STORAGE NAME: h0685s1.ted
DATE: April 14, 2000

HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
ANALYSIS

BILL #: CS/HB 685

RELATING TO: Motor Vehicle Damage Disclosure

SPONSOR(S): Committee on Insurance and Representative Kyle

TIED BILL(S): None.

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

(1) BUSINESS REGULATION & CONSUMER AFFAIRS YEAS 7 NAYS 0
(2) INSURANCE YEAS 12 NAYS 0
(3) JUDICIARY YEAS 9 NAYS 0
(4) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
(5)

I. SUMMARY:

CS/HB 685 would specify the rights, responsibilities, and remedies of manufacturers, dealers, and buyers when a motor vehicle is damaged after manufacture, but prior to delivery to a dealer.

Regardless of the terms of a franchise agreement, a manufacturer would be liable for any and all damage actually known to the manufacturer. The manufacturer would be required to disclose to the dealer damage and repair known to the manufacturer, if the cost of repairing the damage exceeds 3 percent of the manufacturer's suggested retail price (MSRP) or $650, whichever is less, excluding the cost of certain replacement parts. The dealer would be required to notify the manufacturer of any known damage and seek manufacturer approval before repairing the vehicle. Depending on the circumstances, ownership of the damaged motor vehicle could revert to the manufacturer, or the manufacturer could elect to repurchase the motor vehicle or provide reasonable compensation to assist the dealer in selling the vehicle.

It would be made "unlawful" for a manufacturer to fail to assume all responsibility for any liability resulting from structural or production defects and fail to compensate a dealer for damage repairs authorized by the manufacturer. Prior to entering into a sales contract, a dealer would be required to disclose to a buyer any damage and repair to a motor vehicle, if (1) the dealer has actual knowledge of the damage and repair; and (2) the repair cost exceeds 3 percent of the MSRP or $650, whichever is less, excluding the cost of certain replacement parts. For purposes of dealer disclosure to a buyer, the amount would be calculated based on the warranty rate for labor and parts.

If a dealer failed to make the required disclosure, the buyer would have several remedies, in addition to those available under current law. As an alternative to rescission, the buyer could sue for damages under this act and recover reasonable attorney's fees, if the action is brought within one year after the buyer discovered or reasonably should have discovered the damage. Finally, a buyer could pursue remedies available "under any law." If, however, a dealer is not required to disclose the damage and repairs, a buyer would be barred from suing the dealer or manufacturer or rescinding the sales contract based "solely upon the fact that the new motor vehicle was damaged and repaired before completion of the sale."

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

The bill has an effective date of July 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes [] No [X] N/A []

The bill creates new law with respect to the disclosure of vehicle damage, and creates new rights, remedies, and causes of action for consumers and motor vehicle dealers.

2. Lower Taxes Yes [] No [] N/A [X]

3. Individual Freedom Yes [] No [] N/A [X]

4. Personal Responsibility Yes [X] No [] N/A []

5. Family Empowerment Yes [] No [] N/A [X]

B. PRESENT SITUATION:

Manufacturers and Dealers

Relations between manufacturers and dealers generally are covered under state law and in franchise agreements ("the contractual relationship between a manufacturer, factory branch, distributor, or importer, and a motor vehicle dealer, pursuant to which the motor vehicle dealer is authorized to transact business pertaining to motor vehicles of a particular line-make"[1]). Florida law regulates the content of franchise agreements. All terms and conditions of franchise agreements offered to motor vehicle dealers are of no force and effect under Florida law when inconsistent with state law.[2]

Florida does not have regulations governing the respective responsibilities, rights, and remedies of manufacturers and dealers specific to the circumstance where a motor vehicle is damaged and repaired after manufacture but before delivery to the dealer. However, that circumstance may be captured under other statutory provisions regulating motor vehicle franchise agreements. For example, a manufacturer must compensate an authorized dealer performing work "to rectify the (manufacturer's) product"[3] as part of their warranty responsibility.

Policies and procedures manuals used by motor vehicle manufacturers and referenced in franchise agreements typically spell out the process for handling damaged vehicles. These manuals describe the procedure for handling damaged motor vehicles and specify when a dealer must notify the manufacturer before making a repair. One manufacturer contacted instructs its dealers to disclose to the buyer anything other than "insignificant scratches or dents." The dealer is provided with a disclosure form which must be presented to and signed by buyers at the time of sale.

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[1] Section 320.60, F.S.

[2] Section 320.63(3), F.S.

[3] Section 320.696, F.S.

A violation of a franchise agreement is actionable as a breach of contract. Remedies available to the manufacturer and dealer may include required performance of the contract (i.e., specific performance) or damages. Further, the Department of Highway Safety and Motor Vehicles may deny, suspend, or revoke the license of a manufacturer if, with sufficient frequency, the manufacturer is unable to meet contractual obligations to its dealers.[4]

Dealers and Buyers

Under Florida law,[5] the Department of Highway Safety and Motor Vehicles may deny, suspend, or revoke the license of a motor vehicle dealer that, with sufficient frequency, fails to disclose certain damages to a new motor vehicle if the dealer had actual knowledge of the damage and if the dealer's cost of repair, excluding tires, bumpers, and glass, exceeds 3 percent of the MSRP. If the damage repair is limited to the application of exterior paint, disclosure is not required unless the cost exceeds $100. However, a purchaser of a motor vehicle in Florida does not have a statutory cause of action specific to dealer failure to disclose damage and repair occurring to a new motor vehicle after manufacture but prior to delivery to a dealer. The statutes do not address consumer remedies if the required disclosures are not made by the dealer. However, buyers may seek relief through other statutory and common law causes of action.

Buyers can bring a cause of action against a dealer or manufacturer under the "Florida Deceptive and Unfair Trade Practices Act,"[6] if the buyer has suffered a loss as a result of a violation of the act. Section 520.204(1), F.S., makes unlawful "(u)nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce." If the prevailing party, the buyer can recover actual damages, plus attorney's fees and costs. In addition, the Act provides for a $10,000 civil penalty per violation for the willful use of a method, act, or practice declared unlawful under s. 520.204, F.S.

Buyers may be able to seek relief in a breach of contract action under an implied warranty. These can be of two types: a warranty of merchantability that the goods shall be merchantable and a warranty of fitness for a particular purpose. These statutory warranties are contained in the Uniform Commercial Code.[7]

A buyer may also pursue a common law cause of action for fraud. To be actionable, a buyer would have to show the following: a false statement of material fact[8] that the person making the representation knew was false, and an intention that the representation induce another to act on the false statement which resulted in injury to the party acting in reliance on it.[9] The buyer generally would be able to recover damages sufficient to compensate him or her for the loss or injury sustained (i.e., to make the buyer whole).

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[4] Section 320.64(1), F.S.

[5] Section 320.27(9)(n), F.S.

[6] Section 501.201, et. seq., F.S.

[7] Sections 672.314 and 672.315, F.S.

[8] " The nondisclosure of a material fact . . . may be deemed fraudulent where the other party does not have equal opportunity to become apprised of the fact." 27 Fla. Jur. 2d, Fraud and Deceit § 38 (1981).

[9] 27 Fla. Jur. 2d, Fraud and Deceit § 7 (1981).

Buyers may also have remedies under local consumer protection ordinances.

C. EFFECT OF PROPOSED CHANGES:

The bill would specify the rights, responsibilities, and remedies of manufacturers, dealers, and buyers when a motor vehicle is damaged after manufacture, but prior to delivery to a dealer.

Manufacturers and Dealers

Regardless of the terms of any applicable franchise agreement, a manufacturer would be liable for any and all damage actually known to the manufacturer that occurred to a motor vehicle after manufacture, but prior to delivery of the motor vehicle to a dealer. Liability would apply from the first dollar of repair costs.

Within 3 business days after delivery of a motor vehicle, the dealer would be required to inform the manufacturer of any damage which occurred prior to delivery to the dealer. The dealer would be required to seek authorization from the manufacturer before repairing a vehicle. Ownership of the damaged motor vehicle would revert to the manufacturer if the manufacturer refused or failed to authorize repairs within 10 business days from the date the dealer notified the manufacturer of the damage. If the damage exceeded 3 percent of the MSRP or $650, whichever is less, excluding the cost of replacement parts, the manufacturer could elect to repurchase the motor vehicle or provide reasonable compensation to assist the dealer in selling the vehicle.

The manufacturer would be required to disclose to the dealer damage and subsequent repair actually known to the manufacturer which occurred prior to the delivery of the vehicle, if the cost of repairing the damage exceeds 3 percent of the MSRP or $650, whichever is less, excluding the cost of replacement parts.

Therefore, a manufacturer would be liable for all known damage to a motor vehicle without regard to the cost to repair, but required to disclose to the dealer damages exceeding 3 percent of the MSRP or $650, whichever is less, excluding the cost of replacement parts.

It would be made “unlawful” for a manufacturer to fail to compensate a dealer for repairs authorized by the manufacturer to a motor vehicle damaged after production or in transit. However, no civil or criminal sanctions are specified for manufacturers that violate this section.

Motor vehicle distributors, importers, or motor vehicle auctions are not referenced in the bill and would not be required by statute to notify manufacturers or dealers of damage that occurred to a motor vehicle while in the custody of an importer or a distributor.

Dealers and Buyers

Prior to entering into a sales contract, a dealer would be required to disclose to a buyer, in writing, any damage and repair to a motor vehicle, if:

(1) the dealer has actual knowledge of the damage and repair; and
(2) the repair cost exceeds 3 percent of the MSRP or $650, whichever is less, excluding the cost of replacement parts.

For purposes of dealer disclosure to a buyer, the threshold amount would be calculated based on the warranty rate for labor and parts.

If a dealer failed to make the required disclosure, the buyer would have certain remedies in addition to those available under current law. The buyer could sue for damages or rescind the sales contract. To rescind the sales contract, the buyer would have to return the vehicle to the dealer within 30 days from the date of purchase. If the buyer chose to rescind the sales contract, the buyer could not sue for damages under this act for failure to disclose.

If the buyer chooses to to sue for damages under this act for failure to disclose, a court could award the prevailing buyer the amount of any pecuniary loss, litigation costs, and reasonable attorney's fees. The buyer would have to bring the action within one year after the buyer discovered or reasonably should have discovered the damage.

A buyer would not be precluded from pursuing other "rights or remedies" under any law, such as the Motor Vehicle Warranty Act and the Florida Deceptive and Unfair Trade Practices Act. However, if dealer disclosure is not required under this act, a buyer would be barred from suing the dealer or manufacturer or rescinding the sales contract based "solely upon the fact that the new motor vehicle was damaged and repaired before completion of the sale." This would not appear to preclude actions for breach of contract, implied warranty or fraudulent misrepresentation, for example, because these actions would require proof of something more than just damage and repair of the vehicle.

D. SECTION-BY-SECTION ANALYSIS:

See II.C. above.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None anticipated.

2. Expenditures:

None anticipated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None anticipated.

2. Expenditures:

None anticipated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Currently, damage repair is a matter of negotiation, contract liability, warranty, 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.

The bill appears to require dealers to obtain authorization from manufacturers before repairing any motor vehicle damaged after manufacture but before delivery to the dealer. Those manufacturers that have policies in place giving dealers the authority to make certain repairs without specific authorization could experience additional administrative paperwork.

D. FISCAL COMMENTS:

The bill does not have a fiscal impact. The bill does not specify a fine or penalty for the failure of a manufacturer to comply with its responsibilities.

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

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

The bill makes it is unlawful for a vehicle manufacturer to fail to assume all 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.

The bill expressly creates one new cause of action for a consumer against a dealer that fails to make the required disclosure. The consumer will be able to seek rescission or damages, including attorney's fees, if he or she filed an action within one year of discovering the damage, or within one year of the time the buyer should reasonably have discovered the damage. Except for the one year period of limitations and the rescission remedy, this provision is redundant. The Deceptive and Unfair Trade Practices Act clearly provides for relief, including actual damages, attorney's fees and costs, and imposes a penalty for willful violations. These provisions could be referred to in the bill, improving its clarity and making it more concise.

Moreover, by having redundant provisions that are declared to be supplemental to other remedies at law, the bill may create confusion as to a consumer's choice of remedies.

In addition, the bill may create confusion with respect to common law fraud. The question of whether a consumer has been defrauded may be difficult to answer unless the bill makes it clear that the manufacturer or dealer has the duty to certify that the vehicle to be purchased has not been damaged as defined in the bill. If the manufacturer or dealer so certifies with respect to a vehicle that has been damaged, a consumer may be able to state a claim for common law fraud. However, the consumer may be better served by filing an action under the Unfair and Deceptive Trade Practices Act, since the Act provides for greater remedies.

It is unclear whether the bill creates a cause of action for dealers against manufacturers who fail to make the required disclosure regarding damage to a motor vehicle, by making manufacturers expressly liable for all damage to a motor vehicle that is within the manufacturer's knowledge, and by making it unlawful for the manufacturer to fail to compensate a dealer for repairs to a damaged motor vehicle under certain circumstances. However, this language does not explicitly provide for relief under a franchise agreement or by reference to the Unfair and Deceptive Trade Practices Act. This language could be tied to the Act or made a requirement for a franchise agreement under Chapter 320 to clarify the potential liability of the manufacturer and the rights of a dealer.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 21, 2000, the Insurance Committee adopted an amended "remove everything" amendment as a substitute amendment for a "remove everything" amendment adopted by the Committee on Business Regulation and Consumer Affairs that had been traveling with the bill. The Insurance Committee then adopted the bill as a Committee Substitute incorporating only the amended substitute amendment. The Committee Substitute differs from the original bill in that the Committee Substitute:

- Corrects cross references;
- Corrects additional inconsistencies in drafting and other drafting oversights;
- Clarifies the reference to the definition of motor vehicle relating to truck weight limits;
- Includes seats, upholstery, and trim in the list of replacement items allowed to be deducted from the "threshold amount";
- Allows the cost of replacement items to be deducted from the threshold amount if original equipment manufactured parts are used;
- Reduces the time period for a dealer to notify a manufacturer of damage to a vehicle from seven business days to three business days; and
- Clarifies that a manufacturer compensate a dealer for repair costs incurred only when the manufacturer has provided written authorization for the repair.
- Removes language requiring manufacturers to assume all responsibility for any liability for certain defects;

- Restructures, without making substantive changes, the consumer remedies section to clarify which remedies are available under this act; and

- As between buyers and dealers: ties the thresholds for damage costs which trigger the duty to disclose to authorized warranty costs for labor and parts.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION & CONSUMER AFFAIRS:

Prepared by:	Staff Director:
Alan W. Livingston	Rebecca R. Everhart

AS REVISED BY THE COMMITTEE ON INSURANCE:

Prepared by:	Staff Director:
Stephen Hogge	Stephen Hogge

AS FURTHER REVISED BY THE COMMITTEE ON JUDICIARY:

Prepared by:	Staff Director:
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AS FURTHER REVISED BY THE COMMITTEE ON TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS:

Prepared by:	Staff Director:
Loretta J. Darity	Eliza Hawkins