

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 55 Deceptive and Unfair Trade Practices

**SPONSOR(S):** Business & Professional Regulation Subcommittee and Gaetz

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 292

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	11 Y, 1 N	Cary	Bond
2) Business & Professional Regulation Subcommittee	9 Y, 3 N, As CS	Collins	Luczynski
3) Judiciary Committee			

### SUMMARY ANALYSIS

Florida law prohibits certain deceptive and unfair trade practices of many different businesses. Current law allows the filing of a suit against an automobile dealer alleging commission of an unfair and deceptive trade act without prior notice to such dealer.

This bill requires that an individual alleging deceptive and unfair trade practices must first give a demand letter to the dealer. If the dealer pays the claim and an additional surcharge within the 30-day allotted time period, the individual may not file suit. This requirement only applies if the dealer provided the customer with notice of the requirement as a part of the transaction.

The bill does not apply to a certified class action or to enforcement by a state attorney or the attorney general.

This bill does not appear to have a fiscal impact on the state or local governments.

The bill has an effective date of July 1, 2013.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Present Situation**

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.<sup>1</sup> The law can be enforced either by enforcing authorities, generally a state attorney or the Department of Legal Affairs (DLA)<sup>2</sup>, or by a private suit filed by an individual.<sup>3</sup> Additionally, there is a separate part of the chapter that applies specifically to motor vehicle dealers.<sup>4</sup>

#### **Effect of Proposed Changes**

This bill creates s. 501.98, F.S. This section requires a consumer suing a motor vehicle dealer under either FDUTPA or its motor vehicle part to provide the dealer with a 30-day notice prior to filing suit. The demand letter must include:

- The name, address, and telephone number of the claimant;
- The name, address, and telephone number of the dealer;
- The underlying facts of the claim, including a detailed statement describing each item for which actual damages are claimed;
- To the extent available, all transaction or other documents upon which the claim is based; and
- The amount of damages claimed.

The demand letter must contain sufficient information to adequately put the dealer on notice as to the nature of the claim and the relief sought.

The claimant must send the demand letter by the United States Postal Service or by a nationally recognized carrier, return receipt requested. If the dealer is a corporate entity, the demand letter must be sent to any officer, director, or manager of the dealer as reported in the dealer's most recent annual report to the Secretary of State.

A claimant may not initiate civil litigation against a dealer under either FDUTPA or its motor vehicle counterpart if the dealer pays, within 30 days after receipt of the notice, the amount sought in the demand letter plus a ten percent surcharge, which may not exceed \$500.

The dealer is not required to pay the claimant's attorney fees in any civil litigation initiated under FDUTPA or its motor vehicle counterpart if:

- The dealer responds to the claimant in writing, within 30 days, and a court agrees that the claim is not supported by the underlying facts or that the claim includes items that are not recoverable under either provision of law; or
- The claimant fails to materially comply with the notice requirements, except that the demand letter will be satisfactory as long as it contains sufficient information to adequately put the dealer on notice as to the nature of the claim and the relief sought.

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<sup>1</sup> Section 501.204, F.S.

<sup>2</sup> Section 501.203(2), F.S.

<sup>3</sup> Section 501.211, F.S.

<sup>4</sup> Section 501.976, F.S.

The bill provides that a dealer's payment of actual damages, or an offer to pay, is not an admission of wrongdoing or liability by the dealer and is inadmissible as evidence under s. 90.408, F.S.<sup>5</sup> Further, payment or an offer to pay releases the dealer and its employees, agents, principals, sureties, and insurers from any claim, suit, or action that could be brought arising out of the transaction, event, or occurrence described in the demand letter.

The bill also provides a 30-day tolling period from the date of delivery of the demand letter for a claimant initiating an action under FDUTPA or its motor vehicle counterpart.

The bill provides a notice for the dealer to provide to the purchaser of an automobile. Without including such language, the dealer is not afforded the protections of this bill.

**B. SECTION DIRECTORY:**

**Section 1:** amends s. 501.975, F.S., to apply the definitions related to ch. 501, F.S., to the new section created by the bill.

**Section 2:** creates s. 501.98, F.S., to provide the requirements related to the demand letter.

**Section 3:** provides an effective date of July 1, 2013.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

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<sup>5</sup> Section 90.408, F.S., relating to compromise and offers to compromise, provides that "evidence of an offer to compromise a claim which was disputed as to validity or amount, as well as any relevant conduct or statements made in negotiations concerning a compromise, is inadmissible to prove liability or absence of liability for the claim or its value."

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

Article I, sec. 21 of the Florida Constitution grants citizens the right to access to courts. A law violates this provision if it unduly restricts a cause of action unless the legislature provides a reasonable alternative remedy or commensurate benefit, or the legislature makes a showing of an overpowering public necessity justifying a restriction with a finding that there is no alternative method of meeting such public necessity.<sup>6</sup>

This constitutional provision only applies to causes of action that existed at common law or by statute prior to the enactment of the 1968 Florida Constitution.<sup>7</sup> FDUTPA was created by the legislature in 1973<sup>8</sup> and the motor vehicle part of FDUTPA was created in 2001.<sup>9</sup> As a result, Article I, sec. 21 of the Florida Constitution is not implicated.

#### B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

At the February 6, 2013 meeting of the Business & Professional Regulation Subcommittee, two amendments were proposed and adopted. The bill was reported favorably as a Committee Substitute.

The first amendment eliminated the requirement that a comprehensive statement describing each item must be included in the demand letter. Instead, only a detailed statement is required.

The second amendment clarifies that the demand letter should state the amount of damages claimed.

The analysis is drafted to the Committee Substitute.

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<sup>6</sup> *Psychiatric Assoc. v. Siegel*, 610 So. 2d 419 (Fla. 1992).

<sup>7</sup> *Kluger v. White*, 281 So. 2d 1 (Fla. 1973).

<sup>8</sup> L.O.F. 73-124.

<sup>9</sup> L.O.F. 2001-196.