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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/09/2013	.	
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	.	
	.	

The Committee on Judiciary (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.

(3) "Replacement item" means a tire, bumper, bumper fascia,



719480

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:

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



719480

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, or, if not available, the
49 claimant's best estimate of the amount of damages.

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

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

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

64 (4) Notwithstanding any provision of this chapter:

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



719480

72 lesser of \$500 or 10 percent of the damages claimed.

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

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

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

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

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



719480

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

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

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

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

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

126 (9) This section applies only to civil litigation,
127 including arbitration, arising out of a transaction for which
128 the dealer has provided the following written notice to the
129 consumer, which must be acknowledged by the consumer, and which



719480

130 must be in a font size no smaller than that of the predominant
131 text on the page in which the notice is disclosed, or if it is
132 disclosed by itself, in a font size of at least 12 point:
133

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

150 Section 3. This act shall take effect July 1, 2013.
151

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

153 And the title is amended as follows:

154 Delete everything before the enacting clause
155 and insert:

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



719480

159 provisions; creating s. 501.98, F.S.; requiring a
160 claimant to provide a demand letter to the motor
161 vehicle dealer as a condition precedent to initiating
162 civil litigation, including arbitration, against such
163 dealer under the Florida Deceptive and Unfair Trade
164 Practices Act; providing for expiration of the demand
165 letter after a specified period; providing for the
166 tolling of applicable time limitations for initiating
167 actions; requiring a stay of civil litigation,
168 including arbitration, brought without compliance with
169 the demand letter requirements; providing an
170 additional opportunity for claimants to comply with
171 specified provisions; providing a condition that
172 constitutes waiver of notice; providing for
173 applicability; requiring that a specified notice be
174 provided to consumers and acknowledged before
175 provisions may apply; providing an effective date.