



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:

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



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



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57 claimant must give the dealer a written demand letter at least  
58 30 days before initiating the litigation.

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  
65 a 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  
70 accompanied by all transaction or other documents upon which the  
71 claim is 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,



85 including arbitration, against a dealer or its employees,  
86 agents, principals, sureties, or insurers for a claim arising  
87 under this chapter related to, or in connection with, the  
88 transaction or event described in the demand letter if, within  
89 30 days after receipt of the demand letter, the dealer pays the  
90 claimant the amount sought in the demand letter, plus a  
91 surcharge of the lesser of \$500 or 10 percent of the damages  
92 claimed.

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

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

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

111 (5) The demand letter required by this section expires 30  
112 days after receipt by the dealer, unless renewed by the



113 claimant, and does not place a limitation on the damages that  
114 the claimant may claim in any subsequently maintained civil  
115 litigation, including arbitration. Payment of the damages  
116 claimed in the demand letter and the required surcharge as set  
117 forth in this section within 30 days after receipt of the demand  
118 letter:

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

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

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

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

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

139 (8) If a claimant initiates civil litigation, including  
140 arbitration, without first complying with this section, the



141 court or arbitrator shall stay the action upon timely motion  
142 until the claimant complies with this section. Attorney fees and  
143 court or arbitration costs incurred by the claimant before  
144 compliance with this section are not recoverable under this  
145 chapter.

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

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



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