

CHAPTER 2013-186

Committee Substitute for Committee Substitute for House Bill No. 55

An act relating to deceptive and unfair trade practices; amending s. 501.975, F.S.; conforming provisions; creating s. 501.98, F.S.; requiring a claimant to provide a demand letter to the motor vehicle dealer as a condition precedent to initiating civil litigation, including arbitration, against such dealer under the Florida Deceptive and Unfair Trade Practices Act; providing for expiration of the demand letter after a specified period; providing for the tolling of applicable time limitations for initiating actions; requiring a stay of civil litigation, including arbitration, brought without compliance with the demand letter requirements; providing an additional opportunity for claimants to comply with specified provisions; providing a condition that constitutes waiver of notice; providing for applicability; requiring that a specified notice be provided to consumers and acknowledged before provisions may apply; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 501.975, Florida Statutes, is amended to read:

501.975 Definitions.—As used in this part ~~s. 501.976~~, the term ~~following~~ terms shall have the following meanings:

- (1) “Customer” includes a customer’s designated agent.
- (2) “Dealer” means a motor vehicle dealer as defined in s. 320.27, but does not include a motor vehicle auction as defined in s. 320.27(1)(c)4.
- (3) “Replacement item” means a tire, bumper, bumper fascia, glass, in-dash-board equipment, seat or upholstery cover or trim, exterior illumination unit, grill, sunroof, external mirror and external body cladding. The replacement of up to three of these items does not constitute repair of damage if each item is replaced because of a product defect or damaged due to vandalism while the new motor vehicle is under the control of the dealer and the items are replaced with original manufacturer equipment, unless an item is replaced due to a crash, collision, or accident.
- (4) “Threshold amount” means 3 percent of the manufacturer’s suggested retail price of a motor vehicle or \$650, whichever is less.
- (5) “Vehicle” means any automobile, truck, bus, recreational vehicle, or motorcycle required to be licensed under chapter 320 for operation over the roads of Florida, but does not include trailers, mobile homes, travel trailers, or trailer coaches without independent motive power.

Section 2. Section 501.98, Florida Statutes, is created to read:

501.98 Demand letter.—

(1) As a condition precedent to initiating any civil litigation, including arbitration, arising under this chapter against a motor vehicle dealer, which may also include its employees, agents, principals, sureties, and insurers, a claimant must give the dealer a written demand letter at least 30 days before initiating the litigation.

(2) The demand letter, which must be completed in good faith, must:

(a) State the name, address, and telephone number of the claimant.

(b) State the name and address of the dealer.

(c) Describe the underlying facts of the claim, including a statement describing each item for which actual damages are claimed.

(d) State the amount of damages, or, if not available, the claimant's best estimate of the amount of damages.

(e) To the extent available to the claimant, be accompanied by all transaction or other documents upon which the claim is based.

In any challenge to the claimant's compliance with this subsection, the demand letter shall be deemed satisfactory if it contains sufficient information to reasonably put the dealer on notice of the nature of the claim and the relief sought.

(3) The demand letter must be delivered by the United States Postal Service or by a nationally recognized carrier, return receipt requested, to the address at which the subject vehicle was purchased or leased or at which the subject transaction occurred, or an address at which the dealer regularly conducts business.

(4) Notwithstanding any provision of this chapter:

(a) A claimant may not initiate civil litigation, including arbitration, against a dealer or its employees, agents, principals, sureties, or insurers for a claim arising under this chapter related to, or in connection with, the transaction or event described in the demand letter if, within 30 days after receipt of the demand letter, the dealer pays the claimant the amount sought in the demand letter, plus a surcharge of the lesser of \$500 or 10 percent of the damages claimed.

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

1. The dealer, within 30 days after receipt of the demand letter, notifies the claimant in writing, and a court or arbitrator subsequently agrees that the amount sought in the demand letter is not reasonable in light of the facts

of the transaction or event described in the demand letter or if the demand letter includes items and amounts not properly recoverable under this chapter; or

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

(5) The demand letter required by this section expires 30 days after receipt by the dealer, unless renewed by the claimant, and does not place a limitation on the damages that the claimant may claim in any subsequently maintained civil litigation, including arbitration. Payment of the damages claimed in the demand letter and the required surcharge as set forth in this section within 30 days after receipt of the demand letter:

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

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

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

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

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

(8) If a claimant initiates civil litigation, including arbitration, without first complying with this section, the court or arbitrator shall stay the action upon timely motion until the claimant complies with this section. Attorney fees and court or arbitration costs incurred by the claimant before compliance with this section are not recoverable under this chapter.

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

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

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

Approved by the Governor June 14, 2013.

Filed in Office Secretary of State June 14, 2013.