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CS/CS/HB 55, Engrossed 1

2013 Legislature

1
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:

23
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.



ENROLLED

CS/CS/HB 55, Engrossed 1

2013 Legislature

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



ENROLLED
CS/CS/HB 55, Engrossed 1

2013 Legislature

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,



ENROLLED

CS/CS/HB 55, Engrossed 1

2013 Legislature

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



ENROLLED

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2013 Legislature

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



ENROLLED

CS/CS/HB 55, Engrossed 1

2013 Legislature

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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169

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