

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED      (Y/N)  
 ADOPTED AS AMENDED      (Y/N)  
 ADOPTED W/O OBJECTION      (Y/N)  
 FAILED TO ADOPT      (Y/N)  
 WITHDRAWN      (Y/N)  
 OTHER           

1 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative Gaetz offered the following:

**Amendment**

5 Remove lines 48-141 and insert:

6 501.98 Demand letter.-

7 (1) As a condition precedent to initiating any civil  
 8 litigation, including arbitration, arising under this chapter  
 9 against a motor vehicle dealer, which may also include its  
 10 employees, agents, principals, sureties, and insurers, a  
 11 claimant must give the dealer a written demand letter at least  
 12 30 days before initiating the litigation.

13 (2) The demand letter, which must be completed in good  
 14 faith, must:

15 (a) State the name, address, and telephone number of the  
 16 claimant.

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

18 (c) Describe the underlying facts of the claim, including a  
 19 statement describing each item for which actual damages are  
 20 claimed.

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

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

26  
27 In any challenge to the claimant's compliance with this  
28 subsection, the demand letter shall be deemed satisfactory if it  
29 contains sufficient information to reasonably put the dealer on  
30 notice of the nature of the claim and the relief sought.

31 (3) The demand letter must be delivered by the United  
32 States Postal Service or by a nationally recognized carrier,  
33 return receipt requested, to the address where the subject  
34 vehicle was purchased or leased, where the subject transaction  
35 occurred, or any address at which the dealer regularly conducts  
36 business.

37 (4) Notwithstanding any provision of this chapter:

38 (a) A claimant may not initiate civil litigation, including  
39 arbitration, against a dealer or its employees, agents,  
40 principals, sureties, or insurers for a claim arising under this  
41 chapter related to, or in connection with, the transaction or  
42 event described in the demand letter if, within 30 days after  
43 receipt of the demand letter, the dealer pays the claimant the  
44 amount sought in the demand letter, plus a surcharge of the  
45 lesser of \$500 or ten percent of the damages claimed.

46 (b) A dealer and its employees, agents, principals,  
47 sureties, and insurers may not be required to pay the attorney

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48 fees of the claimant in any action brought under this chapter  
49 if:

50 1. The dealer, within 30 days after receipt of the demand  
51 letter, notifies the claimant in writing, and a court or  
52 arbitrator agrees in any subsequently filed litigation, that the  
53 amount sought in the demand letter is not reasonable in light of  
54 the facts of the transaction or event described in the demand  
55 letter or if the demand letter includes items and amounts not  
56 properly recoverable under this chapter; or

57 2. The claimant fails to sufficiently comply with this  
58 section; however, to the extent that there is a challenge to the  
59 sufficiency of the demand letter, the demand letter shall be  
60 deemed satisfactory if it contains sufficient information to  
61 reasonably put the dealer on notice of the nature of the claim  
62 and the amount and relief sought such that the dealer could  
63 appropriately respond.

64 (5) The demand letter required by this section expires 30  
65 days after receipt by the dealer, unless renewed by the  
66 claimant, and does not place a limitation on the damages that  
67 the claimant may claim in subsequently maintained civil  
68 litigation, including arbitration. Payment of the damages  
69 claimed in the demand letter and the required surcharge as set  
70 forth in this section within 30 days of receipt of the demand  
71 letter:

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

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

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

83 (6) The applicable time limitations for initiating an  
84 action under this chapter are tolled for 30 days after the date  
85 of delivery of the demand letter to the dealer pursuant to  
86 subsection (3), or such other period agreed to in writing and  
87 signed by the parties after the demand letter is received by the  
88 dealer.

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

92 (8) If a claimant initiates civil litigation, including  
93 arbitration, without first complying with the provisions of this  
94 section, the court or arbitrator shall stay the action upon  
95 timely motion until the claimant complies with this section.  
96 Attorney fees and court or arbitration costs incurred by the  
97 claimant before compliance with this section are not recoverable  
98 under this chapter.

99 (9) This section applies only to civil litigation,  
100 including arbitration, arising out of a transaction for which  
101 the dealer has provided the following written notice to the  
102 consumer, which must be acknowledged by the consumer, and which  
103 must be in a font size no smaller than that of the predominant

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104 text on the page in which the notice is disclosed, or if it is  
105 disclosed by itself, in a font size of at least 12 point:

106  
107 "Section 501.98, Florida Statutes, requires that, at least  
108 30 days before bringing any claim against a motor vehicle  
109 dealer for an unfair or deceptive trade practice, a  
110 consumer must provide the dealer with a written demand  
111 letter stating the name, address, and telephone number of  
112 the consumer; the name and address of the dealer; a  
113 description of the facts that serve as the basis for the  
114 claim; the amount of damages claimed; and copies of any  
115 documents in the possession of the consumer which relate to  
116 the claim. Such notice must be delivered by the United  
117 States Postal Service or by a nationally recognized  
118 carrier, return receipt requested, to the address where the  
119 subject vehicle was purchased or leased, where the subject  
120 transaction occurred, or any address at which the dealer  
121 regularly conducts business."

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