

By Representative Lawson

1                                   A bill to be entitled  
2           An act relating to motor vehicles; creating the  
3           "Used Car Buyer's Protection Act"; providing  
4           legislative intent; providing definitions;  
5           providing for duties of dealers; providing for  
6           disclosure; providing for the duties of the  
7           Department of Highway Safety and Motor  
8           Vehicles; providing consumer remedies;  
9           providing for bad faith claims; amending s.  
10          320.27, F.S.; providing additional grounds for  
11          the denial, suspension, or revocation of a  
12          motor vehicle dealer's license; providing an  
13          effective date.

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

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17           Section 1. Short title.--Sections 1 through 9 may be  
18 cited as the "Used Car Buyer's Protection Act."

19           Section 2. Legislative intent.--The Legislature  
20 recognizes that the procurement of a used motor vehicle is a  
21 major consumer purchase. It is the intent of the Legislature  
22 to provide certain disclosure rights to consumers who purchase  
23 used motor vehicles from dealers in this state. It is the  
24 intent of the Legislature that consumers be made aware of  
25 their rights prior to the sale of a used motor vehicle so as  
26 to receive the basis of their bargain.

27           Section 3. Definitions.--For purposes of this act:  
28           (1) "Consumer" means any person who is not a dealer as  
29 defined in s. 320.27(1)(c), Florida Statutes, excluding any  
30 person who has purchased a leased vehicle as a result of the

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1 exercise of a purchase option in a lease-purchase agreement  
2 that has a lease term of 1 year or more.

3 (2) "Dealer" means a licensed motor vehicle dealer  
4 licensed under s. 320.27(1)(c), Florida Statutes.

5 (3) "Department" means the Department of Highway  
6 Safety and Motor Vehicles.

7 (4) "Implied warranty" means an implied warranty as  
8 defined in ss. 672.314 and 672.315, Florida Statutes.

9 (5) "Manufacturer" means a manufacturer as defined in  
10 s. 320.60(9), Florida Statutes, a distributor as defined in s.  
11 320.60(5), Florida Statutes, or an importer as defined in s.  
12 320.60(7), Florida Statutes.

13 (6) "Motor vehicle" means a motor vehicle propelled by  
14 power other than muscular power, which is sold in this state,  
15 with a gross vehicle weight rating of less than 8,500 lbs.,  
16 but excludes recreational vehicles, motorcycles, mopeds,  
17 traction engines, truck tractors, road rollers, trailers,  
18 semitrailers, off-road vehicles, and vehicles run only upon  
19 tracks or water.

20 (7) "Nonconforming vehicle" means a motor vehicle  
21 which has been repurchased or replaced by a manufacturer or  
22 its agent pursuant to s. 681.114, Florida Statutes.

23 (8) "Service contract" means a written contract to  
24 perform, over a fixed period of time or for a specified  
25 duration, services relating to the maintenance or repair, or  
26 both, of a motor vehicle which is subject to a monetary  
27 premium.

28 (9) "Used motor vehicle" means a used or secondhand  
29 motor vehicle as defined in s. 320.60(13), Florida Statutes.

30 (10) "Warranty" means any undertaking in writing,  
31 excluding a service contract, in connection with the sale by a

1 dealer of a used motor vehicle, to refund, repair, replace,  
2 maintain, or take other action with respect to a used motor  
3 vehicle and provided at no extra charge beyond the purchase  
4 price.

5 Section 4. Duty of dealer.--

6 (1) If a dealer fails to comply with the disclosure  
7 requirements of section 5, any agreement entered into by a  
8 consumer that waives, limits, or disclaims implied warranty  
9 rights is void as contrary to public policy.

10 (2) A dealer shall honor any warranty offered by the  
11 dealer or any applicable implied warranty. This act does not  
12 diminish the obligations of a manufacturer under an express  
13 warranty issued by the manufacturer. If a dealer has not  
14 determined whether the manufacturer's warranty still applies,  
15 the dealer is not obligated to disclose said information to  
16 the consumer pursuant to paragraph (1)(f) of section 5.

17 (3) A dealer or the dealer's agent shall provide to  
18 the consumer, each time the dealer's used vehicle is returned  
19 for examination or repair under the warranty or implied  
20 warranty, if applicable, a fully itemized, legible statement  
21 or repair order indicating a general description of the  
22 problem reported by the consumer or an identification of the  
23 defect or condition, any diagnosis made, and all work  
24 performed on the vehicle, including parts and labor, the date,  
25 and the odometer reading.

26 (4) A dealer may not refuse any consumer the  
27 opportunity to have an independent prepurchase inspection of  
28 any used motor vehicle offered for sale. If the consumer  
29 requests an inspection it shall be conducted by a person  
30 chosen by the consumer, but the dealer may establish

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1 reasonable conditions regarding the place, time, and extent of  
2 the inspection.

3 (5) If a used motor vehicle is sold "As Is" pursuant  
4 to the disclosure requirements of subsection (1) of section 5,  
5 a dealer is not responsible for repairs, and no warranties,  
6 either express or implied, follow a used motor vehicle sold in  
7 this condition. If a dealer voluntarily consents to repair a  
8 used motor vehicle part, any warranty created by such repair  
9 would be limited to said part for a period not exceeding 30  
10 days from the date of repair. However, this subsection shall  
11 not void any implied warranty rights created pursuant to 15  
12 U.S.C. 2308(a)(2).

13 Section 5. Disclosure.--

14 (1) Each used motor vehicle sold by a dealer must have  
15 a disclosure form signed by the dealer and the consumer. The  
16 form's language shall be easily readable and understandable.  
17 The disclosures, at a minimum, shall include the following:

18 (a) In 18 point, bold, all capital type at the top of  
19 the form, the name of the department, the title of this act,  
20 and the toll-free number required under subsection (1) of  
21 section 6.

22 (b) The vehicle's year, make, model, and  
23 identification number.

24 (c) A statement that federal law requires dealers to  
25 complete and display a "Buyer's Guide" sticker on a window of  
26 the vehicle and that the dealer is to provide the consumer  
27 with a copy of the sticker.

28 (d) A statement that federal law requires dealers to  
29 complete, sign, and provide the consumer with an odometer  
30 disclosure statement indicating the vehicle's actual miles or  
31 that the actual miles are unknown to the dealer.

1       (e) A statement that this act requires dealers to  
2 disclose to the consumer the previous use or condition of the  
3 vehicle pursuant to ss. 319.14 and 681.114, Florida Statutes,  
4 followed by a space to indicate the previous use or condition,  
5 if applicable.

6       (f) In 12 point, all capital type, preceded by a box  
7 to mark where applicable, the following statements:

8  
9           MANUFACTURER'S WARRANTY STILL APPLIES. THE  
10 MANUFACTURER'S ORIGINAL WARRANTY HAS NOT  
11 EXPIRED ON THE VEHICLE. CONSULT THE  
12 MANUFACTURER'S WARRANTY BOOKLET FOR DETAILS AS  
13 TO WARRANTY COVERAGE, SERVICE, LOCATION, ETC.

14  
15           DEALER OFFERS A SEPARATE WARRANTY ON THIS  
16 VEHICLE. FOR SPECIFIC DETAILS, REFER TO THE  
17 "BUYER'S GUIDE" ON THE SIDE WINDOW OF THE  
18 VEHICLE.

19  
20           VEHICLE SOLD "AS IS." THIS VEHICLE COMES WITH  
21 NO WARRANTY. THE ENTIRE RISK AS TO THE QUALITY  
22 AND PERFORMANCE OF THE VEHICLE IS WITH THE  
23 BUYER. IF THE VEHICLE PROVES DEFECTIVE  
24 FOLLOWING THE PURCHASE, YOU WILL HAVE TO PAY  
25 FOR ALL REPAIRS. IF WE HAVE MADE ANY PROMISES  
26 TO YOU CONCERNING THE CONDITION OF REPAIR OF  
27 THE VEHICLE, ASK US TO PUT ALL PROMISES INTO  
28 WRITING ON THE "BUYER'S GUIDE."

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30       (g) A statement, appearing just below the explanation  
31 of an "As Is" sale, indicating the consumer has read the form

1 and understands it, followed by spaces for the consumer to  
2 sign and print his or her name and to provide his or her  
3 address.

4 (h) Spaces provided at the bottom of the form for the  
5 dealer to indicate the date of sale and the dealer's name and  
6 address, and to sign the form.

7 (2) The dealer shall complete the form, give the  
8 consumer the top copy of the form, and provide the consumer  
9 with all referenced documents specified on the form. The  
10 dealer shall keep the bottom copy of the form or  
11 electronically store an exact image of the completed copy for  
12 a period of at least 3 years after the date of sale.

13 (3) The department shall prescribe the size, format,  
14 paper stock, and other requirements for the disclosure  
15 required by this section.

16 Section 6. Department duties.--

17 (1) The department shall provide and maintain a  
18 toll-free number which a consumer can contact for information  
19 concerning the consumer's rights, information concerning the  
20 previous history of the vehicle, or to file a complaint under  
21 this act.

22 (2) The department shall prepare brochures and other  
23 educational materials to be distributed to consumers informing  
24 them of their rights and remedies under this act.

25 (3) The department shall maintain records in its  
26 database of vehicles previously registered or used as  
27 taxicabs, police vehicles, lease vehicles, rebuilt vehicles,  
28 or any other vehicle carrying a title brand pursuant to  
29 chapter 319, Florida Statutes, or for nonconforming vehicles  
30 repurchased or replaced by a manufacturer or its agent  
31 pursuant to s. 681.114, Florida Statutes.

1           (4) The department shall gather, through the current  
2 dealer records inspection program, statistical information  
3 indicating, at a minimum, the following:

4           (a) Compliance with disclosure requirements.

5           (b) "As Is" sales of used motor vehicles.

6           (c) Issuance of warranties for used motor vehicles.

7           Section 7. Consumer remedies.--

8           (1) A consumer may file an action to recover damages  
9 caused by a violation of this act. The court shall award a  
10 consumer who prevails in such action damages, costs,  
11 reasonable attorney's fees, and appropriate equitable relief.

12           (2) An action brought under this act must be commenced  
13 within 6 months from the expiration of the warranty, or 1 year  
14 from the date of purchase, whichever occurs later.

15           (3) This act does not prohibit a consumer from  
16 pursuing other rights or remedies under any other law.

17           Section 8. Bad faith claims.--Any claim by a consumer  
18 which is found by the court to have been filed in bad faith or  
19 solely for the purpose of harassment, or in complete absence  
20 of a justifiable issue of either fact or law raised by the  
21 consumer, shall result in the consumer being liable for all  
22 costs and reasonable attorney's fees incurred by the dealer as  
23 a direct result of the bad faith claim.

24           Section 9. Fees.--A \$1 fee shall be collected by a  
25 motor vehicle dealer from the consumer at the consummation of  
26 the sale of a used motor vehicle. Such fees shall be remitted  
27 to the county tax collector acting as agent for the Department  
28 of Highway Safety and Motor Vehicles. All fees shall be  
29 transferred to the department for deposit into the Highway  
30 Safety Operating Trust Fund.

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1           Section 10. Paragraphs (v) and (w) are added to  
2 subsection (9) of section 320.27, Florida Statutes, 1996  
3 Supplement, to read:

4           320.27 Motor vehicle dealers.--

5           (9) DENIAL, SUSPENSION, OR REVOCATION.--The department  
6 may deny, suspend, or revoke any license issued hereunder or  
7 under the provisions of s. 320.77 or s. 320.771, upon proof  
8 that a licensee has failed to comply with any of the following  
9 provisions with sufficient frequency so as to establish a  
10 pattern of wrongdoing on the part of the licensee:

11           (v) Failure to display the Federal Trade Commission's  
12 Buyer's Guide on a window of the vehicle.

13           (w) Any violation of this section.

14           Section 11. This act shall take effect January 1,  
15 1998.

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18           HOUSE SUMMARY

19           Creates the "Used Car Buyer's Protection Act" to provide  
20 disclosure rights to consumers who purchase used motor  
21 vehicles from dealers in the state and to provide that  
22 consumers be made aware of their rights prior to the sale  
23 of the used motor vehicle. Provides that failure to  
24 display the Federal Trade Commission's Buyer's Guide on  
the window of a vehicle and any violation of the  
provision of law relating to motor vehicle dealers may  
result in the denial, suspension, or revocation of the  
dealer's license. See bill for details.