

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/HB 55	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Judiciary Committee; Business & Professional Regulation Subcommittee; Gaetz and others	83 Y's	29 N's
COMPANION BILLS:	(CS/CS/SB 292)	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/CS/HB 55 passed the House on March 13, 2013, and subsequently passed the Senate on April 24, 2013. The bill requires a claimant under the Florida Deceptive and Unfair Trade Practices Act to provide a notice and an opportunity to cure prior to filing a lawsuit against an automobile dealer.

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 was approved by the Governor on June 14, 2013, ch. 2013-186, L.O.F., and will become effective on July 1, 2013.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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 To recover under FDUTPA, a claimant must prove a deceptive act, causation, and damages.⁴

Additionally, there is a separate part of FDUTPA that applies specifically to motor vehicle dealers.⁵ With respect to motor vehicle dealers, FDUTPA provides 19 specific violations:

- Misrepresenting that a vehicle is a factory executive vehicle or executive vehicle;
- Misrepresenting that a vehicle is a demonstrator vehicle;
- Misrepresenting a vehicle's status or usage;
- Misrepresenting the quality of care or general condition of a vehicle;
- Misrepresenting that a vehicle has not sustained structural or substantial damage;
- Selling a vehicle without fully disclosing the warranty in writing;
- Failing to honor an express or implied warranty;
- Misrepresenting warranty coverage, application period, or transfer cost and conditions;
- Obtaining signatures of an incomplete contract from a customer;
- Requiring a deposit before a contract is binding;
- Adding impermissible fees and costs;
- Altering an odometer reading;
- Selling a vehicle without disclosing the vehicle's year and model;
- Filing a lien against a vehicle in certain circumstances without disclosures;
- Increasing the price of a vehicle after accepting an order unless certain conditions are met;
- Advertising the price of a vehicle without providing specific vehicle identification;
- Charging for a predelivery service if the charge is reimbursed to the dealer by the manufacturer;
- Charging for a predelivery service without a disclosure; and
- Failing to disclose damage to a new vehicle.⁶

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 written demand letter at least 30 days prior to filing suit. This requirement applies to an arbitration action as well. 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

¹ Section 501.204, F.S.

² Section 501.203(2), F.S.

³ Section 501.211, F.S.

⁴ *Rollins, Inc. v. Butland*, 951 So.2d 860, 869 (Fla. 2d DCA 2006).

⁵ Section 501.976, F.S.

⁶ *Id.*

- To the extent available, include 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.⁷ Further, payment 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. However, the payment of damages does not serve as a release as to damages that are not recoverable under FDUTPA.

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.

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.

⁷ 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."

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.