



The Florida Senate

Interim Project Report 2008-107

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Committee on Commerce

EXAMINATION OF AUTOMOBILE DEALERS' DOCUMENTATION FEES

SUMMARY

This report examines issues related to automobile dealers' documentation fees, or the "pre-delivery service fee," charged to consumers by most motor vehicle dealers in Florida. This discretionary charge "represents costs and profit to the dealer for items such as inspecting, cleaning, and adjusting vehicles, and preparing documents related to the sale."¹

This report identifies types of costs incurred by consumers in the purchase of a vehicle; sales disclosure requirements required by federal law and the Florida Deceptive and Unfair Trade Practices Act; the monetary range of pre-delivery service fees imposed across the state; and limits on similar fees imposed by dealers in other states.

The report also presents findings and offers options for the Legislature to consider.

window of the vehicle and state several items of information, including:

- the make and model of the car;
- serial or identification numbers;
- the final assembly point;
- the name and location of the final dealer to whom it is delivered;
- the method of transportation used in making the delivery;
- the Manufacturers' Suggested Retail Price (MSRP);
- the MSRP of optional equipment installed on the vehicle;
- the transportation charges for delivery of the vehicle from the manufacturer;
- the total MSRP of all of the aforementioned charges; and
- the Environmental Protection Act's mileage estimates for the vehicle.³

BACKGROUND

Motor Vehicle Sales Generally

Florida has a number of laws to protect consumers. The principle law relating to the automobile dealer-consumer relationship is Part VI of ch. 501, F.S. This section of law describes prohibited dealer actions under the Florida Deceptive and Unfair Trade Practices Act (FDUTPA), and provides guidelines regarding motor vehicle pricing and notice to consumers. The state law supplements federal law in this area.

Federal law (the Monroney Act) requires manufacturers to affix to each new automobile a sticker, which shows the suggested retail sales price for each vehicle.² This sticker must be attached to the side

In addition to the "Monroney Sticker," consumers may also see a supplemental sticker, known as the "Dealer Addendum Sticker," which shows the suggested retail price of dealer installed options. This dealer sticker may also list the dealer preparation fee and the pre-delivery service fee. At the dealer's option, the dealer sticker may include a total of the charges listed on both stickers.

It is generally recognized in the automobile sales industry that the charges listed on the Monroney and dealer sticker may be negotiable.

The customer will also be required to pay several fees imposed by state law, such as sales tax, title, registration, licensing, new tire fees and a battery fee.

¹ Section 501.976(18), F.S.

² 15 U.S.C. § 1231, et. seq. (the Monroney Act).

³ Autopedia, Monroney Sticker History,

<http://autopedia.com/html/monroneysticker.html>.

(summarizing 15 U.S.C. § 1232), last visited August 31, 2007.

These fees are not negotiable, and typically not included on the Monroney or dealer sticker.

At some point the customer meets with a sales person or business manager to negotiate a final sales price for the vehicle. At this time, the dealer may offer a number of options not listed on the Monroney or dealer sticker. These options may, for example, include:

- Warranties, in addition to factory warranties;
- Gap insurance, to pay the difference between a car loan and vehicle value if a vehicle is "totaled";
- Paint protection;
- Security Systems; and
- Service plans for scheduled maintenance.

At some point in the sale's process, the dealer completes a "Buyer's Order" or similar document listing the costs to the consumer of the vehicle selected.⁴ If imposed, the dealer's pre-delivery service fee is required to be specified on this document.

The pre-delivery service fee is also referred to as a documentation or documentary fee (DOC Fee), dealer fee, dealership services fee, dealer service fee, dealer preparation fee, delivery or handling fee, or processing fee.⁵ Our research indicates most dealers in Florida impose this fee, which is intended to either increase their profit or offset costs they have incurred in preparing the vehicle and associated documents for the customer. The statutes recognize this industry practice and require the following statement be included on all documents that include a line item for the fee:

This charge represents costs and profit to the dealer for items such as inspecting, cleaning, and adjusting vehicles and preparing documents related to the sale.⁶

⁴ The Buyer's Order "is a sales contract between the buyer and the seller that includes the sale price of the vehicle and any additional fees and charges that will be assessed during the sales transaction." Ted L. Smith, President, FADA. (Sept. 27, 2007)

⁵ As identified in the September 2007 surveys of new and used auto dealers, through the Florida Automobile Dealers' Association (FADA) and Florida Independent Automobile Dealers Association (FIADA). The dealer responses to the FADA survey list an additional 22 names for this fee.

⁶ Section 501.976(18), F.S.

This fee varies among dealerships and, at times, among customers of the same dealership.⁷

A representative of the Florida Automobile Dealers Association (FADA) offered this statement about the pre-delivery service fee:

These fees are but one small element of the overall cost framework for purchasing a vehicle in any state... Because these fees are variable and there is a large market for automobile sales in Florida, FADA endorses competition and market forces as the appropriate regulator with regard to these fees, which are by statute included in any advertised price of a vehicle....

The reductions in dealer margins (the difference between the manufacturer's suggested retail price and the dealer cost) over time have increased the dealer's reliance on these fees for preparing and delivering vehicles to consumers.⁸

Similarly, a representative of the Florida Independent Automobile Dealers Association (FIADA) stated that the cost of operating a used-car business has increased, and the

[p]re-delivery fees allow the dealer to recoup some profit (sometimes the only profit in the transaction)... The FIADA recommends that the Florida Legislature make no attempt to "set" motor vehicle pricing. Prices that consumers pay should be determined by the market. If there is a consumer protection issue, more attention should be paid to enforcement, rather than changing current law.⁹

Regulation of Motor Vehicle Dealers in Florida

Section 320.27(1)(c), F.S., defines a "motor vehicle dealer," in pertinent part, as "any person engaged in the business of buying, selling, or dealing in motor

⁷ As with all charges imposed by the dealer, this fee may be negotiable.

⁸ Response to Interim Project from Ted L. Smith, CAE, President, Florida Automobile Dealers' Association (Sept. 20, 2007)(on file with the Senate Commerce Committee).

⁹ Letter from Larry Peters, Executive Vice President, Florida Independent Automobile Dealers Association (Sept. 24, 2007)(on file with the Senate Commerce Committee).

vehicles or offering or displaying motor vehicles for sale at wholesale or retail....” Paragraph (1)(b) defines a motor vehicle as any motor vehicle required to be registered under ch. 319, F.S. Chapter 319, F.S., in turn does not define “motor vehicle,”¹⁰ but provides definitions for the terms “new motor vehicle” and “used motor vehicle.”¹¹

Notably, s. 320.27, F.S., delineates five categories of motor vehicle dealers to include: franchised, independent, wholesale, auction, and salvage motor vehicle dealers.¹² This report focuses on the first two categories, franchised and independent dealers, the only categories that engage in retail sales of whole vehicles (as opposed to parts sold by salvage dealers) to consumers.

Franchised dealers sell new motor vehicles under an agreement with a manufacturer, while independent dealers sell used motor vehicles. In Florida, one trade association represents each category. FADA represents franchised dealers and claims approximately 815 members. FIADA represents independent dealers and has approximately 1,400 members. Each association educates its members regarding state and federal laws related to dealerships, and lobbies on behalf of their members’ interests.

Motor vehicle dealers are regulated by the Division of Motor Vehicles (division) in Florida’s Department of Highway Safety and Motor Vehicles (DHSMV). The division issues annual licenses to dealers and regulates them pursuant to s. 320.27, F.S.¹³ In Fiscal Year 2006-2007, the division issued an estimated 12,800 motor vehicle licenses.¹⁴ The division enforces collection of statutorily mandated fees such as title and registration by dealers, but has no authority to regulate pre-delivery service fees.

¹⁰ See ss. 206.01(23), 316.003(21), and 320.01(1), F.S.

¹¹ A “new motor vehicle” is one for which legal title has not been transferred by a manufacturer, distributor, importer, or dealer to an ultimate purchaser. Section 319.001(8), F.S. According to s. 319.001(11), F.S., a “used motor vehicle” is one that is not a “new motor vehicle as defined in s. 319.001(8), F.S.

¹² Section 320.27(1)(c), F.S.

¹³ It is important to note that this section also authorizes the department to deny, suspend, or revoke any license for violations involving dealer-consumer relations. Section 320.27(9)(b), F.S.

¹⁴ Department of Highway Safety and Motor Vehicles, Division of Motor Vehicles, Performance Statistics, <http://www.hsmv.state.fl.us/html.FactsFiguresFY2006/PerSTaDMV.htm>, last visited August 10, 2007.

Florida Law

Section 501.976, F.S., provides a list of 19 possible actions that constitute actionable, unfair or deceptive acts or practices with regard to the sale of motor vehicles.¹⁵ Several of the provisions directly address notice related to the pricing of motor vehicles, and sales contract requirements.

Section 501.976(9), F.S., prohibits dealers from obtaining signatures on contracts from customers if the contracts are not fully completed at the time the customer signs, or if the contract does not accurately reflect the negotiations and agreement between the consumer and the dealer.

Section 501.976(11), F.S., forbids dealers from adding to the cash price of a vehicle any fee or charge other than those provided in s. 520.02(2), F.S. According to s. 520.02(2), F.S., “cash price” is:

[T]he price at which a seller, in the ordinary course of business, offers to sell for cash the property to service that is the subject of the transaction. At the *seller’s option*, the term “cash price” may include the price of accessories, *services related to the sale*, service contracts, and taxes and fees for license, title and registration of the motor vehicle. The term “cash price” does not include any finance charge. (Emphasis added).

If the pre-delivery service fee is considered a service “related to the sale,” inclusion in the cash price is optional. Nevertheless, s. 501.976(11), F.S., also provides that:

[A]ll fees or charges *permitted* to be added to the cash price...must be fully disclosed to customers in all binding contracts concerning the vehicle’s selling price. (Emphasis added).

Based on a reading of both provisions, it appears the dealer has the option to disclose the pre-delivery

¹⁵ This provision was preceded by Florida Attorney General Rule 2-19.005, F.A.C., which was created in 1974 and repealed in 1996. Rule 2-2.001, F.A.C., explains that the repeal of this rule and others enacted pursuant to Part II, ch. 501, F.S., the Florida Deceptive and Unfair Trade Practices Act (FDUTPA), did not modify or restrict the application of FDUTPA. Therefore, despite the rule’s repeal, consumers would continue to enjoy the same protections previously existent under FDUTPA.

service fee in the cash price, but is *required* to do so in any contract for sale of the motor vehicle.

Section 501.976(16), F.S., forbids dealers from advertising the price of a vehicle

unless the vehicle is identified by the year, make, model, and a commonly accepted trade, brand, or style name. *The advertised price must include all fees or charges that the customer must pay, including freight or destination charge, dealer preparation charge, and charges for undercoating or rustproofing.* (Emphasis added).

Consequently, the pre-delivery service fee must be included in the advertised price of a vehicle.¹⁶

Section 501.976(17), F.S., prohibits dealers from charging customers for any pre-delivery service required by the manufacturer, distributor, or importer for which they are reimbursed by the manufacturer, distributor, or importer.

As previously noted, s. 501.976(18), F.S., prohibits dealers from charging a customer for any pre-delivery service without having printed on all documents that include a line item for the pre-delivery service fee the following disclosure:

This charge represents costs and profit to the dealer for items such as inspecting, cleaning, and adjusting vehicles and preparing documents related to the sale.

METHODOLOGY

The Commerce Committee staff researched both federal and state law related to motor vehicle dealers' fees and pricing. In order to determine whether consumers have complained about motor vehicle dealers' fees to state agencies, committee staff also contacted DHSMV, the Department of Agriculture's Division of Consumer Services, and representatives of the Automobile Dealers Industry Advisory Board.

¹⁶ Subsection (16) also provides that "When two or more dealers advertise jointly, with or without participation of the franchisor, the advertised price need not include fees and charges that are variable among the individual dealers cooperating in the advertisement, *but the nature of all charges that are not included in the advertised price must be disclosed in the advertisement.*" (Emphasis added).

Committee staff requested the presidents of the trade associations that represent motor vehicle dealers in the state, the FADA and the FIADA, survey their members about their fees.

Committee staff conducted legal research to determine whether state law exists addressing the pre-delivery service fee and performed internet research to gather information related to how other states address this issue.

FINDINGS

Consumer Complaints

Florida's Department of Agriculture and Consumer Services (DACS) handles a variety of consumer complaints. However, according to a DACS representative, consumers who call the DACS consumer hotline with complaints related to motor vehicle sales are directed to contact DHSMV.

When asked whether it had received complaints related to pre-service delivery fees, DHSMV representatives indicated the department does not separately categorize such complaints. Therefore, DHSMV is not able to discern the number of complaints received by the DHSMV regarding such fees.

Members of the Automobile Dealers Industry Advisory Board¹⁷ indicate it has not examined this issue, nor has it been asked to do so by DHSMV.

Advertisements and Pre-Delivery Service Fees

Section 501.976(16), F.S., requires all vehicle advertisements to include "all fees or charges that the customer must pay..." excluding state and local taxes, tags, registration fees, and title fees. However, "advertisement" is not statutorily defined.

Industry representatives understand this term to include the price presented in media advertisements, prices "painted" on vehicle windshields, or the "totaled" or "bottom line" price on the Monroney and dealer stickers. While not specifically identified, the fee must be included in the price advertised. Industry representatives further assert that the dealer sticker, is

¹⁷ This board was created within DHSMV by s. 320.275, F.S., and is required to, among other duties, "present licensed motor vehicle dealer industry issues to the department for its consideration [and] consider any matters relating to the motor vehicle dealer industry presented to it by the department..." Section 320.275(1), F.S.

not “an advertisement” unless a total price is provided or calculated on the sticker.¹⁸ Consequently, the customer may not become *specifically* aware that the dealer will impose a pre-delivery service fee – or the amount of the fee – until the buyer’s order is submitted to the customer.

In 1988, Florida’s Attorney General (AG) issued an opinion directly addressing this issue, which may support this interpretation.¹⁹ This opinion analyzed portions of Rule 2-19.005, F.A.C., the predecessor to s. 501.076, F.S.²⁰ The opinion answered four questions posed by a state attorney regarding pre-delivery service charges and advertising in the context of pricing vehicles.

First, the opinion specifically addressed whether pre-delivery service charges were required to be included in the advertised price of a vehicle. The AG relied on the plain language of Rule 2-19.005(16), F.A.C., and found:

With the exception of those charges or fees specifically exempted in Rule 2-19.005(16), F.A.C., a motor vehicle dealer, if authorized to impose pre-delivery charges on the customer pursuant to Rule 2-19.005(17)-(20), F.A.C., must include those charges in the advertised price.²¹

¹⁸ Discussion with Ted L. Smith, President, Florida Automobile Dealers Association (FADA), September 20, 2007.

¹⁹ Fla. AGO 88-58.

²⁰ It should be noted that the provisions of the current statute are substantially similar to those of Rule 2-19.005, F.A.C., with two notable exceptions. *See* ch. 2001-196, L.O.F. Subsections (19) of the rule provided that where a motor vehicle is available for inspection by a prospective purchaser, the dealer had the option of attaching a window sticker that specifies pre-delivery service charges. Subsection (20) provided that if the dealer opted to use the window sticker to make the pre-delivery service charges disclosure, the dealer was prohibited from adding additional pre-delivery service charges on other sales documents. Subsection (20) was not included in the 2001 law. Subsection (19) was included, but changed the rule’s window-sticker provision from optional to mandatory. This provision was repealed, and applied retroactively to the effective date of the 2001 law, by ch. 2002-54 L.O.F. The analysis for the Senate bill indicates that the change from an optional to a mandatory requirement was inadvertent. For more details, see Senate Staff Analysis, CS/SB 1956 (2001) and Senate Staff Analysis, SB 344 (2002).

²¹ Fla. AGO 88-58, 1988 WL 407004 at 1 (Fla. A.G.).

The next issue the opinion addressed concerned whether prices posted on vehicles either through a window sticker or painted on the windshield of the car, are advertisements for the purpose of Rule 2-19.005(16), F.A.C. The AG concluded price postings, *in any form*, must comply with the requirements of the rule. Therefore, window stickers or prices painted on windows must include pre-delivery service charges. Importantly, in answering this question, the AG noted:

[A]ny form of posted price on a motor vehicle, when done in a manner to sell or induce the customer to enter into an obligation relating to the vehicle, is an ‘advertisement.’ (Emphasis added).²²

The third question the AG addressed asked whether a motor vehicle dealer could disclose pre-delivery charges by advertising the price as “plus taxes, tags, registration and title fees, plus pre-delivery charges.” After noting state and local taxes, tags, registration and title fees are exempt from disclosure while pre-delivery service charges are not, the AG concluded prices could not be advertised in the manner suggested by the question.

The last question posed asked whether the fee charged by motor vehicle dealers to customers for processing paperwork for tags and title could also be excluded from the advertised price of a vehicle. In answering this question in the negative, the AG noted:

The rule appears to contemplate that excluded from the advertised price are those fees levied or assessed by a governmental entity rather than those charges by the dealer of processing the paper work necessary to procure the tag and title, regardless of the name given such a charge by the dealer.²³

The AG concluded any fee or charge imposed by the dealer for handling paperwork, regardless of the name given the fee by the dealer, must be included in the advertised price – and the advertised price includes “any form of posted price on a motor vehicle, when done in a manner to sell or induce the customer to enter into an obligation relating to the vehicle.”

In 2003, the Economic Crimes Division of the Office of the Attorney General readdressed this issue through an investigation of motor vehicle dealer advertising irregularities and violations of the advertising

²² *Id.* at 3.

²³ *Id.* at 4.

provisions of s. 501.976(16), F.S.²⁴ The AG investigated dealers whose advertised price did not include a pre-delivery service fee, and those ads which mentioned a fee, but did not specify the amount.²⁵ The FADA intervened to negotiate a settlement on behalf of the dealers who had been cited. As a result, the AG entered into informal settlements with the cited dealers by issuing Letters of Agreement which required dealers to acknowledge the laws regarding advertising, pay \$3,000, and express the intent of future compliance, in exchange for ending the investigations.

Importantly, the FADA offered to initiate a Voluntary Compliance Program for Dealer Advertising and issued guidelines to its members which would help avoid future AG audits. The suggested advertising guidelines recommended dealers take several steps which included, but were not limited to:

- Avoid displaying a price for a vehicle and footnotes indicating the price excludes the pre-delivery service charge;
- Include all dealer fees in the advertised price, and avoid footnotes specifying the amount of those fees;
- Make the advertised price the largest print size in the advertisement; and
- Avoid displaying a bold print advertised priced that could only be secured through the application of specialized rebates that do not apply to all buyers.

In summary, s. 501.976(11), F.S., requires that the pre-delivery service fee be disclosed on all binding contracts related to the sale. Section 501.976(16), F.S., requires that the pre-delivery service fee be included in the advertised price of the vehicle. Because the term "advertisement" is not defined, dealers must rely on the Attorney General's interpretation of the term, and trade association guidelines, to ensure the public is fully noticed that the pre-delivery service fee will be imposed, and the amount that will be charged.

²⁴ FADA Response to Interim Project, 2003-2004 correspondence between FADA and the AG's office, and news alerts provided by FADA to the Commerce Committee on September 20, 2007 (on file with the Commerce Committee). A representative of the AG's office indicated that 62 investigations were opened in 2003, but that all had been resolved.

²⁵ Florida Automobile Dealer Association, *Special Alert*, July 28, 2003 (on file with the Commerce Committee).

There is enough ambiguity in current law to allow that the consumers may not be specifically aware that the pre-delivery service fee is imposed, and the amount of the fee, prior to receipt of the Buyer's Order. The law requires the fee be "included" rather than "specifically delineated" in the advertised price. Furthermore, the fee is not required to be delineated on the dealer window sticker.

Dealer Survey Results

Pre-delivery service fees are widely imposed by new and used automobile dealers in Florida, ranging from \$189 to \$699. While some dealers charge no fee, most do.

Staff asked FADA and FIADA to survey their members to ascertain whether dealers charge a pre-delivery service fee and the dollar amount of the fee.

The FADA reports it received 67 responses from its 815 members (8.2 percent).²⁶ Of these responses, 64 (or 95.5 percent of the respondents) charge a pre-delivery service fee, or a fee of a similar name. Fee amounts ranged from \$100 to \$699. (See TABLE 1.)

The FIADA reports it received 55 responses from its 1,400 members (3.9 percent).²⁷ Seventy-eight percent (43 of 55 respondents) reported they charge a pre-delivery service fee, or a fee of a similar name. Fee amounts ranged from \$3.50 to \$499. (See TABLE 2.)

TABLE 1
New Car Dealers

Fee Amount	# of Dealers
\$ 100 - \$ 199	3
\$ 200 - \$ 299	11
\$ 300 - \$ 399	22
\$ 400 - \$ 499	20
\$ 500 - \$ 599	6
\$ 600 - \$ 699	2

²⁶ While the number of survey responses may be few, they are informative.

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TABLE 2
Used Car Dealers

Fee Amount	# of Dealers
<\$100	9
\$ 100 - \$ 199	15
\$ 200 - \$ 299	7
\$ 300 - \$ 399	9
\$ 400 - \$ 499	3

Limits on Pre-Delivery Fees in Other States

At least 13 states impose limits on pre-delivery service fees²⁸ in the following manner: Arkansas--\$129;²⁹ California--\$55;³⁰ Illinois--\$55;³¹ Louisiana--\$50 (\$35 documentation fee plus \$15 notary fee);³² Maryland--\$100;³³ Michigan--\$170;³⁴ Minnesota--\$50;³⁵ New York--\$45;³⁶ Ohio--\$250;³⁷ Oregon--\$50;³⁸ Texas--\$75;³⁹ and Washington--\$100.⁴⁰

Additional State Initiatives

In recent years, several states have expanded notice requirements to consumers of dealer charges and fees.⁴¹

²⁸ The terms used for this fee vary widely across the states.

²⁹ 2007 Ark. Acts 366 (HB 1718).

³⁰ Cal. Vehicle Code § 11713.1(e) (2007).

³¹ 815 Ill. Comp. Stat. 375/11.1 (2007). The fee was set at \$40 in 1992, but is adjusted each year to the percentage of change in the Bureau of Labor Statistics' Consumer Price Index.

³² La. Rev. Stat. Ann. Section 969.18(A) and (B), (2007).

³³ Md. Code Ann., Transp. Section 15-311.1(b)(1)(ii) (2003).

³⁴ State of Michigan, Department of Labor and Economic Growth, Office of Financial and Insurance Services, Bulletin 2007-01-CF, *In the matter[of] Documentary Preparation Fee adjustment under the Motor Vehicle Sales Finance Act*, available at

http://www.michigan.gov/documents/cis/2007-01-CF_184979_7.pdf, last visited 11 September 2007

(describing change in statutorily defined fee as provided in Mich Comp. Laws Section 492.113(2)(a)).

³⁵ Minn. Stat. § 53C01, Sub d. 2 (2007).

³⁶ N.Y. Comp. Codes R. & Regs. Tit. 15, § 77.8(c) and (d) (2004). Dealers may also charge a maximum fee of \$5.00 as a special plate processing fee (N.Y. Comp. Codes R. & Regs. Tit. 15, § 78.19(d) (2004)).

³⁷ Ohio Rev. Code Ann. § 1317.07 (2007).

³⁸ Or. Admin. R. 137-20-0020(2)(k).

³⁹ Tex. Fin. Code Ann. § 345.251 (1997).

⁴⁰ 2007 Wash. Laws 155 (SB 6129).

⁴¹ For a general discussion regarding recent national developments regarding such fees, see, Jennifer Saranow, *Paperwork Is A Rising Cost For Car Buyers*, Wall Street Journal, Oct. 3, 2006,

For example, California recently passed a Car Buyer's Bill of Rights⁴² which, among other requirements, prohibits motor vehicle dealers from excluding from the advertised price of a vehicle, all costs to the purchaser at the time of sale, including the dealer document preparation charge.⁴³ A 2007 Arkansas law also requires notice to customers of the fee in the form of a disclaimer noting that the fee is not a government fee and may result in profit to the dealer. Notably, the Arkansas law permits dealers to charge a "service and handling fee" to handle, process and store documents, as well as, other administrative and clerical services, or to recover costs.⁴⁴

Consumer Initiated Lawsuits

While consumers have the option of filing civil actions under FDUTPA to remedy violations of the act,⁴⁵ arbitration and mediation clauses in motor vehicle sales contracts, which require consumers to waive jury trials, may hinder this action. However, Florida consumers have attempted to seek redress in this manner.

In 2002, a Florida consumer filed a federal action challenging the legitimacy of charging pre-delivery service fees, and alleging violations of the federal Sherman Antitrust Act,⁴⁶ the Consumer Leasing Act,⁴⁷ and common law breach of contract.⁴⁸ However, the merits of the case—whether the plaintiff should have been charged a dealer fee when he chose to exercise his purchase option after leasing a car—were left unresolved, since the case was settled after the lower court's denial of class certification was affirmed.⁴⁹

A Florida class action filed in 2005 challenges a dealer's practice of advertising a pre-delivery service fee as "administrative and state fees," and failing to include the disclosure statement required by s. 501.976(18), F.S., as a violation of FDUTPA.⁵⁰ The

http://online.wsj.com/public/article_print/SB115983616457080652.html.

⁴² Cal. Vehicle Code § 11713.1(e) (2007).

⁴³ Cal. Vehicle Code § 11713.1(c)(1) (2007).

⁴⁴ 2007 Ark. Acts 366 (HB 1718).

⁴⁵ Section 501.211, F.S.

⁴⁶ 15 U.S.C. § 1, et. seq.

⁴⁷ 15 U.S.C. § 1667.

⁴⁸ *Zelman v. Nissan Motor Acceptance Corp.*, Case No. 02-10298 HH (11th Cir. 2002), Appellant's Initial Brief, 2002 WL 32303527, (March 7, 2002)(on file with the Commerce Committee)

⁴⁹ *Zelman v. Nissan Motor Acceptance Corp.*, 57 Fed. Appx. 415 (11th Cir. 2002), affirming, Case No. 97-10062-CV-NCR (S.D. Fla. 2002).

⁵⁰ *Chrzanowski v. S.D.S d/b/a Lexus of Jacksonville*, Case

case remains pending in Florida's First District Court of Appeal.⁵¹

Consumers in at least one other state have initiated a class action suit relating to dealer fees. In New Jersey nearly every motor vehicle dealer in the state was named in a 2003 suit targeting "documentary fees" related to obtaining registrations and titles.⁵² The case, involving 397 dealers and close to 5 million vehicles, was settled in 2005. The settlement grants consumers a \$100 coupon off of their next purchase or lease from the dealership from which they purchased their vehicle in addition to refunds of the documentary fees.⁵³

Summary

In summary, the law requires that the pre-delivery service fee be disclosed on all binding contracts related to the sale and be included in the advertised price of the vehicle. The Attorney General has investigated irregularities and violations of the advertising requirements.

Consumers may not be specifically aware that the pre-delivery service fee is imposed, or of the amount of the fee, prior to receipt of the Buyer's Order. The law requires that the fee be "included" rather than "specifically delineated" in the advertised price. Furthermore, Florida law does not require that the fee be delineated on the dealer window sticker.

Survey research indicates whether fees are charged by dealers and the amount of such fees, which varies from dealer to dealer. According to survey results, most dealers impose a pre-delivery service fee. While a small number of dealers surveyed charge no fee, those that do impose fees ranging from \$100 - \$699.

State laws across the nation also widely differ. Staff research found that while several states have imposed caps on pre-delivery service fees, ranging from \$45 to \$250, others impose no caps at all.

RECOMMENDATIONS

Should the Legislature choose to address the issues identified in this report, it may consider expanding the notice requirements for the dealer imposed pre-delivery service fee, or, as other states have done, impose a cap on such fees.

No. 2005-CA-005434 (Fla. 4th Cir. Ct. 2005).

⁵¹ The lower court allowed class certification and denied the dealers' motion to arbitrate. Both issues are on appeal and will be argued at the 1st DCA on October 17, 2007.

⁵² Charles Toutant, *Car-Dealer Class Actions: Coupons for Clients, Big Bucks for Lawyers*, N.J. Law Journal, November 3, 2004, <http://www.law.com/jsp/law/LawArticleFriendly.jsp?id=1099217133803>.

⁵³ *Cerbo, et. al. v. Ford of Englewood, et. al.*, No. BER-L-2871-03, 2005 WL 1252568 (N.J. Super. Ct. Law Div. May 16, 2005); *see also*, David Schwab, *Dealer will pay car owners after overcharging for fees*, Star Ledger Staff, July 10, 2005, http://www.nj.com/news/stories/0710_dealers.html.