

STORAGE NAME: h0685.brc

DATE: February 23, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION & CONSUMER AFFAIRS
ANALYSIS**

BILL #: HB 685

RELATING TO: Motor Vehicle Damage Disclosure

SPONSOR(S): Representative Kyle

TIED BILL(S): None.

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION & CONSUMER AFFAIRS
 - (2) INSURANCE
 - (3) JUDICIARY
 - (4) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
 - (5)
-

I. SUMMARY:

The bill addresses circumstances where a new motor vehicle is damaged after it has been manufactured but before the vehicle is delivered to a dealer for sale.

The bill provides that a manufacturer of a new motor vehicle is liable for damage to the vehicle which occurs prior to delivery to a dealer if the manufacturer is aware of the damage. The manufacturer is required to disclose to the dealer damage to a vehicle if the damage and any repairs to the vehicle exceed a threshold amount of three percent of the manufacturer's suggested retail price or \$650, whichever is less. Certain replacement items, such as tires, bumpers, or glass, among others, are excluded from the calculation of the threshold amount.

The bill also requires a dealer to disclose to a purchaser prior to entering into a sales agreement any vehicle damage and repairs which may have occurred if these costs exceed the threshold amount.

The bill provides a cause of action on the part of the buyer resulting from the failure to provide the damage disclosures. Failure to provide proper notice to the buyer could also constitute grounds for rescission of the sales contract.

The bill does not appear to have a fiscal impact on state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain.

B. PRESENT SITUATION:

Currently, s. 320.27(9)(n), F.S., provides that the Department of Highway Safety and Motor Vehicles (DHS&MV) may deny, suspend, or revoke the license of a motor vehicle dealer who fails to disclose certain damages to a new motor vehicle if the dealer had knowledge of the damage and if the dealer's cost of repair, excluding tires, bumpers, and glass, exceeds 3 percent of the manufacturer's suggested retail price. However, if only the application of exterior paint is involved in the repair of the damage, disclosure is required if the cost of the application of touch-up paint exceeds \$100. The statute does not specify who is to receive the disclosure, however, the DHS&MV indicates the purchaser of the vehicle from the dealer, either another dealer or a consumer, is the intended recipient of the disclosure.

Under this section, the department may take action against a dealer if the failure to make required disclosures occurs with sufficient frequency to establish a pattern of wrongdoing on the licensee's part. The statutes do not address consumer remedies if the required disclosures are not made by the dealer.

There is currently no specific statutory provision which imposes liability on vehicle manufacturers for damage to a new motor vehicle while being delivered to a dealer. As an industry practice, liability is addressed in contract provisions which may be specified between individuals in the distribution channels, including the manufacturer, importer, distributor, and dealer.

C. EFFECT OF PROPOSED CHANGES:

The bill creates a new part VI of chapter 501, F.S., to consist of the single section 501.98, F.S. The bill specifies that the manufacturer of a new motor vehicle is liable for damage and repair to the motor vehicle when the manufacturer is aware of the damage and the damage occurs at any time after the manufacturing process is complete but before delivery of the vehicle to the dealer.

The bill defines "replacement items" to include tires, bumpers, bumper fascia, glass, in-dashboard equipment, or any readily detachable component that is not structural in nature. "Threshold amount" is defined as 3 percent of the manufacturer's suggested retail price or \$650, whichever is less, excluding the cost of replacement parts. The bill requires that a manufacturer provide a written damage disclosure to a dealer at the time of delivery of a

damaged vehicle. This disclosure is required if the cost of repairing the damage, excluding the cost of replacement items, exceeds the threshold amount.

If a new motor vehicle is damaged prior to delivery to the dealer, the bill requires a dealer to notify the manufacturer or the manufacturer's transportation agent within seven business days and request authorization from the manufacturer or the transportation agent to repair the damage. If the manufacturer or agent refuses or fails to authorize the repair within 10 business days after receiving notification, the bill specifies that the ownership of the vehicle reverts to the manufacturer. If the damage exceeds the threshold amount, the manufacturer may repurchase the damaged vehicle or provide compensation to the dealer to assist in selling the vehicle.

The bill requires a dealer to disclose to the purchaser, prior to entering into a sales contract, any damage and repair to the vehicle if the cost of repair exceeds the threshold amount, excluding replacement items. The disclosure must be in writing and the buyer must acknowledge receipt of the disclosure in writing.

The bill provides that a motor vehicle buyer may file an action to recover damages caused by a violation of the disclosure requirements contained in the bill. The bill specifies that the court award a buyer who prevails in such action the amount of any pecuniary loss, litigation costs and reasonable attorney's fees. An action brought under this section must be commenced within one year after the discovery of the damage or within one year after the time discovery reasonably should have been made.

Failure by the dealer to disclose damage that is within the knowledge of the dealer constitutes grounds for rescission of the sales contract, provided that, within 30 days after the purchase, the motor vehicle is returned to the dealer with a written notice of the grounds for rescission. The bill specifies that if damage disclosure is not required pursuant to the provisions of this section, the purchaser of the vehicle may not bring an action based solely on the fact that the vehicle had been damaged and repaired prior to its sale.

The bill amends s. 320.27(9)(n), F.S., to provide that failure to disclose damage to a new motor vehicle, as required under the newly created provisions of the bill, constitutes a basis for denial, suspension or revocation of a motor vehicle dealers' license if the failure to disclose occurs in such frequency as to create a pattern of violations.

D. SECTION-BY-SECTION ANALYSIS:

See II.C. above.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Department of Highway Safety and Motor Vehicles does not anticipate the provisions of the bill will have a fiscal impact on state government.

2. Expenditures:

See 1. above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None anticipated.

2. Expenditures:

None anticipated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill addresses responsibilities for the repair and disposition of damaged motor vehicles between a vehicle manufacturer and dealer, as well as, providing certain consumer remedies. Currently, damage repair is a matter of negotiation, contract liability or litigation between the parties. It is not anticipated that the provisions of the bill will impose a significant additional economic impact on the private sector.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

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B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

In addition to creating s. 501.98, F.S., the bill amends s. 320.27, F.S., to authorize DHS&MV to impose administrative penalties against the license of a dealer for failure to consistently disclose vehicle damage, as provided in the bill. This amended section refers to the definition of motor vehicle in s. 320.60(10), F.S. This definition of the term motor vehicle is much broader than the definition of the term motor vehicle created in the bill. Since the bill attempts to limit the application of the newly created liability and disclosure requirements, it may be desirable to reference the definition created in s. 501.98, F.S. rather than s. 320.60(1), F.S.

The bill specifies that it is unlawful for a vehicle manufacturer to fail to assume responsibility for structural or production defects of a vehicle and to fail to compensate a dealer for the cost of repairs of a vehicle which are incurred by the dealer. The bill does not specify a penalty for the failure of a manufacturer to comply with these two responsibilities.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION & CONSUMER AFFAIRS:

Prepared by:

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