

1                                   A bill to be entitled  
 2           An act relating to deceptive and unfair trade  
 3           practices; amending s. 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 or arbitration against such dealer  
 8           under the Florida Deceptive and Unfair Trade Practices  
 9           Act; providing for the content of the notice;  
 10          providing method of delivery of the notice; providing  
 11          conditions for settling claims; providing for the  
 12          effective date of payment; limiting attorney fees  
 13          under certain circumstances; providing for effect of  
 14          payment; providing for the tolling of applicable  
 15          statutes of limitations; providing a condition that  
 16          constitutes waiver of notice; providing for  
 17          applicability; providing an effective date.

18  
 19   Be It Enacted by the Legislature of the State of Florida:

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 21           Section 1.   Section 501.975, Florida Statutes, is amended  
 22   to read:

23           501.975   Definitions.—As used in this part ~~s. 501.976~~, the  
 24   term ~~following terms shall have the following meanings:~~

- 25           (1)   "Customer" includes a customer's designated agent.
- 26           (2)   "Dealer" means a motor vehicle dealer as defined in s.
- 27   320.27, but does not include a motor vehicle auction as defined
- 28   in s. 320.27(1)(c)4.

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

39 (4) "Threshold amount" means 3 percent of the  
40 manufacturer's suggested retail price of a motor vehicle or  
41 \$650, whichever is less.

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

47 Section 2. Section 501.98, Florida Statutes, is created to  
48 read:

49 501.98 Notice of claim.—

50 (1) As a condition precedent to initiating any civil  
51 litigation or arbitration arising under this part or part II  
52 against a motor vehicle dealer, a claimant must give the dealer  
53 written notice of the claimant's intent to initiate litigation  
54 or arbitration against the dealer not less than 15 days before  
55 initiating the litigation or arbitration.

56 (2) The notice of claim, which must be completed in good

57 faith, must:

58 (a) State the name, address, and telephone number of the  
59 claimant.

60 (b) Provide the date and a description of the transaction,  
61 event, or circumstance upon which the claim is based.

62 (c) Describe the underlying facts of the claim, including  
63 a comprehensive and detailed statement describing each item for  
64 which actual damages are claimed.

65 (d) To the extent available, be accompanied by all  
66 documents upon which the claim is based or upon which the  
67 claimant relies to assert the claim.

68 (3) The notice of claim must be delivered to the dealer by  
69 United States mail or another nationally recognized carrier,  
70 return receipt requested. The dealer shall reimburse the  
71 claimant for the cost of delivery if the dealer ultimately pays  
72 the claim and the claimant requests reimbursement of such cost  
73 in the notice of claim.

74 (4) Notwithstanding any provision of this part or part II,  
75 a claimant may not initiate civil litigation or arbitration  
76 against a dealer for a claim arising under this part or part II  
77 related to, or in connection with, the transaction, event, or  
78 circumstance described in the notice of claim if, within 15 days  
79 after receipt of the notice of claim, the dealer pays the  
80 claimant:

81 (a) The amount of actual damages claimed pursuant to  
82 paragraph (2) (c); and

83 (b) If requested pursuant to subsection (3), the cost of  
84 delivery.

85        (5) For purposes of this section, payment by a dealer is  
86 deemed paid on the date that a draft or other valid instrument  
87 that is equivalent to payment is placed in the United States  
88 mail, or another nationally recognized carrier, in a properly  
89 addressed, postpaid envelope, or, if not so posted, on the date  
90 of delivery.

91        (6) Notwithstanding any provision of this part or part II,  
92 a dealer is not required to pay a claimant's attorney fees in  
93 any action brought under this part or part II if:

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

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

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

105        (a) Does not constitute an admission of any wrongdoing or  
106 liability by the dealer.

107        (b) Is protected by s. 90.408 from introduction as  
108 evidence during any civil litigation.

109        (c) Releases the dealer from any claim, suit, action, or  
110 other action that could be brought arising out of, or in  
111 connection with, the specific transaction, event, or  
112 circumstance described in the notice of claim.

113 (8) Mailing of the notice of claim required by this  
114 section tolls the applicable statute of limitations for an  
115 action brought under this part or part II for 15 days from the  
116 date that the notice is received by the dealer.

117 (9) A claimant is not required to give the dealer notice  
118 of the claim before initiating civil litigation or arbitration  
119 if the dealer waives the notice requirements of this section by  
120 failing to provide the following statement in writing to the  
121 claimant at the time of sale:

122  
123 Section 501.98, Florida Statutes, requires that you  
124 give written notice to a motor vehicle dealer at least  
125 15 days before initiating civil litigation or  
126 arbitration against the dealer for violation of the  
127 Florida Deceptive and Unfair Trade Practices Act  
128 (parts II and VI of chapter 501, Florida Statutes).  
129 The notice must include:

- 130 1. Your name, address, and telephone number.  
131 2. A description and date of the transaction,  
132 event, or circumstance upon which your claim is based.  
133 3. A description of the underlying facts of your  
134 claim, including a comprehensive and detailed  
135 statement describing each item for which actual  
136 damages are claimed.  
137 4. To the extent available, all documents upon  
138 which your claim is based or upon which you rely to  
139 assert the claim.

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141 The notice must be delivered to the dealer by United  
142 States mail or another nationally recognized carrier,  
143 return receipt requested. The dealer shall reimburse  
144 you for the cost of delivery if the dealer ultimately  
145 pays the claim and you request reimbursement of the  
146 cost of delivery in your notice of claim. The notice  
147 of claim must be delivered to the following:

148  
149 Name: ...Name of motor vehicle dealer...  
150 Attention: ...Name of dealer's representative...  
151 Address: ...Dealer's address...

152  
153 (10) This section does not apply to:  
154 (a) A claim for actual damages that is certified as a  
155 class action.  
156 (b) An action brought by the enforcing authority.  
157 (11) If a claimant initiates civil litigation under this  
158 part or part II without first complying with this section or  
159 brings a claim as a class action that ultimately is not  
160 certified as a class action, the court, upon motion, may abate  
161 the litigation, without prejudice, to permit the claimant to  
162 comply with this section and allow the dealer the opportunity to  
163 accept or reject the claim as if the notice of claim had been  
164 given in accordance with this section, and the claimant may not  
165 be awarded attorney fees under this chapter for legal services  
166 rendered before the claimant's compliance with the notice  
167 requirements of this section.  
168 (12) This section applies to all civil litigation, whether

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169 maintained in court or by arbitration.

170 (13) In an action brought under this part or part II  
171 against an employee, agent, principal, surety, or insurer of a  
172 motor vehicle dealer which arises from a claim for which the  
173 dealer could also be held liable, the claimant is not entitled  
174 to an award of attorney fees unless the dealer is joined in the  
175 action and the claimant complies with the notice requirements of  
176 this section.

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