

By the Committee on Transportation and Senator Campbell

306-1862-98

1 A bill to be entitled
2 An act relating to motor vehicle damage
3 disclosure; creating s. 501.98, F.S.;
4 prescribing the duty of motor vehicle
5 manufacturers and dealers to disclose and to
6 repair certain damage to motor vehicles;
7 prescribing duty of dealers with respect to
8 cooperation with manufacturers; providing
9 remedies for purchasers of damaged motor
10 vehicles, including injunctive relief and
11 attorney's fees; apportioning liability for
12 certain damage and repairs; providing an
13 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. Section 501.98, Florida Statutes, is
18 created to read:

19 501.98 New motor vehicle damage; disclosure;
20 repairs.--

21 (1) DEFINITIONS.--As used in this section, the term:

22 (a) "Dealer" means a motor vehicle dealer as defined
23 in s. 320.60.

24 (b) "Manufacturer" means a manufacturer as defined in
25 s. 320.60.

26 (c) "Manufacturer's suggested retail price" means the
27 retail price of a new motor vehicle suggested by the
28 manufacturer, including the retail delivered price suggested
29 by the manufacturer for each accessory or item of optional
30 equipment physically attached to the new motor vehicle at the
31 time it is delivered to the motor vehicle dealer.

1 (d) "Motor vehicle" means any new automobile or truck
2 the equitable or legal title to which has never been
3 transferred by a manufacturer, distributor, importer, or
4 dealer to an ultimate purchaser.

5 (e) "Replacement item" means a tire, a bumper, bumper
6 fascia, glass, in-dashboard equipment, or any readily
7 detachable component that is not structural in nature,
8 including, but not limited to, exterior illumination units,
9 grilles, sunroofs, external mirrors, and external body
10 cladding.

11 (f) "Threshold amount" means 3 percent of the
12 manufacturer's suggested retail price of a motor vehicle or
13 \$500, whichever is greater, based upon the actual cost of
14 repair to the vehicle.

15 (2) RESPONSIBILITIES OF MANUFACTURER.--

16 (a) A manufacturer shall disclose, in writing, to a
17 dealer at the time of delivery of a motor vehicle, damage and
18 repair to the motor vehicle which is known to the manufacturer
19 and which occurred at any time after the manufacturing process
20 is complete, but before delivery of the vehicle to the dealer,
21 if the cost of repairing the damage, excluding the cost of
22 replacing replacement items if identical manufacturer's
23 original equipment was used, exceeds the threshold amount.

24 (b)1. Notwithstanding the terms of any franchise
25 agreement and except as provided in paragraph (d)1., the
26 manufacturer is liable for any and all damage to a motor
27 vehicle which is known to the manufacturer and which occurred
28 at any time after the manufacturing process is complete, but
29 before delivery to the dealer.

30 2. Whenever a new motor vehicle is damaged in transit
31 and the carrier or the means of transportation is designated

1 by the manufacturer or whenever a motor vehicle is otherwise
2 damaged before delivery to the dealer, the dealer shall:

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

7 b. Request from the manufacturer authorization to
8 replace the components, parts, and accessories damaged or to
9 otherwise repair the damage.

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11 Nothing in this section relieves a dealer's obligation to
12 cooperate with the manufacturer as necessary on filing any
13 transportation damage claim with the carrier.

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 damaged motor vehicle for which notice must
19 be given under paragraph (a) or to a motor vehicle damaged in
20 transit to the dealer when the carrier is designated by the
21 manufacturer.

22 (d)1. If the dealer determines the method of
23 transportation, the risk of loss passes to the dealer upon
24 delivery of a motor vehicle to the carrier.

25 2. In every other instance, the risk of loss remains
26 with the manufacturer until the dealer or his designee accepts
27 the motor vehicle from the carrier.

28 (e) If the manufacturer refuses or fails to authorize
29 repair of any damage within 10 business days after receiving
30 notification given under this section or within any additional
31 time as specified in the franchise agreement, ownership of the

1 motor vehicle shall revert to the manufacturer, and the dealer
2 shall have no obligation, financial or otherwise, with respect
3 to the motor vehicle, except that the manufacturer may elect
4 to repurchase the motor vehicle from the dealer or provide
5 reasonable and adequate compensation to the dealer to assist
6 in selling or disposing of the vehicle, as long as the dealer
7 has complied with all other contractual agreements with regard
8 to damaged vehicles. If the manufacturer repurchases the motor
9 vehicle, the dealer shall have no obligation, financial or
10 otherwise, with respect to the motor vehicle.

11 (3) RESPONSIBILITIES OF DEALER.--A dealer shall
12 disclose, in writing, to the purchaser, including a purchaser
13 for resale, of a motor vehicle, damage and repair to the motor
14 vehicle which is known to the dealer, before entering into a
15 sales contract, if the cost of repairing the damage, excluding
16 the cost of replacing replacement items if identical
17 manufacturer's original equipment was used, exceeds the
18 threshold amount. The purchaser must provide written
19 acknowledgement that he or she has received the disclosure.

20 (4) CONSUMER REMEDIES.--

21 (a)1. A motor vehicle purchaser may file an action to
22 recover damages caused by a violation of the disclosure
23 requirements of this section. The court shall award a
24 purchaser who prevails in such action the amount of any
25 pecuniary loss, litigation costs, reasonable attorney's fees,
26 and appropriate equitable relief.

27 2. An action brought under this section must be
28 commenced within 1 year after the discovery of the damage or
29 within 1 year after the time discovery reasonably should have
30 been made by the purchaser.

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1 3. This section does not preclude a motor vehicle
2 purchaser from pursuing other rights or remedies under any
3 law, including an action under chapter 681.

4 (b) Failure to disclose any repaired damage that must
5 be disclosed and that is within the knowledge of the selling
6 dealer constitutes grounds for rescission of the sales
7 contract, provided that, within 30 days after the purchase,
8 the motor vehicle is returned to the dealer with an
9 accompanying written notice of the grounds for rescission. In
10 case of rescission under this paragraph, the dealer shall
11 accept the motor vehicle and refund any payments made to the
12 dealer in connection with the transaction, less a reasonable
13 allowance for the purchaser's use of the motor vehicle as
14 defined in s. 681.102(20). If the purchaser elects to proceed
15 under this paragraph, it shall be the purchaser's exclusive
16 remedy.

17 (c) If disclosure is not required under this section,
18 a purchaser may not rescind a sales contract or bring a civil
19 action against the dealer or manufacturer based solely upon
20 the fact that the new motor vehicle was damaged and repaired
21 before completion of the sale.

22 Section 2. Paragraph (n) of subsection (9) of section
23 320.27, Florida Statutes, is amended to read:

24 320.27 Motor vehicle dealers.--

25 (9) DENIAL, SUSPENSION, OR REVOCATION.--The department
26 may deny, suspend, or revoke any license issued hereunder or
27 under the provisions of s. 320.77 or s. 320.771, upon proof
28 that a licensee has failed to comply with any of the following
29 provisions with sufficient frequency so as to establish a
30 pattern of wrongdoing on the part of the licensee:

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1 (n) Failure to disclose damage to a new motor vehicle
2 as defined in s. 320.60(10) as required in s. 501.98 ~~of which~~
3 ~~the dealer had actual knowledge if the dealer's actual cost of~~
4 ~~repair, excluding tires, bumpers, and glass, exceeds 3 percent~~
5 ~~of the manufacturer's suggested retail price; provided,~~
6 ~~however, if only the application of exterior paint is~~
7 ~~involved, disclosure shall be made if such touch-up paint~~
8 ~~application exceeds \$100.~~

9 Section 3. The Division of Statutory Revision is
10 requested to designate section 501.98, Florida Statutes, as
11 created by section 1 of this act, part VI of chapter 501,
12 Florida Statutes.

13 Section 4. This act shall take effect July 1, 1998.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 SB 1104

4 The committee substitute assigns the previously unnumbered
5 sections to a newly created section within Ch. 501, F.S. The
6 committee substitute revises the threshold amount for damage
7 disclosure from 3 percent of the manufacturer's suggested
8 retail price, to 3 percent of the manufacturer's suggested
9 retail price or \$500, whichever is greater, excluding
10 replacement items.

11 The committee substitute expands the number of items that are
12 considered replacement items (exempt from disclosure
13 requirement, provided that they are replaced with identical
14 manufacturer's original equipment) to include
15 readily-detachable components that are not structural in
16 nature. Examples include exterior illumination units, grilles,
17 sunroofs, external mirrors, and external body cladding.

18 The committee substitute specifies that replacement items must
19 be replaced by identical manufacturer's original equipment.
20 The committee substitute also provides that dealers must
21 notify the manufacturer of damage within 7 business days.

22 The committee substitute provides that this section does not
23 preclude a consumer from other rights or remedies, and
24 specifically cites the New Motor Vehicle Warranty Act (Lemon
25 Law).

26 The committee substitute provides that failure to make the
27 disclosures required under this section constitutes the basis
28 for denial, suspension, or revocation of a motor vehicle
29 dealer license.

30 The committee substitute provides that an action under this
31 section must be brought within 1 year of the discovery of the
32 damage.