

By Senator Evers

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1 A bill to be entitled
2 An act relating to unfair or deceptive acts or
3 practices involving motor vehicles; amending s.
4 501.975, F.S.; defining the term "business day" and
5 conforming provisions; creating s. 501.977, F.S.;
6 providing for the disposition of certain claims
7 against motor vehicle dealers before civil litigation;
8 requiring claimants to provide written notice of such
9 claims to motor vehicle dealers before initiating
10 litigation; specifying the required contents and
11 procedures for providing the written notices;
12 directing the Department of Legal Affairs to adopt a
13 notice-of-claim form; authorizing the department to
14 adopt rules; requiring motor vehicle dealers to
15 provide a copy of the notice-of-claim form to each
16 customer; authorizing claimants to initiate litigation
17 without prior notice to motor vehicle dealers that do
18 not provide copies of the notice-of-claim form;
19 prohibiting a claimant from initiating litigation
20 against a motor vehicle dealer that pays the actual
21 damages claimed plus a surcharge within a specified
22 period; limiting a motor vehicle dealer's further
23 liability upon payment of a claim; limiting a motor
24 vehicle dealer's liability for payment of attorney
25 fees under certain circumstances; tolling time
26 limitations for initiating litigation against motor
27 vehicle dealers under certain circumstances; limiting
28 admissibility of a motor vehicle dealer's payment or
29 offer to pay a claimant's actual damages; providing

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30 applicability; providing an effective date.

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

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

36 501.975 Definitions.—As used in this part ~~s. 501.976~~, the
37 term following terms shall have the following meanings:

38 (1) "Business day" means any day other than a Saturday,
39 Sunday, or legal holiday.

40 (2)~~(1)~~ "Customer" includes a customer's designated agent.

41 (3)~~(2)~~ "Dealer" means a motor vehicle dealer as defined in
42 s. 320.27, but does not include a motor vehicle auction as
43 defined in s. 320.27(1)(c)4.

44 (4)~~(3)~~ "Replacement item" means a tire, bumper, bumper
45 fascia, glass, in-dashboard equipment, seat or upholstery cover
46 or trim, exterior illumination unit, grill, sunroof, external
47 mirror and external body cladding. The replacement of up to
48 three of these items does not constitute repair of damage if
49 each item is replaced because of a product defect or damaged due
50 to vandalism while the new motor vehicle is under the control of
51 the dealer and the items are replaced with original manufacturer
52 equipment, unless an item is replaced due to a crash, collision,
53 or accident.

54 (5)~~(4)~~ "Threshold amount" means 3 percent of the
55 manufacturer's suggested retail price of a motor vehicle or
56 \$650, whichever is less.

57 (6)~~(5)~~ "Vehicle" means any automobile, truck, bus,
58 recreational vehicle, or motorcycle required to be licensed

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59 under chapter 320 for operation over the roads of Florida, but
60 does not include trailers, mobile homes, travel trailers, or
61 trailer coaches without independent motive power.

62 Section 2. Section 501.977, Florida Statutes, is created to
63 read:

64 501.977 Disposal of claims before civil litigation; notice
65 of claim.—

66 (1) At least 15 days before a claimant may initiate civil
67 litigation against a dealer under part II or this part, the
68 claimant must provide the dealer with written notice of the
69 claim and the claimant's good-faith intent to initiate
70 litigation. The written notice of claim must include:

71 (a) A statement that the notice of claim is provided under
72 this section.

73 (b) The name, address, and telephone number of the
74 claimant.

75 (c) The name and address of the dealer.

76 (d) The date and description of the transaction, event, or
77 circumstances upon which the claim is based.

78 (e) The provisions of part II or this part which the dealer
79 is claimed to have violated and a specific description of the
80 underlying facts that show the violation.

81 (f) A comprehensive, detailed statement describing each
82 item for which actual damages are claimed and recoverable under
83 part II or this part and the amount claimed for each item,
84 including, to the extent applicable, the formula or basis by
85 which the damages are calculated.

86 (2) (a) The Department of Legal Affairs shall adopt a
87 notice-of-claim form that provides blank spaces for the

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88 information required under subsection (1) and includes an
89 explanation of part II and this part. The department shall
90 publish a copy of its notice-of-claim form on the department's
91 Internet website. The department may adopt rules to administer
92 this paragraph.

93 (b) A dealer shall provide a copy of the department's
94 notice-of-claim form to each customer at the time of each
95 transaction, and the dealer must include on the form the name or
96 position title and address of the person to whom the notice of
97 claim must be provided under subsection (4) or the name and
98 address of the dealer's business division assigned by the dealer
99 with responsibility for processing claims.

100 (c) A dealer's failure to provide a copy of the
101 department's notice-of-claim form to a claimant constitutes
102 waiver of the dealer's right to notice under this section, and,
103 notwithstanding subsection (1), the claimant may initiate civil
104 litigation without providing the dealer with prior notice of the
105 claim.

106 (3) Each notice of claim, to the extent applicable, must be
107 accompanied by a copy of each transaction or other document upon
108 which the claim is based or upon which the claimant relied in
109 asserting the claim.

110 (4) (a) A notice of claim must be provided to the dealer by
111 certified or registered United States mail, return receipt
112 requested, to the dealer's registered agent, any person listed
113 in s. 48.081(1) if the dealer does not have a registered agent,
114 or, if included on the notice-of-claim form provided to
115 customers by the dealer, the dealer's business division assigned
116 by the dealer with responsibility for processing claims.

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117 (b) If the dealer pays the claim under paragraph (5) (a) and
118 if requested by the claimant, the dealer shall reimburse the
119 claimant for the postal costs of providing the notice.

120 (5) Notwithstanding any provision of part II or this part:

121 (a) A claimant may not initiate civil litigation against a
122 dealer under part II or this part if the dealer, within 15
123 business days after receipt of the notice of claim, pays to the
124 claimant:

125 1. The amount of actual damages claimed in the notice under
126 paragraph (1) (f).

127 2. A surcharge equal to 10 percent of the amount of actual
128 damages claimed in the notice, not to exceed a surcharge of
129 \$500. A claimant is not entitled to a surcharge if the dealer
130 rejects or does not respond to the claimant's notice of claim.

131 (b) A dealer that pays the claimant for actual damages and
132 the surcharge is not further liable to the claimant for the
133 transaction, event, or circumstances described in the notice of
134 claim.

135 (c) A dealer is not required to pay the claimant's attorney
136 fees in any civil litigation initiated under part II or this
137 part if the dealer, within 15 business days after receipt of the
138 notice of claim, notifies the claimant in writing, and a court
139 or arbitrator agrees, that:

140 1. The amount claimed is not supported by the underlying
141 facts described in the notice of claim or by generally accepted
142 accounting principles or the amount claimed includes items that
143 are not recoverable under part II or this part; or

144 2. The claimant has not substantially complied with this
145 section.

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146 (d) Any time limitation on initiating civil litigation
147 under part II or this part is tolled for 15 business days, or
148 for such other period as agreed to in writing by the parties,
149 after the date that the notice of claim provided to the dealer
150 under paragraph (4) (a) is postmarked by the United States Postal
151 Service.

152 (6) A dealer's payment of the claimant's actual damages or
153 offer to pay such damages is:

154 (a) Not an admission of any wrongdoing by the dealer.

155 (b) Inadmissible as evidence under s. 90.408.

156 (7) For purposes of this section, payment by a dealer is
157 deemed paid on the date that a draft or other valid payment
158 instrument is postmarked by the United States Postal Service,
159 date-stamped with a verifiable tracking number by a common
160 carrier, or delivered, if a postmark or verifiable tracking
161 number is not available.

162 (8) This section does not apply to:

163 (a) A claim for actual damages brought and certified as a
164 maintainable class action.

165 (b) An action brought by the enforcing authority as defined
166 in s. 501.203.

167 (c) An act or practice required or specifically authorized
168 by federal law or any provision of state law except chapter 501.

169 (d) A claim for personal injury or death or a claim for
170 damage to tangible personal property other than the property
171 that is the subject of the customer transaction.

172 Section 3. This act shall take effect upon becoming a law.