

1 A bill to be entitled
 2 An act relating to deceptive and unfair trade
 3 practices; amending 501.975, F.S.; conforming
 4 provisions; creating s. 501.98, F.S.; requiring a
 5 claimant to provide written notice to the motor
 6 vehicle dealer as a condition precedent to initiating
 7 civil litigation against such dealer under the Florida
 8 Deceptive and Unfair Trade Practices Act; providing
 9 for the content of the notice; providing method of
 10 delivery of the notice; providing conditions for
 11 settling claims; providing for the effective date of
 12 payment; limiting the availability of a surcharge;
 13 limiting attorney fees under certain circumstances;
 14 providing for effect of payment; providing for the
 15 tolling of applicable statutes of limitations;
 16 requiring the Department of Legal Affairs to prepare a
 17 form; providing an additional opportunity for
 18 claimants to comply with specified provisions;
 19 providing a condition that constitutes waiver of
 20 notice; providing for applicability; providing an
 21 effective date.

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

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 25 Section 1. Section 501.975, Florida Statutes, is amended
 26 to read:

27 501.975 Definitions.—As used in this part ~~s. 501.976~~, the
 28 term ~~following terms shall have the following meanings:~~

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

30 (2) "Dealer" means a motor vehicle dealer as defined in s.
 31 320.27, but does not include a motor vehicle auction as defined
 32 in s. 320.27(1)(c)4.

33 (3) "Replacement item" means a tire, bumper, bumper
 34 fascia, glass, in-dashboard equipment, seat or upholstery cover
 35 or trim, exterior illumination unit, grill, sunroof, external
 36 mirror and external body cladding. The replacement of up to
 37 three of these items does not constitute repair of damage if
 38 each item is replaced because of a product defect or damaged due
 39 to vandalism while the new motor vehicle is under the control of
 40 the dealer and the items are replaced with original manufacturer
 41 equipment, unless an item is replaced due to a crash, collision,
 42 or accident.

43 (4) "Threshold amount" means 3 percent of the
 44 manufacturer's suggested retail price of a motor vehicle or
 45 \$650, whichever is less.

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

51 Section 2. Section 501.98, Florida Statutes, is created to
 52 read:

53 501.98 Demand letter.-

54 (1) As a condition precedent to initiating any civil
 55 litigation arising under this part or part II against a motor
 56 vehicle dealer, a claimant must give the dealer written notice

57 of the claimant's intent to initiate litigation against the
 58 dealer not less than 15 days before initiating the litigation.

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

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

63 (b) State the name, address, and telephone number of the
 64 claimant;

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

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

68 (e) Describe with specificity the underlying facts of the
 69 claim and how such facts give rise to an alleged violation of
 70 this part or part II;

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

74 (g) Include a comprehensive and detailed statement
 75 describing each item of actual damage demanded by the claimant
 76 and recoverable under this part or part II and the amount
 77 claimed for each item of damage, including, if applicable, the
 78 formula or basis by which each item of damage was calculated.

79 (3) (a) The notice of claim must be delivered to the dealer
 80 by certified United States mail, return receipt requested. The
 81 postal costs shall be reimbursed to the claimant by the dealer
 82 if the dealer pays the claim and if the claimant requests
 83 reimbursement of the postal costs in the notice of claim.

84 (b) If the dealer is a corporate entity, the notice of

85 claim must be sent to the registered agent of the dealer as
 86 recorded with the Department of State and, in the absence of a
 87 registered agent, any person listed in s. 48.081(1).

88 (4) Notwithstanding any provision of this part or part II,
 89 a claimant may not initiate litigation against a dealer for a
 90 claim arising under this part or part II related to, or in
 91 connection with, the transaction or event described in the
 92 notice of claim if the dealer pays the claimant within 15
 93 business days after receiving the notice of claim:

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

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

98 (5) For purposes of this section, payment by a dealer is
 99 deemed paid on the date a draft or other valid instrument that
 100 is equivalent to payment is placed in the United States mail, or
 101 another nationally recognized carrier, in a properly addressed,
 102 postpaid envelope, or, if not so posted, on the date of
 103 delivery.

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

107 (7) Notwithstanding any provision of this part or part II,
 108 a dealer is not required to pay the attorney fees of the
 109 claimant in any civil action brought under this part or part II
 110 if:

111 (a) The dealer, within 15 business days after receiving
 112 the claimant's notice of claim, notifies the claimant in

113 writing, and a court or arbitrator agrees, that the amount
 114 claimed is not supported by the facts of the transaction or
 115 event described in the notice of claim or by generally accepted
 116 accounting principles or includes items not properly recoverable
 117 under this part or part II; or

118 (b) The claimant fails to substantially comply with this
 119 section.

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

122 (a) Does not constitute an admission of any wrongdoing by
 123 the dealer;

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

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

129 (9) The applicable statute of limitations for an action
 130 under this part or part II is tolled for 15 business days, or
 131 such other period of time as agreed to by the parties in
 132 writing, by the mailing of the notice of claim required by this
 133 section.

134 (10) The Department of Legal Affairs shall prepare a form
 135 demand letter to incorporate the information required by
 136 subsection (2) and an explanation of this part or part II and
 137 make it available to the public and provided to the customer at
 138 the time of transaction. The form shall provide the address
 139 where the demand letter must be sent.

140 (11) If a claimant initiates civil litigation under this

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141 part or part II without first complying with the requirements of
142 this section, the court, upon a motion by the claimant, may
143 abate the litigation, without prejudice, to permit the claimant
144 to comply with the provisions of this part and allow the dealer
145 the opportunity to accept or reject the demand in accordance
146 with subsection (4).

147 (12) Failure to provide the information required in
148 subsection (10) by the dealer constitutes waiver of the notice
149 of claim required under this part.

150 (13) This section does not apply to:

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

153 (b) An action brought by the enforcing authority.

154 (c) A claim for personal injury or death or a claim for
155 damage to property other than the property that is the subject
156 of the consumer transaction.

157 (d) The sale of any motor vehicle service agreement as
158 defined in s. 634.011(8).

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