

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

SPONSOR(S): Judiciary Committee; Business & Professional Regulation Subcommittee; Gaetz

TIED BILLS: None **IDEN./SIM. BILLS:** CS/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	11 Y, 2 N, As CS	Cary	Havlicak

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 practice without prior notice to the dealer.

This bill requires that an individual alleging a deceptive and unfair trade practice 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 an enforcement action brought 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.¹ The law can be enforced either by enforcing authorities, generally a state attorney or the Department of Legal Affairs (DLA)², or by a private suit filed by an individual.³ Additionally, there is a separate part of FDUTPA that applies specifically to motor vehicle dealers.⁴

Effect of Proposed Changes

This bill creates s. 501.98, F.S. This section requires a consumer suing a motor vehicle dealer under FDUTPA to provide the dealer with a 30-day notice prior to filing suit. This requirement applies to arbitration also. The demand letter must be completed in good faith and must include:

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

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.

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

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

- The dealer responds to the claimant in writing, within 30 days, and a court or arbitrator agrees that the claim is not reasonable or that the claim includes items that are not recoverable under FDUTPA; or
- The claimant fails to sufficiently 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.

Thirty days after the dealer receives the demand letter, it expires and the claimant's claim of damages is not limited by the bill.

The bill provides that a dealer's payment of actual damages is not an admission of wrongdoing or liability by the dealer and is inadmissible as evidence under s. 90.408, F.S.⁵ Further, payment releases

¹ Section 501.204, F.S.

² Section 501.203(2), F.S.

³ Section 501.211, F.S.

⁴ Section 501.976, F.S.

⁵ 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."

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. However, the payment of damages does not serve as a release as to damages that are not included in the demand letter or are not recoverable under FDUPTA.

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. The bill does not apply to a class action lawsuit against a motor vehicle dealer or apply to an action brought by a State Attorney or the Attorney General.

The bill provides notice language for the dealer to provide to the purchaser of an automobile. The provisions of the bill do not apply if the dealer does not provide the statutory language, in which case a suit would be permitted without the need for the customer to send a demand letter.

B. SECTION DIRECTORY:

Section 1: amends s. 501.975, F.S., relating to definitions.

Section 2: creates s. 501.98, F.S., relating to 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:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct impact on the private sector.

D. FISCAL COMMENTS:

None.

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.⁶

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.⁷ FDUTPA was created by the Legislature in 1973⁸ and the motor vehicle part of FDUTPA was created in 2001.⁹ As a result, Article I, sec. 21 of the Florida Constitution does not appear to be 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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

At the February 6, 2013, meeting of the Business & Professional Regulation Subcommittee, two amendments were 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 clarified that the demand letter must state the amount of damages claimed.

On February 21, 2013, the Judiciary Committee adopted one amendment and one amendment to the amendment and reported the bill favorably as a committee substitute. The amendment provides a lower bar for the demand letter by requiring a "statement" rather than a "detailed statement" describing each item for which actual damages are claimed. The amendment also requires the claimant to state the amount of damages being claimed, or the claimant's best estimate if the actual damages are not available. The amendment also accounts for situations where the dispute will ultimately be decided in arbitration rather than court. The amendment to the amendment changes the bill so that the payment of damages or an offer to pay damages does not serve as a release as to damages that are not included in the demand letter *or* are not recoverable under FDUTPA. This analysis is drafted to the committee substitute as passed by the Judiciary Committee.

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

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

⁸ Chapter 73-124, L.O.F.

⁹ Chapter 2001-196, L.O.F.