requested. The cost of delivery shall be
55 reimbursed to the claimant by the dealer if the dealer pays the
56 claim and if the claimant requests reimbursement of the costs in
57 the notice of claim.
- 58 (4) Notwithstanding any other provision of this part, a
59 claimant may not initiate civil litigation against a dealer for
60 a claim arising under this part which is related to, or in
61 connection with, the transaction or event described in the
62 notice of claim if the dealer pays the claimant, within 15 days
63 after receiving the notice of claim, the amount requested as
64 specified in paragraph (2)(c) and the cost of delivering the
65 notice if requested pursuant to subsection (3) and provides any
66 other remedy or relief sought by the claimant.
- 67 (5) For purposes of this section, payment by a dealer is
68 deemed paid on the date a draft or other valid instrument that
69 is equivalent to payment is placed in the United States mail, or
70 another nationally recognized carrier, in a properly addressed,



344094

71 postpaid envelope, or, if not so posted, on the date of
72 delivery.

73 (6) Notwithstanding any other provision of this part, a
74 dealer is not required to pay the claim of the claimant in any
75 action brought under this part if:

76 (a) The dealer, within 15 days after receiving the
77 claimant's notice of claim, notifies the claimant in writing,
78 and a court or arbitrator agrees, that the amount claimed is not
79 supported by the facts of the transaction or event described in
80 the notice of claim or by generally accepted accounting
81 principles or includes items not properly recoverable under this
82 part; or

83 (b) The claimant fails to substantially comply with this
84 section.

85 (7) Payment of the actual damages as set forth in this
86 section:

87 (a) Does not constitute an admission of any wrongdoing or
88 liability by the dealer; and

89 (b) Serves to release the dealer from any claim, suit, or
90 other action that could be brought arising out of or in
91 connection with the specific transaction, event, or occurrence
92 described in the notice of claim.

93 (8) Mailing of the notice of claim required by this section
94 tolls the applicable statute of limitations for an action under
95 this part for 15 days following the date the notice is received
96 by the dealer or any extended period agreed to by the parties.
97 Upon denial of claim, the claimant has the remainder of the
98 statute of limitations or 60 days, whichever is greater, in
99 which to file an action under this part.



344094

100 (9) A dealer waives the requirement of this section that a
101 claimant serve a notice of claim prior to initiating civil
102 litigation if the dealer fails to provide the following
103 statement in writing to the claimant at the time of sale:
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105 Section 501.98, Florida Statutes, requires that at
106 least 15 days before you initiate civil litigation,
107 including an arbitration action, against a motor
108 vehicle dealer for violation of the Florida Deceptive
109 and Unfair Trade Practices Act (Chapter 501, Florida
110 Statutes), you must provide written notice to the
111 dealer. This notice must include the following:

112 (a) Your name, address, and telephone number;

113 (b) A description and date of the transaction
114 that resulted in the claim;

115 (c) A description of the underlying facts of the
116 claim, including a comprehensive and detailed
117 statement describing each item of actual damage
118 demand; and

119 (d) To the extent available, all documents upon
120 which the claim is based or upon which you rely to
121 assert the claim.
122

123 Notice may be provided to this dealership by United
124 States mail or other nationally recognized carrier,
125 return receipt requested (cost of delivery shall be
126 reimbursed to the claimant by the dealer if the dealer
127 pays the claim and if the claimant requests
128 reimbursement of the costs in the notice of claim) to



344094

129 the following:

130

131 ...(Dealership Name)...

132 Attention: ..(Dealership Representative)...

133 ...(Dealership Address)...

134

135 (10) This section does not apply to:

136 (a) Any claim brought as a class action; or

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

138 (11) If a claimant initiates civil litigation under this

139 part without first complying with the requirements of this

140 section or files a claim as a class action, but is ultimately

141 not certified as a class, the court, upon motion, may abate the

142 litigation, without prejudice, to permit the claimant to comply

143 with the provisions of this section and allow the dealer the

144 opportunity to accept or reject the demand as if it had been

145 sent in accordance with subsection (1), and no attorney fees

146 shall be recoverable by the claimant under this chapter for

147 legal services rendered prior to the claimant's compliance with

148 the notice requirement in this section. Notice by a single

149 claimant made for the claimant on behalf of herself or himself

150 and others similarly situated constitutes notice for the entire

151 putative class.

152 (12) This section applies to all civil litigation whether

153 maintained in court or by arbitration.

154 (13) A claimant is not entitled to recover attorney fees in

155 an action under this part against a motor vehicle dealer's

156 employees, agents, principals, sureties, or insurers for actions

157 for which that motor vehicle dealer could also be held liable



344094

158 unless the motor vehicle dealer is joined in that action and the
159 claimant has complied with this section as to such claim.

160 Section 3. Subsection (1) of section 501.213, Florida
161 Statutes, is amended to read:

162 501.213 Effect on other remedies.—

163 (1) The remedies of this part are in addition to remedies
164 otherwise available for the same conduct under state or local
165 law. Proof of reliance on a representation, omission, act, or
166 practice alleged to be in violation of this part is not required
167 in any action brought under this part, and causation of loss or
168 of being aggrieved shall be presumed upon an objective showing
169 of an act, practice, representation, or omission in violation of
170 this part.

171 Section 4. This act shall take effect July 1, 2012.

172
173 ===== T I T L E A M E N D M E N T =====

174 And the title is amended as follows:

175 Delete everything before the enacting clause
176 and insert:

177 A bill to be entitled
178 An act relating to unfair or deceptive acts or
179 practices involving motor vehicles; amending s.
180 501.975, F.S.; conforming provisions; creating s.
181 501.98, F.S.; providing for the disposition of certain
182 claims against motor vehicle dealers before civil
183 litigation; requiring that a claimant provide written
184 notice of such claim to the motor vehicle dealer
185 before initiating litigation; specifying the required
186 contents and procedures for providing the written



344094

187 notice; requiring that a motor vehicle dealer provide
188 a copy of the notice-of-claim form to each customer;
189 authorizing a claimant to initiate litigation without
190 prior notice to a motor vehicle dealer that does not
191 provide a copy of the notice-of-claim form;
192 prohibiting a claimant from initiating litigation
193 against a motor vehicle dealer that pays the actual
194 damages claimed within a specified period; limiting a
195 motor vehicle dealer's further liability upon payment
196 of a claim; limiting a motor vehicle dealer's
197 liability for payment of attorney fees under certain
198 circumstances; tolling time limitations for initiating
199 litigation against a motor vehicle dealer under
200 certain circumstances; limiting admissibility of a
201 motor vehicle dealer's payment or offer to pay a
202 claimant's actual damages; providing for
203 applicability; amending s. 501.213, F.S.; clarifying
204 the availability of remedies under part II of ch. 501,
205 F.S., upon an objective showing of certain acts,
206 practices, representations, or omissions; providing an
207 effective date.