

By Senator Campbell

33-369-98

1 A bill to be entitled
2 An act relating to motor vehicle damage
3 disclosure; requiring manufacturers to disclose
4 to dealers certain damage to new motor
5 vehicles; requiring dealers to disclose such
6 damage to buyers; providing manufacturers'
7 liability with respect to damage occurring
8 before motor vehicles are delivered to dealers;
9 providing buyers' remedies for failure to make
10 required disclosures; providing dealers'
11 remedies for failure of manufacturers to make
12 required repairs; providing definitions;
13 providing an effective date.

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

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17 Section 1. Motor vehicle damage disclosure.--
18 (1) RESPONSIBILITIES OF MANUFACTURER.--
19 (a) A manufacturer shall disclose, in writing, to a
20 dealer at the time of delivery of a motor vehicle, damage and
21 repair to the motor vehicle which occurred while the motor
22 vehicle was in the possession or under the control of the
23 manufacturer if the cost of repairing the damage exceeds 3
24 percent of the manufacturer's suggested retail price as
25 calculated at the rate of the dealer's authorized warranty
26 rate for labor and parts. A manufacturer is not required to
27 disclose to a dealer that the glass, tires, bumper, or in-dash
28 equipment of or in a motor vehicle was damaged if the damaged
29 item has been replaced with original or comparable new
30 equipment.

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1 (b)1. Notwithstanding the terms of any franchise and
2 except as provided in paragraph (d)2., the manufacturer is
3 liable for any and all damage to a motor vehicle before it is
4 delivered to a dealer.

5 2. Whenever a new motor vehicle is damaged in transit,
6 the dealer shall:

7 a. Notify the manufacturer of the damage within 3
8 business days after the date the vehicle is delivered to the
9 dealer or within any additional time specified in the
10 franchise; and

11 b. Request from the manufacturer authorization to
12 replace the components, parts, and accessories damaged or to
13 otherwise repair the damage.

14 (c) It is unlawful for any manufacturer to:

15 1. Fail to assume all responsibility for any liability
16 resulting from structural or production defects.

17 2. Fail to compensate any dealer for repairs effected
18 by the dealer to a motor vehicle damaged in manufacture or
19 transit to the dealer when the carrier is designated by the
20 manufacturer.

21 (d)1. Notwithstanding the terms, provisions, or
22 conditions of any agreement or franchise, the manufacturer is
23 liable for all damage to a motor vehicle before it is
24 delivered to a carrier or transporter.

25 2. If a dealer determines the method of
26 transportation, the risk of loss passes to the dealer upon
27 delivery of a motor vehicle to the carrier.

28 3. In every other instance, the risk of loss remains
29 with the manufacturer until the dealer or his designee accepts
30 the motor vehicle from the carrier.

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1 4. Whenever a motor vehicle is damaged while in
2 transit and the carrier or the means of transportation is
3 designated by the manufacturer, or whenever a motor vehicle is
4 otherwise damaged before delivery to the dealer, the dealer
5 must:

6 a. Notify the manufacturer of such damage within 3
7 working days, or within such additional time as authorized by
8 the franchise agreement, of the occurrence of the delivery of
9 the motor vehicle; and

10 b. Request from the manufacturer authorization to
11 repair the damage sustained or to replace the parts or
12 accessories damaged.

13 5. Nothing in this section relieves a dealer of the
14 obligation to cooperate with the manufacturer as necessary on
15 filing any transportation damage claim with the carrier.

16 (e) If the manufacturer refuses or fails to authorize
17 repair of any damage within 10 days after receiving
18 notification given under this section, or within any
19 additional time as specified in the franchise, ownership of
20 the motor vehicle shall revert to the manufacturer, and the
21 dealer shall have no obligation, financial or otherwise, with
22 respect to the motor vehicle, except that the manufacturer may
23 elect to repurchase the motor vehicle from the dealer or
24 provide reasonable and adequate compensation to the dealer to
25 assist in selling or disposing of the vehicle, as long as the
26 dealer has complied with all other contractual agreements with
27 regard to damaged vehicles. If the manufacturer repurchases
28 the motor vehicle, the dealer shall have no obligation,
29 financial or otherwise, with respect to the motor vehicle.

30 (2) RESPONSIBILITIES OF DEALER.--In addition to any
31 other disclosure requirement provided by law, a dealer must

1 disclose, in writing, to the purchaser of a motor vehicle
2 before entering into a sales contract, any damage and repair
3 to the vehicle if the cost of the repair exceeds 3 percent of
4 the manufacturer's suggested retail price as calculated at the
5 rate of the dealer's authorized warranty rate for labor and
6 parts. The disclosure must be in writing, and the buyer must
7 acknowledge receipt of the disclosure in writing. A dealer is
8 not required to disclose to a purchaser that the glass, tires,
9 or bumper of a motor vehicle was damaged at any time if the
10 damaged item has been replaced with original or comparable
11 equipment.

12 (3) CONSUMER REMEDIES.--

13 (a)1. A motor vehicle buyer may file an action to
14 recover damages caused by a violation of the disclosure
15 requirements of this section. The court shall award a buyer
16 who prevails in such action the amount of any pecuniary loss,
17 litigation costs, reasonable attorney's fees, and appropriate
18 equitable relief.

19 2. An action brought under this section must be
20 commenced within 2 years after the discovery of the damage or
21 within 2 years after the time discovery reasonably should have
22 been made by the consumer.

23 3. This section does not prohibit a motor vehicle
24 buyer from pursuing other rights or remedies under any other
25 law.

26 (b) Failure to disclose any corrected damage that must
27 be disclosed and that is within the knowledge of the selling
28 dealer constitutes grounds for revocation of the sales
29 contract, provided that, within 30 days after the purchase,
30 the motor vehicle is returned to the dealer with an
31 accompanying written notice of the grounds for revocation. In

1 case of revocation under this section, the dealer shall accept
2 the motor vehicle and refund any payments made to the dealer
3 in connection with the transaction, less a reasonable
4 allowance for the buyer's use of the motor vehicle.

5 (c) If disclosure is not required under this section,
6 a buyer may not revoke or rescind a sales contract or bring a
7 civil action based solely upon the fact that the new motor
8 vehicle was damaged and repaired before completion of the
9 sale.

10 (4) DEFINITIONS.--As used in this section, the term:

11 (a) "Dealer" means a motor vehicle dealer as defined
12 in section 320.60, Florida Statutes.

13 (b) "Manufacturer" means a manufacturer as defined in
14 section 320.60, Florida Statutes.

15 (c) "Manufacturer's suggested retail price" means the
16 retail price of a new motor vehicle suggested by the
17 manufacturer, including the retail delivered price suggested
18 by the manufacturer for each accessory or item of optional
19 equipment physically attached to the new motor vehicle at the
20 time it is delivered to the motor vehicle dealer.

21 (d) "Motor vehicle" means a motor vehicle as defined
22 in section 320.60, Florida Statutes.

23 Section 2. This act shall take effect July 1, 1998.

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SENATE SUMMARY

Requires the manufacturer of a motor vehicle to notify the motor vehicle dealer when a vehicle is damaged while in the possession or under the control of the manufacturer and the cost of repairing the damage exceeds 3 percent of the manufacturer's suggested retail price, and requires a motor vehicle dealer to give the same notification to the buyer. However, notification is not required when the damage consists of damage to glass, tires, bumpers, or in-dash equipment, so long as it is replaced with original or comparable new equipment. Requires dealers to notify manufacturers when such damage is discovered and to request authorization to make repairs. Failure to respond by a manufacturer so notified effects a transfer of ownership of the damaged motor vehicle back to the manufacturer. Provides a cause of action on the part of the buyer for damages resulting from a failure to give notice or make repairs when required to do so. Failure to give notice also provides grounds for revocation of a sale.