

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 WITHDRAWN (Y/N)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: Business & Consumer
 2 Affairs Subcommittee
 3 Representative Gaetz offered the following:

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:

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

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

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

12 (2) "Dealer" means a motor vehicle dealer as defined in s.
 13 320.27, but does not include a motor vehicle auction as defined
 14 in s. 320.27(1)(c)4.

15 (3) "Replacement item" means a tire, bumper, bumper
 16 fascia, glass, in-dashboard equipment, seat or upholstery cover
 17 or trim, exterior illumination unit, grill, sunroof, external
 18 mirror and external body cladding. The replacement of up to
 19 three of these items does not constitute repair of damage if

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

25 (4) "Threshold amount" means 3 percent of the
26 manufacturer's suggested retail price of a motor vehicle or
27 \$650, whichever is less.

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

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

35 501.98 Notice of Claim.-

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

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

44 (a) State the name, address, and telephone number of the
45 claimant;

46 (b) Provide the date and a description of the transaction,
47 event, or circumstance that is the basis of the claim;

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48 (c) Describe the underlying facts of the claim, including
49 a comprehensive and detailed statement describing each item of
50 actual damage demanded; and

51 (d) To the extent available, be accompanied by all
52 documents upon which the claim is based or upon which the
53 claimant is relying to assert the claim.

54 (3) The notice of claim must be delivered to the dealer by
55 United States mail or other nationally recognized carrier,
56 return receipt requested. The cost of delivery shall be
57 reimbursed to the claimant by the dealer if the dealer pays the
58 claim and if the claimant requests reimbursement of the costs in
59 the notice of claim.

60 (4) Notwithstanding any provision of this part or part II,
61 a claimant may not initiate civil litigation against a dealer
62 for a claim arising under this part or part II related to, or in
63 connection with, the transaction or event described in the
64 notice of claim if the dealer pays the claimant within 15 days
65 after receiving the notice of claim the amount requested as
66 specified in paragraph (2) (c) and cost of delivering the notice
67 if requested pursuant to paragraph (3).

68 (5) For purposes of this section, payment by a dealer is
69 deemed paid on the date a draft or other valid instrument that
70 is equivalent to payment is placed in the United States mail, or
71 another nationally recognized carrier, in a properly addressed,
72 postpaid envelope, or, if not so posted, on the date of
73 delivery.

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74 (6) Notwithstanding any provision of this part or part II,
75 a dealer shall not be required to pay the attorney fees of the
76 claimant in any action brought under this part or part II if:

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

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

86 (7) Payment of the actual damages or an offer to pay
87 actual damages as set forth in this section:

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

90 (b) Is protected by s. 90.408 from introduction as
91 evidence during any civil litigation; and

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

96 (8) Mailing of the notice of claim required by this
97 section tolls the applicable statute of limitations for an
98 action under this part or part II for 15 days from the date the
99 notice is received by the dealer.

100 (9) A dealer waives the requirement of this section that a
101 claimant serve a notice of claim prior to initiating civil

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102 litigation if the dealer fails to provide the following
103 statement in writing to the claimant at the time of sale:

104
105 Section 501.98, Florida Statutes, requires that at
106 least fifteen (15) days before you initiate civil
107 litigation, including an arbitration action, against a
108 motor vehicle dealer for violation of Florida's
109 Deceptive and Unfair Trade Practices Act (Chapter 501,
110 parts II and VI, of Florida Statutes) you must provide
111 written notice to the dealer. This notice must
112 include the following:

- 113 (a) Your name, address, and telephone number;
114 (b) A description and date of the transaction
115 that resulted in the claim;
116 (c) A description of the underlying facts of the
117 claim, including a comprehensive and detailed
118 statement describing each item of actual damage
119 demanded; and
120 (d) To the extent available, you must also
121 provide all documents upon which the claim is
122 based or upon which you rely to assert the claim.

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

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129 reimbursement of the costs in the notice of claim) to
130 the following:

131
132 [Dealership Name]
133 Attention: [Dealership Representative]
134 [Dealership Address]

135
136 (10) This section does not apply to:

137 (a) Any claim for actual damages brought as a class action
138 so long as it is ultimately certified as a class action; or

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

140 (11) If a claimant initiates civil litigation under this
141 part or part II without first complying with the requirements of
142 this section or files a claim as a class action but is
143 ultimately not certified as a class, the court, upon motion, may
144 abate the litigation, without prejudice, to permit the claimant
145 to comply with the provisions of this section and allow the
146 dealer the opportunity to accept or reject the demand as if it
147 had been sent in accordance with subsection (1), and no
148 attorneys fees shall be recoverable by the claimant under this
149 Chapter for legal services rendered prior to claimant's
150 compliance with the notice requirement in this section.

151 (12) This section applies to all civil litigation whether
152 maintained in court or by arbitration.

153 (13) A claimant shall not be entitled to recover attorneys'
154 fees in an action under this part or part II of this Chapter
155 against a motor vehicle dealer's employees, agents, principals,
156 sureties, and insurers for actions for which that motor vehicle

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

160 Section 3. This act shall take effect July 1, 2012.

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162

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164 **T I T L E A M E N D M E N T**

165 Remove the entire title and insert:

166 A bill to be entitled

167 An act relating to deceptive and unfair trade
168 practices; amending 501.975, F.S.; conforming
169 provisions; creating s. 501.98, F.S.; requiring a
170 claimant to provide written notice to the motor
171 vehicle dealer as a condition precedent to initiating
172 civil litigation against such dealer under the Florida
173 Deceptive and Unfair Trade Practices Act; providing
174 for the content of the notice; providing method of
175 delivery of the notice; providing conditions for
176 settling claims; providing for the effective date of
177 payment; limiting attorney fees under certain
178 circumstances; providing for effect of payment;
179 providing for the tolling of applicable statutes of
180 limitations; providing a condition that constitutes
181 waiver of notice; providing for applicability;
182 providing an effective date.