

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 929 Deceptive and Unfair Trade Practices

SPONSOR(S): Business & Consumer Affairs Subcommittee, Civil Justice Subcommittee and 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	9 Y, 4 N, As CS	Livingston	Creamer
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. The bill prohibits a claimant from bringing a civil action if, within 15 days of receiving notice, the dealer pays actual damages.

The bill also provides a dealer payment is not an admission of wrongdoing and will be inadmissible as evidence if the matter is litigated. In a civil action, a dealer will not be required to pay a claimant's attorney fees if the dealer timely notifies the claimant, in writing, and a court or arbitrator agrees, that claims are not supported by the facts or generally accepted accounting principles, include non-recoverable items, or the claimant has failed to substantially comply with requirements governing notice.

The bill does not apply to actions by an enforcement authority or certified class action suits.

This bill has no fiscal impact on state funds.

The bill has an effective date of July 1, 2012.

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.¹ The law can be enforced either by enforcing authorities, generally a state attorney or the Department of Legal Affairs (DLA)², or by a private suit filed by an individual.³ Additionally, there is a separate part of the chapter that applies specifically to motor vehicles.⁴

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 of claim prior to filing suit. The notice must include:

- The name, address, and telephone number of the claimant;
- 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.

The requirement that a claimant serve a notice of claim prior to initiating civil litigation does not apply if the dealer fails to provide a notice in writing to the claimant at the time of sale that includes, in part, the following information:

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

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

¹ Section 501.204, F.S.

² Section 501.203(2), F.S.

³ Section 501.211, F.S.

⁴ Section 501.976, F.S.

actual damages. Such a payment releases the dealer from liability to the claimant for the transaction, event, or circumstance described in the notice of claim. The 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.⁵

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 provides 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.

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 notice of claim.

Section 3 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

⁵ 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."

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:

None.

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.

On January 31, 2012, the Business & Consumer Affairs Subcommittee adopted a strike-all amendment and reported the bill favorably as a CS for CS. The CS for CS differs in the following areas:

- Removes the term "demand letter" and replaces it with the term "notice of claim."
- Removes the requirement that the Department of Legal Affairs adopt a notice of claim form that provides blank spaces for the claimant to enter the required information
- Statutorily specifies the contents of the claim form notice to be provided by the dealer to a purchaser;
- Removes the requirement for information relating to the method of calculating damages;
- Removes reference to imposing a 10 percent surcharge against the dealer for early payment.

This analysis is drafted to the CS for CS as passed by the Business & Consumer Affairs Subcommittee.