

**By** the Committees on Judiciary; and Commerce and Tourism; and  
Senators Richter, Flores, Bean, Brandes, and Grimsley

590-03892-13

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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 a demand letter to the motor  
6 vehicle dealer as a condition precedent to initiating  
7 civil litigation, including arbitration, against such  
8 dealer under the Florida Deceptive and Unfair Trade  
9 Practices Act; providing for expiration of the demand  
10 letter after a specified period; providing for the  
11 tolling of applicable time limitations for initiating  
12 actions; requiring a stay of civil litigation,  
13 including arbitration, brought without compliance with  
14 the demand letter requirements; providing an  
15 additional opportunity for claimants to comply with  
16 specified provisions; providing a condition that  
17 constitutes waiver of notice; providing for  
18 applicability; requiring that a specified notice be  
19 provided to consumers and acknowledged before  
20 provisions may apply; providing an effective date.

21  
22 Be It Enacted by the Legislature of the State of Florida:

23  
24 Section 1. Section 501.975, Florida Statutes, is amended to  
25 read:

26 501.975 Definitions.—As used in this part ~~s. 501.976~~, the  
27 term ~~following terms shall have the following meanings:~~

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

29 (2) "Dealer" means a motor vehicle dealer as defined in s.

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30 320.27, but does not include a motor vehicle auction as defined  
31 in s. 320.27(1)(c)4.

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

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

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

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

52 501.98 Demand letter.-

53 (1) As a condition precedent to initiating any civil  
54 litigation, including arbitration, arising under this chapter  
55 against a motor vehicle dealer, which may also include its  
56 employees, agents, principals, sureties, and insurers, a  
57 claimant must give the dealer a written demand letter at least  
58 30 days before initiating the litigation.

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59       (2) The demand letter, which must be completed in good  
60 faith, must:

61       (a) State the name, address, and telephone number of the  
62 claimant.

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

64       (c) Describe the underlying facts of the claim, including a  
65 statement describing each item for which actual damages are  
66 claimed.

67       (d) State the amount of damages, or, if not available, the  
68 claimant's best estimate of the amount of damages.

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

72  
73 In any challenge to the claimant's compliance with this  
74 subsection, the demand letter shall be deemed satisfactory if it  
75 contains sufficient information to reasonably put the dealer on  
76 notice of the nature of the claim and the relief sought.

77       (3) The demand letter must be delivered by the United  
78 States Postal Service or by a nationally recognized carrier,  
79 return receipt requested, to the address at which the subject  
80 vehicle was purchased or leased or at which the subject  
81 transaction occurred, or an address at which the dealer  
82 regularly conducts business.

83       (4) Notwithstanding any provision of this chapter:

84       (a) A claimant may not initiate civil litigation, including  
85 arbitration, against a dealer or its employees, agents,  
86 principals, sureties, or insurers for a claim arising under this  
87 chapter related to, or in connection with, the transaction or

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88 event described in the demand letter if, within 30 days after  
89 receipt of the demand letter, the dealer pays the claimant the  
90 amount sought in the demand letter, plus a surcharge of the  
91 lesser of \$500 or 10 percent of the damages claimed.

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

96 1. The dealer, within 30 days after receipt of the demand  
97 letter, notifies the claimant in writing, and a court or  
98 arbitrator subsequently agrees that the amount sought in the  
99 demand letter is not reasonable in light of the facts of the  
100 transaction or event described in the demand letter or if the  
101 demand letter includes items and amounts not properly  
102 recoverable under this chapter; or

103 2. The claimant fails to sufficiently comply with this  
104 section; however, to the extent that there is a challenge to the  
105 sufficiency of the demand letter, the demand letter shall be  
106 deemed satisfactory if it contains sufficient information to  
107 reasonably put the dealer on notice of the nature of the claim  
108 and the amount and relief sought such that the dealer could  
109 appropriately respond.

110 (5) The demand letter required by this section expires 30  
111 days after receipt by the dealer, unless renewed by the  
112 claimant, and does not place a limitation on the damages that  
113 the claimant may claim in any subsequently maintained civil  
114 litigation, including arbitration. Payment of the damages  
115 claimed in the demand letter and the required surcharge as set  
116 forth in this section within 30 days after receipt of the demand

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117 letter:

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

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

122 (c) Releases the dealer and its employees, agents,  
123 principals, sureties, and insurers from any claim, suit, or  
124 other action that could be brought arising out of, or in  
125 connection with, the specific transaction, event, or occurrence  
126 described in the demand letter; but does not serve as a release  
127 as to items of damages that are not recoverable under this  
128 chapter.

129 (6) The applicable time limitations for initiating an  
130 action under this chapter are tolled for 30 days after the date  
131 of delivery of the demand letter to the dealer pursuant to  
132 subsection (3), or such other period agreed to in writing and  
133 signed by the parties after the demand letter is received by the  
134 dealer.

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

138 (8) If a claimant initiates civil litigation, including  
139 arbitration, without first complying with this section, the  
140 court or arbitrator shall stay the action upon timely motion  
141 until the claimant complies with this section. Attorney fees and  
142 court or arbitration costs incurred by the claimant before  
143 compliance with this section are not recoverable under this  
144 chapter.

145 (9) This section applies only to civil litigation,

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146 including arbitration, arising out of a transaction for which  
147 the dealer has provided the following written notice to the  
148 consumer, which must be acknowledged by the consumer, and which  
149 must be in a font size no smaller than that of the predominant  
150 text on the page in which the notice is disclosed, or if it is  
151 disclosed by itself, in a font size of at least 12 point:

152  
153 "Section 501.98, Florida Statutes, requires that, at  
154 least 30 days before bringing any claim against a  
155 motor vehicle dealer for an unfair or deceptive trade  
156 practice, a consumer must provide the dealer with a  
157 written demand letter stating the name, address, and  
158 telephone number of the consumer; the name and address  
159 of the dealer; a description of the facts that serve  
160 as the basis for the claim; the amount of damages; and  
161 copies of any documents in the possession of the  
162 consumer which relate to the claim. Such notice must  
163 be delivered by the United States Postal Service or by  
164 a nationally recognized carrier, return receipt  
165 requested, to the address where the subject vehicle  
166 was purchased or leased or where the subject  
167 transaction occurred, or an address at which the  
168 dealer regularly conducts business."

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