

By the Committees on Commerce and Economic Opportunities,
Transportation and Senator Campbell

310-2021-98

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; requesting specific
13 designation of certain newly created provisions
14 in the Florida Statutes; providing an effective
15 date.

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

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19 Section 1. Section 501.98, Florida Statutes, is
20 created to read:

21 501.98 New motor vehicle damage; disclosure;
22 repairs.--

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

24 (a) "Dealer" means a motor vehicle dealer as defined
25 in s. 320.60.

26 (b) "Manufacturer" means a manufacturer as defined in
27 s. 320.60.

28 (c) "Manufacturer's suggested retail price" means the
29 retail price of a new motor vehicle suggested by the
30 manufacturer, including the retail delivered price suggested
31 by the manufacturer for each accessory or item of optional

1 equipment physically attached to the new motor vehicle at the
2 time it is delivered to the motor vehicle dealer.

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

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

13 (f) "Threshold amount" means 3 percent of the
14 manufacturer's suggested retail price of a motor vehicle or
15 \$650, whichever is less, based upon the actual cost of repair
16 to the vehicle.

17 (2) RESPONSIBILITIES OF MANUFACTURER.--

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

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

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

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

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

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

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

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

19 2. Fail to compensate any dealer for repairs effected
20 by the dealer to a damaged motor vehicle for which notice must
21 be given under paragraph (a) or to a motor vehicle damaged in
22 transit to the dealer when the carrier is designated by the
23 manufacturer.

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

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

30 (e) If the manufacturer refuses or fails to authorize
31 repair of any damage within 10 business days after receiving

1 notification given under this section or within any additional
2 time as specified in the franchise agreement, ownership of the
3 motor vehicle shall revert to the manufacturer, and the dealer
4 shall have no obligation, financial or otherwise, with respect
5 to the motor vehicle, except that the manufacturer may elect
6 to repurchase the motor vehicle from the dealer or provide
7 reasonable and adequate compensation to the dealer to assist
8 in selling or disposing of the vehicle, as long as the dealer
9 has complied with all other contractual agreements with regard
10 to damaged vehicles. If the manufacturer repurchases the motor
11 vehicle, the dealer shall have no obligation, financial or
12 otherwise, with respect to the motor vehicle.

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

22 (4) CONSUMER REMEDIES.--

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

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

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

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

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

24 Section 2. The Division of Statutory Revision is
25 requested to designate section 501.98, Florida Statutes, as
26 created by section 1 of this act, part VI of chapter 501,
27 Florida Statutes.

28 Section 3. This act shall take effect July 1, 1998.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
CS Senate Bill 1104

The committee substitute for Committee Substitute for SB 1104:

Changes the threshold amount of certain damage repair costs, above which such damage and repair must be disclosed, to \$650 or 3 percent of the suggested retail price, whichever is less (from \$500 or 3 percent, whichever is greater); and

Removes from the measure the conforming revisions to s. 320.27(9)(n), F.S., providing that failure to comply with proposed dealer disclosure requirements with sufficient frequency may provide grounds for the Department of Highway Safety and Motor Vehicles to deny, suspend, or revoke a motor vehicle dealer's license.