

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 929 Unfair or Deceptive Acts or Practices Involving Motor Vehicles

**SPONSOR(S):** Civil Justice Subcommittee; Gaetz

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1512

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	11 Y, 4 N, As CS	Cary	Bond
2) Business & Consumer Affairs Subcommittee			
3) Rulemaking & Regulation Subcommittee			
4) Judiciary Committee			

### SUMMARY ANALYSIS

Florida law prohibits deceptive and unfair trade practices. The law can be enforced by an enforcing authority, which is either a state attorney or the attorney general, or by individuals. There is a similar law prohibiting deceptive acts or practices specifically with respect to motor vehicles.

This bill requires individuals, prior to filing a civil suit under either law, to provide a notice-of-claim to the dealership. If the dealership pays the claim and an additional surcharge within the allotted time, the individual may not file suit.

The bill does not apply to actions by an enforcement authority, certified class action suits, other provisions of federal or state law, or personal injury or death claims.

This bill does not appear to have a fiscal impact on the state or local governments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Present Situation**

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.<sup>1</sup> The law can be enforced either by enforcing authorities, generally a state attorney or the Department of Legal Affairs (DLA)<sup>2</sup>, or by a private suit filed by an individual.<sup>3</sup> Additionally, there is a separate part of the chapter that applies specifically to motor vehicles.<sup>4</sup>

#### **Effect of Proposed Changes**

This bill amends s. 501.975, F.S., to apply the definitions to the new sections created by this bill.

This bill creates s. 501.98, F.S. This section requires consumers suing a motor vehicle dealer under either FDUTPA or its motor vehicle counterpart provision to provide the dealer with a 15-day notice prior to filing suit. The notice must include:

- A statement that the demand letter is provided under "s. 501.98, Florida Statutes";
- The name, address, and telephone number of the claimant;
- The name and address of the dealer;
- The date and description of the transaction, event, or circumstances upon which the claim is based;
- A detailed description of the underlying facts and how they give rise to an alleged violation of FDUTPA or its motor vehicle counterpart;
- All transaction or other documents upon which the claim is based or upon which the claimant is relying to assert the claim; and
- A comprehensive, detailed statement describing each item for which actual damages are claimed and recoverable under FDUTPA or its motor vehicle counterpart and the amount claimed for each item, including the method of calculating damages.

The bill requires DLA to adopt a notice-of-claim form that provides blank spaces for the claimant to enter the required information. The bill requires the dealer to provide a copy of the form with the transaction, along with information regarding to whom the notice-of-claim must be sent. Failure to provide the form constitutes a waiver of the right-to-notice under this bill.

Each notice of claim must be accompanied by a copy of each transaction upon which the claim is based or upon which the claimant relied in asserting the claim. The claimant must send notice by certified mail with return receipt requested to the dealer, the dealer's registered agent, or anybody mentioned in the law dealing with service of process on corporations if the dealer does not have a registered agent. The dealer is required to reimburse the claimant for the cost of postage if the dealer pays the claim.

A claimant may not initiate civil litigation against a dealer under either FDUTPA or its motor vehicle counterpart if the dealer pays, within 15 business days after receipt of the notice, the amount of claimed actual damages and a 10% surcharge, not to exceed \$500. Such a payment releases the dealer from liability to the claimant for the transaction, event, or circumstance described in the notice of claim. The

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<sup>1</sup> Section 501.204, F.S.

<sup>2</sup> Section 501.203(2), F.S.

<sup>3</sup> Section 501.211, F.S.

<sup>4</sup> Section 501.976, F.S.

bill provides that a dealer's payment of actual damages, or an offer to pay, is not an admission of liability by the dealer and is inadmissible as evidence under s. 90.408, F.S.<sup>5</sup>

The dealer is not required to pay the claimant's attorney fees in any civil litigation initiated under FDUTPA or its motor vehicle counterpart if the dealer responds to the claimant in writing, within 15 business days, and if a court or arbitrator agrees that the claimant has not substantially complied with the provisions of this bill, or if the claim is not supported by the underlying facts or by generally accepted accounting principles, or if the claim includes items that are not recoverable under either provision of law.

If a claimant initiates a lawsuit without complying with the requirements of the bill, the claimant may file a motion to abate the litigation without prejudice in order to allow the claimant to comply with the requirements of this bill.

The bill creates s. 501.99, F.S., providing for application of s. 501.98, F.S. The bill does not apply to:

- Any claim for actual damages brought and certified as a maintainable class action;
- Any action brought by an enforcing authority.
- A claim for personal injury or death or a claim for damage to property other than the property that is the subject of the customer transaction;
- The sale of any motor vehicle service agreement as defined by s. 634.011(8), F.S.

#### B. SECTION DIRECTORY:

Section 1 amends s. 501.975, F.S., applying definitions to the new provisions.

Section 2 creates s. 501.98, F.S., relating to demand letter.

Section 3 creates s. 501.99, F.S., relating to application of the part.

Section 4 provides an effective date of July 1, 2012.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill does not appear to have any impact on state revenues.

##### 2. Expenditures:

The bill does not appear to have any impact on state expenditures.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

##### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

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<sup>5</sup> Section 90.408, F.S., relating to compromise and offers to compromise, provides that "evidence of an offer to compromise a claim which was disputed as to validity or amount, as well as any relevant conduct or statements made in negotiations concerning a compromise, is inadmissible to prove liability or absence of liability for the claim or its value."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill appears to provide rule-making authority to the Department of Legal Affairs. The bill requires the DLA to create a notice-of-claim form, which may require the promulgation of an agency rule.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 11, 2012, the Civil Justice Subcommittee approved a strike-all amendment and reported the bill favorably as a committee substitute. The amendment provides:

- A definition for "business days" was removed;
- A requirement for the claimant to submit transaction documents was added.
- A provision was added allowing claimants who file litigation without first filing a claim to file a motion with the court to abate the litigation without prejudice in order to comply with the bill;
- The sale of any motor vehicle service agreement as defined by s. 634.011(8), F.S. is exempt from the bill;
- The effective date was changed from "upon becoming law" to July 1, 2012.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.