

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/SB 938

SPONSOR: Transportation Committee and Senator Bronson

SUBJECT: New Motor Vehicle Damage Disclosure

DATE: March 22, 2000

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|------------------|----------------|-----------|---------------------|
| 1. | <u>McAuliffe</u> | <u>Meyer</u> | <u>TR</u> | <u>Favorable/CS</u> |
| 2. | _____ | _____ | <u>JU</u> | _____ |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |

I. Summary:

Committee Substitute (CS) 938 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 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 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 failure to provide the damage disclosures. Failure to provide proper notice to the buyer could also constitute grounds for rescission of the sales contract.

This CS creates s. 501.98, and amends s. 320.27 of the Florida Statutes.

II. Present Situation:

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 from the dealer, 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 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.

III. Effect of Proposed Changes:

The CS creates a new part VI of chapter 501, F.S., to consist of the single section 501.98, F.S. The CS specifies 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 CS 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) (c) 4, F.S. The CS 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. The CS defines "replacement items" to include tires, bumpers, bumper fascia, glass, in-dashboard equipment, seats or upholstery covers or trim, 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 items which are original vehicle manufacturer equipment.

The CS requires 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 CS 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 CS 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. If the manufacturer or agent refuses or fails to authorize the repair within 10 business days after receiving notification, the CS 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 CS 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 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 CS provides a motor vehicle buyer may file an action to recover damages caused by a violation of the disclosure requirements contained in the CS, or if within 30 days from the date of purchase, may rescind the sales contract. The CS specifies the court award a buyer who prevails in an action to recover damages 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. The CS further provides the provisions of this CS 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 CS further provides if disclosure is not required by the dealer, a purchaser may not bring a civil action against the dealer or manufacturer or rescind a sales contract based solely upon the fact the new motor vehicle was damaged and repaired before completion of the sale.

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

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.