

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 938

SPONSOR: Judiciary and Transportation Committees and Senator Bronson

SUBJECT: New Motor Vehicle Damage Disclosure

DATE: April 16, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McAuliffe</u>	<u>Meyer</u>	<u>TR</u>	<u>Favorable/CS</u>
2.	<u>Johnson</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
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 CS provides a manufacturer of a new motor vehicle is liable for damage to the vehicle which occurs prior to or during delivery to a dealer. The manufacturer is required to disclose to the dealer known damage to a vehicle if the diminution in value and repairs to the vehicle exceed a threshold amount of three percent of the manufacturer's suggested retail price or \$650, whichever is less.

Where the damage to a vehicle is discovered by the dealer, the manufacturer or the manufacturer's shipper must be notified of the damage. The manufacturer or the shipper must then authorize repairs to the vehicle, take the vehicle back or provide financial assistance to the dealer so the vehicle can be sold.

The CS 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 CS provides a cause of action on the part of the buyer resulting from the dealers failure to provide the damage disclosures. Failure to provide proper notice to the buyer could also constitute grounds for rescision of the sales contract and loss of the dealer license.

This CS creates s. 501.98, and amends s. 320.27 of the F.S..

II. Present Situation:

The business relationship between a motor vehicle manufacturer and a motor vehicle dealer is generally regulated by state law and the specific franchise agreement. Both the manufacturer and the dealer must be licensed by the state and the franchise agreement must comport with state laws

regulating the agreement.¹ However, Florida does not regulate the respective responsibilities, rights, and remedies of manufacturers, and dealers regarding vehicles damaged or repaired after manufacture but before the vehicle is delivered to the dealer. Any requirements related to these damaged vehicles would have to be contained in the specific franchise agreement.

Currently, s. 320.27(9)(n), F.S., provides the Department of Highway Safety and Motor Vehicles (DHSMV) 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 DHSMV indicates the purchaser of the vehicle, either another dealer or a consumer, is the intended recipient of the disclosure.

Under this section, the DHSMV 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 statute does not address consumer remedies if the required disclosures are not made by the dealer.

Motor Vehicle purchasers can bring a cause of action against a dealer or manufacturer under the "Florida Deceptive and Unfair Trade Practices Act,"² 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." A purchaser, who is the prevailing party, 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 practices declared unlawful under s. 520.204, F.S.. This civil penalty is paid to the State General Revenue Fund.

Purchasers 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.³

Recovery for damages may also be available to the purchaser under the Motor Vehicle Warranty Enforcement Act in chapter 68, F.S. This is commonly referred to as the "Lemon Law" and provides a mechanism for enforcement of warranty provisions by requiring the manufacturer to either repair or replace a damaged vehicle.

Finally, a purchaser may also pursue a common law cause of action for fraud. Actual fraud involves an intentional untruth between parties to a transaction, and is therefore limited generally to misrepresentations, concealments, or other artifices employed to deceive another.⁴

¹Section 320.61 et seq.

²Section 501.201, et.seq., F.S.

³Sections 672.314 and 672.315, F.S.

⁴27 Fla. Jur. 2d. Fraud and Deceit s. 2 (1981)

To maintain an action for fraud the purchaser must allege that a false representation was knowingly made with the intent that the purchaser would act upon the it and in reliance on the false representation the purchaser made the purchase and was damaged.⁵

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.

III. 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. It 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 provides “dealer” means a motor vehicle dealer as defined in s. 320.27, F.S., but does not include a motor vehicle auction as defined in s. 320.27 (1) © 4., F.S. The bill further defines “Manufacturer” to mean a manufacturer as defined in s. 320.60, F.S. “Manufacturer suggested retail price” means the retail price of a new motor vehicle suggested by the manufacturer set forth in 15 U.S.C. s. 1232, including the retail delivery price suggested by the manufacturer for each accessory or item of optional equipment physically attached to the new motor vehicle at the time it is delivered to the motor vehicle dealer.

“Motor vehicle” is defined to mean any new automobile or truck the equitable or legal title to which has never been transferred by a manufacturer, distributor, importer, or dealer to an ultimate purchaser. The term does not include motor vehicles with a gross vehicle weight of 14,001 pounds or more. “Threshold amount” is defined as 3 percent of the manufacturer’s suggested retail price or \$650, whichever is less.

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 diminution in value of the vehicle and the cost of repairing the damage, exceeds the threshold amount.

If a new motor vehicle is damaged prior to or during delivery to the dealer, the bill requires a dealer to notify the manufacturer or the manufacturer’s transportation agent within three business days and to request authorization from the manufacturer or the transportation agent to repair the damage.

The bill provides it is unlawful for any manufacturer to fail to compensate, or provide for compensation by the manufacturer’s transportation agent, any dealer for repairs made to a motor vehicle damaged in manufacture or transit to the dealer provided that written authorization is given to the dealer by the manufacturer. Compensation must include the cost of sublet repairs or where the dealer performs the repairs, the dealer’s warrant rate for parts and labor, and diminution in the value of the vehicle if the dealer is to retain and sell the vehicle. If the manufacturer or agent refuses or fails to authorize the repair within 10 business days after

⁵27 Fla. Jur. 2d. Fraud and Deceit s. 9 (1981)

receiving notification, the bill specifies 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. The threshold amount for purposes of dealer disclosure is calculated at the rate of the dealer's authorized warranty rate for labor and parts. The disclosure must be in writing, the buyer must acknowledge receipt of the disclosure in writing, and the dealer must retain a copy of the acknowledgment for his or her records.

The bill provides a motor vehicle buyer may file an action to recover damages caused by a violation of the disclosure requirements contained in the bill, or if within 30 days from the date of purchase, may rescind the sales contract. The bill specifies the court award a buyer who prevails in an action to recover damages only the amount of any pecuniary loss, litigation costs and reasonable attorney's fees. The court is prohibited from awarding damages for loss of use, lost profit, incidental damages, or other claims. 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 but may not be brought more than 2 years or 30,000 miles after purchase of the vehicle. The bill further provides the provisions of this section do not preclude a buyer from other rights or remedies under any law including the Motor Vehicle Warranty Enforcement Act (chapter 681, F.S.)

If the purchaser chooses to rescind the sales contract, the purchaser must return the motor vehicle to the dealer within 30 days from the date of purchase with written notice of the grounds for rescission. The dealer must accept the vehicle and refund any payments made to the dealer or financial institution, less a reasonable allowance for the purchaser's use of the motor vehicle. The bill further provides if disclosure is not required by the dealer, a purchaser may not bring a civil action for damages against the dealer or manufacturer or rescind a sales contract as provided in the bill based solely upon the fact the new motor vehicle was damaged and repaired before completion of the 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 CS, 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.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill provides additional consumer protection and remedies where a consumer discovers a new motor vehicle was damaged, but the dealer did not make proper disclosure.

The bill may require that a motor vehicle dealer obtain the permission of the dealer each time a vehicle needs repair. This would negate contract provisions which may provide dealers with blanket manufacturers approval to repair damaged vehicles.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that a motor vehicle dealer may lose his or her license for failure to comply with the disclosure requirements but there is no penalty for the manufacturers failure to make the required disclosures.

VIII. Amendments:

None.