

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
 2 Representative Gaetz offered the following:

Amendment (with title amendment)

5 Remove everything after the enacting clause and insert:

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

8 501.975 Definitions.—As used in this part ~~s. 501.976~~, the
9 following terms shall have the following meanings:

- 10 (1) "Customer" includes a customer's designated agent.
- 11 (2) "Dealer" means a motor vehicle dealer as defined in s.
 12 320.27, but does not include a motor vehicle auction as defined
 13 in s. 320.27(1)(c)4.
- 14 (3) "Replacement item" means a tire, bumper, bumper
 15 fascia, glass, in-dashboard equipment, seat or upholstery cover
 16 or trim, exterior illumination unit, grill, sunroof, external
 17 mirror and external body cladding. The replacement of up to
 18 three of these items does not constitute repair of damage if
 19 each item is replaced because of a product defect or damaged due

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20 to vandalism while the new motor vehicle is under the control of
21 the dealer and the items are replaced with original manufacturer
22 equipment, unless an item is replaced due to a crash, collision,
23 or accident.

24 (4) "Threshold amount" means 3 percent of the
25 manufacturer's suggested retail price of a motor vehicle or
26 \$650, whichever is less.

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

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

34 501.98 Demand letter.-

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

41 (2) The notice, which must be completed in good faith,
42 must:

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

45 (b) State the name, address, and telephone number of the
46 claimant;

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

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

50 (e) Describe with specificity the underlying facts and how
51 they give rise to an alleged violation of this part or part II;

52 (f) To the extent applicable, be accompanied by all
53 transaction or other documents upon which the claim is based or
54 upon which the claimant is relying to assert the claim; and

55 (g) Include a comprehensive and detailed statement
56 describing each item of actual damage demanded by the claimant
57 and recoverable under this part or part II and the amount
58 claimed for each item of damage, including, if applicable, the
59 formula or basis by which each item of damage was calculated.

60 (3) (a) The notice of the claim must be delivered to the
61 dealer by certified United States mail, return receipt
62 requested. The postal costs shall be reimbursed to the claimant
63 by the dealer if the dealer pays the claim and if the claimant
64 requests reimbursement of the postal costs in the notice of
65 claim.

66 (b) If the dealer is a corporate entity, the notice of
67 claim must be sent to the registered agent of the dealer as
68 recorded with the Department of State and, in the absence of a
69 registered agent, any person listed in s. 48.081(1).

70 (4) Notwithstanding any provision of this part or part II
71 to the contrary, a claimant may not initiate litigation against
72 a dealer for a claim arising under this part or part II related
73 to, or in connection with, the transaction or event described in
74 the notice of claim if the dealer pays the claimant within 15
75 business days after receiving the notice of claim:

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

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

80 (5) For the purpose of this section, payment by a dealer
81 is deemed paid on the date a draft or other valid instrument
82 that is equivalent to payment is placed in the United States
83 mail, or other nationally recognized carrier, in a properly
84 addressed, postpaid envelope, or, if not so posted, on the date
85 of delivery.

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

89 (7) Notwithstanding any provision of this part or part II
90 to the contrary, a dealer is not required to pay the attorney's
91 fees of the claimant in any civil action brought under this part
92 or part II if:

93 (a) The dealer, within 15 business days after receiving
94 the claimant's notice of claim, notifies the claimant in
95 writing, and a court or arbitrator agrees, that the amount
96 claimed is not supported by the facts of the transaction or
97 event described in the notice of claim or by generally accepted
98 accounting principles or includes items not properly recoverable
99 under this part or part II; or

100 (b) The claimant fails to substantially comply with this
101 section.

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

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104 (a) Does not constitute an admission of any wrongdoing by
105 the dealer;

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

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

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

115 (10) This section does not apply to:

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

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

119 (11) The Department of Legal Affairs shall prepare a form
120 demand letter to incorporate the information required by
121 subsection (2) and an explanation of this part or part II and
122 make it available to the public and provided to the customer at
123 the time of transaction. The form shall provide the address
124 where the demand letter must be sent.

125 (12) If a claimant initiates civil litigation under this
126 part or part II without first complying with the requirements of
127 this section, the court, upon a motion by the claimant, may
128 abate the litigation, without prejudice, to permit the claimant
129 to comply with the provisions of this part and allow the dealer
130 the opportunity to accept or reject the demand in accordance
131 with subsection (4).

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132 (13) Failure to provide the information required in
133 subsection (11) by the dealer, shall constitute waiver of the
134 notice required under this part.

135 Section 3. Section 501.99, Florida Statutes, is created to
136 read:

137 501.99 Application.—Section 501.98 does not apply to:

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

141 (2) The sale of any motor vehicle service agreement as
142 defined in s. 634.011(8), F.S.

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

146 -----
147 **T I T L E A M E N D M E N T**

148 Remove the entire title and insert:

149 An act relating to deceptive and unfair trade practices;
150 amending 501.975, F.S.; applying the definitions to the new
151 provisions; creating s. 501.98, F.S.; providing written notice
152 requirement; providing for the content of the notice; providing
153 method of delivery of the notice; providing conditions for
154 settling claims; providing for the effective date of payment;
155 limiting availability of surcharge; limiting attorneys fees
156 under certain circumstances; providing effect of payment;
157 providing tolling of statute of limitations; limiting
158 applicability of the section; requiring the Department of Legal
159 Affairs to prepare a form; providing an additional opportunity

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Bill No. HB 929 (2012)

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160 for claimants to comply with the statute; providing condition
161 constituting waiver of notice; creating s. 501.99, F.S.;
162 providing application of certain provisions; providing an
163 effective date.