

By the Committee on Commerce and Economic Opportunities; and
Senators Latvala and Sanderson

310-1879-01

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A bill to be entitled
An act relating to motor vehicles dealers;
providing definitions; prohibiting certain
unfair or deceptive acts by such dealers;
requiring the trial court to consider certain
information when awarding attorney's fees;
repealing s. 320.27(9)(n), F.S., relating to
licensure sanctions for dealers who fail to
disclose certain new vehicle damages to a
purchaser; providing an effective date.

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

Section 1. Definitions.--As used in this act, the term:

(1) "Customer" includes a customer's designated agent.

(2) "Dealer" means a motor vehicle dealer as defined in section 320.27, Florida Statutes, but does not include a motor vehicle auction as defined in section 320.27(1)(c)4., Florida Statutes.

(3) "Replacement item" means a tire, bumper, bumper fascia, glass, in-dashboard equipment, seat or upholstery cover or trim, exterior illumination unit, grill, sunroof, external mirror and external body cladding. The replacement of up to three of these items does not constitute repair of damage if each item is replaced because of a product defect or damaged due to vandalism while the new motor vehicle is under the control of the dealer and the items are replaced with original manufacturer equipment, unless an item is replaced due to a crash, collision, or accident.

1 (4) "Threshold amount" means 3 percent of the
2 manufacturer's suggested retail price of a motor vehicle or
3 \$650, whichever is less.

4 (5) "Vehicle" means any automobile, truck, bus,
5 recreational vehicle or motorcycle required to be licensed
6 under chapter 320, Florida Statutes, for operation over the
7 roads of Florida, but does not include trailers, mobile homes,
8 travel trailers or trailer coaches without independent motive
9 power.

10 Section 2. It is an unfair or deceptive act or
11 practice, actionable under the Florida Deceptive and Unfair
12 Trade Practices Act, for a dealer to:

13 (1) Represent directly or indirectly that a motor
14 vehicle is a factory executive vehicle or executive vehicle
15 unless such vehicle was purchased directly from the
16 manufacturer or a subsidiary of the manufacturer and the
17 vehicle was used exclusively by the manufacturer, its
18 subsidiary, or a dealer for the commercial or personal use of
19 the manufacturer's, subsidiary's, or dealer's employees.

20 (2) Represent directly or indirectly that a vehicle is
21 a demonstrator unless the vehicle was driven by prospective
22 customers of a dealership selling the vehicle and such vehicle
23 complies with the definition of a demonstrator in section
24 320.60(3), Florida Statutes.

25 (3) Represent the previous usage or status of a
26 vehicle to be something that it was not, or make usage or
27 status representations unless the dealer has correct
28 information regarding the history of the vehicle to support
29 the representations.

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1 (4) Represent the quality of care, regularity of
2 servicing, or general condition of a vehicle unless known by
3 the dealer to be true and supportable by material fact.

4 (5) Represent orally or in writing that a particular
5 vehicle has not sustained structural or substantial skin
6 damage unless the statement is made in good faith and the
7 vehicle has been inspected by the dealer or his agent to
8 determine whether the vehicle has incurred such damage.

9 (6) Sell a vehicle without fully and conspicuously
10 disclosing in writing at or before the consummation of sale
11 any warranty or guarantee terms, obligations, or conditions
12 that the dealer or manufacturer has given to the buyer. If the
13 warranty obligations are to be shared by the dealer and the
14 buyer, the method of determining the percentage of repair
15 costs to be assumed by each party must be disclosed. If the
16 dealer intends to disclaim or limit any expressed or implied
17 warranty, the disclaimer must be in writing in a conspicuous
18 manner and in layman's terms in accordance with chapter 672,
19 Florida Statutes, and the Magnuson-Moss Warranty - Federal
20 Trade Commission Improvement Act.

21 (7) Provide an express or implied warranty and fail to
22 honor such warranty unless properly disclaimed pursuant to
23 subsection (6).

24 (8) Misrepresent warranty coverage, application
25 period, or any warranty transfer cost or conditions to a
26 customer.

27 (9) Obtain signatures from a customer on contracts
28 that are not fully completed at the time the customer signs or
29 which do not reflect accurately the negotiations and agreement
30 between the customer and the dealer.

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1 (10) Require or accept a deposit from a prospective
2 customer prior to entering into a binding contract for the
3 purchase and sale of a vehicle unless the customer is given a
4 written receipt that states how long the dealer will hold the
5 vehicle from other sale and the amount of the deposit, and
6 clearly and conspicuously states whether and upon what
7 conditions the deposit is refundable or nonrefundable.

8 (11) Add to the cash price of a vehicle as defined in
9 section 520.02(2), Florida Statutes, any fee or charge other
10 than those provided in that section and in Rule 3D-50.001,
11 Florida Administrative Code. All fees or charges permitted to
12 be added to the cash price by Rule 3D-50.001, Florida
13 Administrative Code, must be fully disclosed to customers in
14 all binding contracts concerning the vehicle's selling price.

15 (12) Alter or change the odometer mileage of a
16 vehicle.

17 (13) Sell a vehicle without disclosing to the customer
18 the actual year and model of the vehicle.

19 (14) File a lien against a new vehicle purchased with
20 a check unless the dealer fully discloses to the purchaser
21 that a lien will be filed if purchase is made by check and
22 fully discloses to the buyer the procedures and cost to the
23 buyer for gaining title to the vehicle after the lien is
24 filed.

25 (15) Increase the price of the vehicle after having
26 accepted an order of purchase or a contract from a buyer,
27 notwithstanding subsequent receipt of an official price change
28 notification. The price of a vehicle may be increased after a
29 dealer accepts an order of purchase or a contract from a buyer
30 if:

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1 (a) A trade-in vehicle is reappraised because it
2 subsequently is damaged, or parts or accessories are removed;

3 (b) The price increase is caused by the addition of
4 new equipment, as required by state or federal law;

5 (c) The price increase is caused by the revaluation of
6 the U.S. dollar by the Federal Government, in the case of a
7 foreign-made vehicle;

8 (d) The price increase is caused by state or federal
9 tax rate changes; or

10 (e) Price protection is not provided by the
11 manufacturer, importer, or distributor.

12 (16) Advertise the price of a vehicle unless the
13 vehicle is identified by year, make, model, and a commonly
14 accepted trade, brand, or style name. The advertised price
15 must include all fees or charges that the customer must pay,
16 including freight or destination charge, dealer preparation
17 charge, and charges for undercoating or rustproofing. State
18 and local taxes, tags, registration fees, and title fees,
19 unless otherwise required by local law or standard, need not
20 be disclosed in the advertisement. When two or more dealers
21 advertise jointly, with or without participation of the
22 franchiser, the advertised price need not include fees and
23 charges that are variable among the individual dealers
24 cooperating in the advertisement, but the nature of all
25 charges that are not included in the advertised price must be
26 disclosed in the advertisement.

27 (17) Charge a customer for any pre-delivery service
28 required by the manufacturer, distributor, or importer for
29 which the dealer is reimbursed by the manufacturer,
30 distributor, or importer.

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1 (18) Charge a customer for any pre-delivery service
2 without having printed on all documents that include a line
3 item for pre-delivery service the following disclosure: "This
4 charge represents costs and profit to the dealer for items
5 such as inspecting, cleaning, and adjusting vehicles, and
6 preparing documents related to the sale."

7 (19) Add an additional charge for pre-delivery service
8 other than those shown on a conspicuous label attached to the
9 window of the vehicle specifying any charges for pre-delivery
10 services and describing the charges as pre-delivery services,
11 delivery and handling, dealer preparation, or in similar terms
12 the dealer's charge for each dealer-installed option, and a
13 total price line.

14 (20) Fail to disclose damage to a new motor vehicle,
15 as defined in subsection 320.60(10), Florida Statutes, of
16 which the dealer had actual knowledge, if the dealer's actual
17 cost of repairs exceeds the threshold amount, excluding
18 replacement items.

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20 In any civil litigation resulting from a violation of this
21 section, when evaluating the reasonableness of an award of
22 attorney's fees to a private person, the trial court shall
23 consider the amount of actual damages in relation to the time
24 spent.

25 Section 3. Paragraph (n) of subsection (9) of section
26 320.27, Florida Statutes, is repealed.

27 Section 4. This act applies to any vehicle sold after
28 October 1, 2001.

29 Section 5. This act shall take effect October 1, 2001.

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 1956

4 The committee substitute makes the following changes to SB
5 1956:

- 6 1) Clarifies that the definition of the term "replacement
7 item" applies to a "new motor vehicle" rather than
8 simply a "vehicle."
9 2) Changes the definition of the term "vehicle."
10 3) References s. 320.60(10), F.S., when defining the term
11 "new motor vehicle" with regard to the violation of
12 failing to disclose damage to a "new motor vehicle," of
13 which the dealer had actual knowledge, if the dealer's
14 actual cost of repairs exceeds the threshold amount,
15 excluding replacement items.
16 4) Strikes provisions for compensation for attorney's fees
17 and costs in civil litigation resulting from an act
18 involving a violation of the provisions established in
19 the committee substitute.
20 5) Provides that in any civil litigation resulting from a
21 violation of certain provisions of the committee
22 substitute, when evaluating the reasonableness of an
23 award of attorney's fees to a private person, the trial
24 court shall consider the amount of actual damages in
25 relation to the time spent.
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