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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/19/2013	.	
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The Committee on Commerce and Tourism (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

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

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

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



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13 (3) "Replacement item" means a tire, bumper, bumper fascia,
14 glass, in-dashboard equipment, seat or upholstery cover or trim,
15 exterior illumination unit, grill, sunroof, external mirror and
16 external body cladding. The replacement of up to three of these
17 items does not constitute repair of damage if each item is
18 replaced because of a product defect or damaged due to vandalism
19 while the new motor vehicle is under the control of the dealer
20 and the items are replaced with original manufacturer equipment,
21 unless an item is replaced due to a crash, collision, or
22 accident.

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

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

31 Section 2. Section 501.98, Florida Statutes, is created to
32 read:

33 501.98 Demand letter.-

34 (1) As a condition precedent to initiating any civil
35 litigation, including arbitration, arising under this chapter
36 against a motor vehicle dealer, which may also include its
37 employees, agents, principals, sureties, and insurers, a
38 claimant must give the dealer a written demand letter at least
39 30 days before initiating the litigation.

40 (2) The demand letter, which must be completed in good
41 faith, must:



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42 (a) State the name, address, and telephone number of the
43 claimant.

44 (b) State the name and address of the dealer.

45 (c) Describe the underlying facts of the claim, including a
46 statement describing each item for which actual damages are
47 claimed.

48 (d) State the amount of damages claimed.

49 (e) To the extent available to the claimant, be accompanied
50 by all transaction or other documents upon which the claim is
51 based.

52
53 In any challenge to the claimant's compliance with this
54 subsection, the demand letter shall be deemed satisfactory if it
55 contains sufficient information to reasonably put the dealer on
56 notice of the nature of the claim and the relief sought.

57 (3) The demand letter must be delivered by the United
58 States Postal Service or by a nationally recognized carrier,
59 return receipt requested, to the address where the subject
60 vehicle was purchased or leased or where the subject transaction
61 occurred, or any address at which the dealer regularly conducts
62 business.

63 (4) Notwithstanding any provision of this chapter:

64 (a) A claimant may not initiate civil litigation, including
65 arbitration, against a dealer or its employees, agents,
66 principals, sureties, or insurers for a claim arising under this
67 chapter related to, or in connection with, the transaction or
68 event described in the demand letter if, within 30 days after
69 receipt of the demand letter, the dealer pays the claimant the
70 amount sought in the demand letter, plus a surcharge of \$500, if



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71 the claimant is represented by an attorney.

72 (b) A dealer and its employees, agents, principals,
73 sureties, and insurers may not be required to pay the attorney
74 fees of the claimant in any action brought under this chapter
75 if:

76 1. The dealer, within 30 days after receipt of the demand
77 letter, notifies the claimant in writing, and a court or
78 arbitrator agrees, that the amount sought in the demand letter
79 is not reasonable in light of the facts of the transaction or
80 event described in the demand letter or if the demand letter
81 includes items and amounts not properly recoverable under this
82 chapter; or

83 2. The claimant fails to sufficiently comply with this
84 section; however, to the extent that there is a challenge to the
85 sufficiency of the demand letter, the demand letter shall be
86 deemed satisfactory if it contains sufficient information to
87 reasonably put the dealer on notice of the nature of the claim
88 and the amount and relief sought such that the dealer could
89 appropriately respond.

90 (5) The demand letter required by this section expires 30
91 days after receipt by the dealer, unless renewed by the
92 claimant, and does not place a limitation on the damages that
93 the claimant may claim in subsequently maintained civil
94 litigation, including arbitration. Payment of the damages
95 claimed in the demand letter and the required surcharge as set
96 forth in this section within 30 days of receipt of the demand
97 letter:

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



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100 (b) Is protected under s. 90.408 from introduction as
101 evidence during any civil litigation, including arbitration.

102 (c) Releases the dealer and its employees, agents,
103 principals, sureties, and insurers from any claim, suit, or
104 other action that could be brought arising out of, or in
105 connection with, the specific transaction, event, or occurrence
106 described in the demand letter; but does not serve as a release
107 as to items of damages that are not included in the demand
108 letter and not recoverable under this chapter.

109 (6) The applicable time limitations for initiating an
110 action under this chapter are tolled for 30 days after the date
111 of delivery of the demand letter to the dealer pursuant to
112 subsection (3), or such other period agreed to in writing and
113 signed by the parties after the demand letter is received by the
114 dealer.

115 (7) This section does not apply to any action brought as a
116 class action that is ultimately certified as a class action or
117 any action brought by the enforcing authority.

118 (8) If a claimant initiates civil litigation, including
119 arbitration, without first complying with the provisions of this
120 section, the court or arbitrator shall stay the action upon
121 timely motion until the claimant complies with this section.
122 Attorney fees and court or arbitration costs incurred by the
123 claimant before compliance with this section are not recoverable
124 under this chapter.

125 (9) This section applies only to civil litigation,
126 including arbitration, arising out of a transaction for which
127 the dealer has provided the following written notice to the
128 consumer, which must be in a font size no smaller than that of



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129 the predominant text on the page in which the claim is
130 disclosed, or if it is disclosed by itself, in a font size of at
131 least 12 points:

132
133 "Section 501.98, Florida Statutes, requires that, at
134 least 30 days before bringing any claim against a
135 motor vehicle dealer for an unfair or deceptive trade
136 practice, a consumer must provide the dealer with a
137 written demand letter stating the name, address, and
138 telephone number of the consumer; the name and address
139 of the dealer; a description of the facts that serve
140 as the basis for the claim; the amount of damages
141 claimed; and copies of any documents in the possession
142 of the consumer which relate to the claim. Such notice
143 must be delivered by the United States Postal Service
144 or by a nationally recognized carrier, return receipt
145 requested to the address where the subject vehicle was
146 purchased or leased or where the subject transaction
147 occurred, or any address at which the dealer regularly
148 conducts business."

149
150 Section 2. This act shall take effect July 1, 2013.

151 ===== T I T L E A M E N D M E N T =====

152 And the title is amended as follows:

153 Delete everything before the enacting clause
154 and insert:

155 A bill to be entitled
156 An act relating to deceptive and unfair trade
157 practices; amending s. 501.975, F.S.; making technical



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158 changes; creating s. 501.98, F.S.; requiring a
159 claimant to provide a demand letter to the motor
160 vehicle dealer as a condition precedent to initiating
161 civil litigation against such dealer under the Florida
162 Deceptive and Unfair Trade Practices Act; providing
163 for requirements and expiration of the demand letter;
164 providing exceptions for liability for payment of
165 attorney fees; providing for the tolling of applicable
166 time limitations for initiating actions; providing an
167 additional opportunity for claimants to comply with
168 specified provisions; providing that attorney fees and
169 other costs incurred by a claimant before compliance
170 with certain provisions are not recoverable; providing
171 for applicability; requiring that a specified notice
172 be provided to consumers before provisions may apply;
173 providing an effective date.