

By Senator Bronson

18-716A-00

See HB

1 A bill to be entitled
2 An act relating to motor vehicle damage
3 disclosure; creating pt. VI of ch. 501, F.S.;
4 consisting of s. 501.98, F.S.; providing
5 definitions; prescribing the duty of motor
6 vehicle manufacturers and dealers to disclose
7 and repair certain damage to motor vehicles;
8 apportioning liability for certain damage and
9 repairs; prescribing duties of dealers with
10 respect to cooperation with manufacturers;
11 providing remedies for purchasers of damaged
12 motor vehicles, including injunctive relief and
13 attorney's fees; amending s. 320.27, F.S.;
14 revising provisions relating to denial,
15 suspension, or revocation of a motor vehicle
16 dealer's license; providing penalties;
17 providing an effective date.

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

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21 Section 1. Part VI of chapter 501, Florida Statutes,
22 consisting of section 501.98, is created to read:

23 PART VI

24 NEW MOTOR VEHICLE DAMAGE DISCLOSURE

25
26 501.98 New motor vehicle damage; disclosure;
27 repairs.--

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

29 (a) "Dealer" means a motor vehicle dealer as defined
30 in s. 320.27.

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1 (b) "Manufacturer" means a manufacturer as defined in
2 s. 320.60.

3 (c) "Manufacturer's suggested retail price" means the
4 retail price of a new motor vehicle suggested by the
5 manufacturer set forth in 15 U.S.C. s. 1231, including the
6 retail delivered price suggested by the manufacturer for each
7 accessory or item of optional equipment physically attached to
8 the new motor vehicle at the time it is delivered to the motor
9 vehicle dealer.

10 (d) "Motor vehicle" means any new automobile or light
11 truck the equitable or legal title to which has never been
12 transferred by a manufacturer, distributor, importer, or
13 dealer to an ultimate purchaser. The term does not include
14 medium or heavy duty trucks with a gross vehicle weight of
15 14,001 pounds or more.

16 (e) "Replacement item" means a tire, a bumper, bumper
17 fascia, glass, in-dashboard equipment, or any readily
18 detachable component that is not structural in nature,
19 including, but not limited to, exterior illumination units,
20 grilles, sunroofs, external mirrors, and external body
21 cladding.

22 (f) "Threshold amount" means 3 percent of the
23 manufacturer's suggested retail price of a motor vehicle or
24 \$650, whichever is less, excluding the replacement items in
25 (1)(e), based upon the actual cost of repair to the vehicle.

26 (2) RESPONSIBILITIES OF MANUFACTURER.--

27 (a) A manufacturer shall disclose, in writing, to a
28 dealer at the time of delivery of a motor vehicle, damage and
29 repair to the motor vehicle which is known to the manufacturer
30 and which occurred at any time after the manufacturing process
31 is complete, but before delivery of the vehicle to the dealer,

1 if the cost of repairing the damage, excluding the cost of
2 replacing replacement items if identical manufacturer's
3 original equipment was used, exceeds the threshold amount.

4 (b)1. Notwithstanding the terms of any franchise
5 agreement, the manufacturer is liable for any and all damage
6 to a motor vehicle which is actually known to the manufacturer
7 and which occurred at any time after the manufacturing process
8 is complete, but before delivery to the dealer.

9 2. Whenever a new motor vehicle is damaged in transit
10 or otherwise damaged before delivery to the dealer, the dealer
11 shall:

12 a. Notify the manufacturer, or the manufacturer's
13 transportation agent, of the damage within 7 business days
14 after the date the vehicle is delivered to the dealer; and

15 b. Request from the manufacturer, or the
16 manufacturer's transportation agent, authorization to replace
17 the components, parts, and accessories damaged or to otherwise
18 repair the damage.

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20 Nothing in this section relieves the dealer's obligation to
21 cooperate with the manufacturer as necessary on filing any
22 transportation damage claim with the manufacturer's
23 transportation agent.

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

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

27 2. Fail to compensate, or provide for compensation by
28 the manufacturer's transportation agent, any dealer for
29 repairs effected by the dealer to a damaged motor vehicle or
30 to a motor vehicle damaged in transit to the dealer.

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1 (d) If the manufacturer, or the manufacturer's
2 transportation agent, refuses or fails to authorize repair of
3 any damage within 10 business days after receiving
4 notification given under this section, ownership of the motor
5 vehicle shall revert to the manufacturer, and the dealer shall
6 have no obligation, financial or otherwise, with respect to
7 the motor vehicle. If the damage exceeds the threshold amount
8 in (1)(f), the manufacturer may elect to repurchase the motor
9 vehicle from the dealer or provide reasonable and adequate
10 compensation to the dealer to assist in selling the vehicle.
11 If the manufacturer repurchases the motor vehicle, the dealer
12 shall have no obligation, financial or otherwise, with respect
13 to the motor vehicle.

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

23 (4) CONSUMER REMEDIES.--

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

30 2. An action brought under this section must be
31 commenced within 1 year after the discovery of the damage or

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 actual knowledge of the
8 selling 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 or financial institution in connection with the
15 transaction, less a reasonable allowance for the purchaser's
16 use of the motor vehicle as defined in s. 681.102(20). If the
17 purchaser elects to proceed under this paragraph, it shall be
18 the purchaser's exclusive 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. Paragraph (n) of subsection (9) of section
25 320.27, Florida Statutes, is amended to read:

26 320.27 Motor vehicle dealers.--

27 (9) DENIAL, SUSPENSION, OR REVOCATION.--The department
28 may deny, suspend, or revoke any license issued hereunder or
29 under the provisions of s. 320.77 or s. 320.771, upon proof
30 that a licensee has failed to comply with any of the following
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1 provisions with sufficient frequency so as to establish a
2 pattern of wrongdoing on the part of the licensee:
3 (n) Failure to disclose damage to a new motor vehicle
4 as defined in s. 320.60(10) as required under s. 501.98 of
5 ~~which the dealer had actual knowledge if the dealer's actual~~
6 ~~cost of repair, excluding tires, bumpers, and glass, exceeds 3~~
7 ~~percent of the manufacturer's suggested retail price;~~
8 ~~provided, however, if only the application of exterior paint~~
9 ~~is involved, disclosure shall be made if such touch-up paint~~
10 ~~application exceeds \$100.~~

11 Section 3. This act shall take effect July 1, 2000.

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14 HOUSE SUMMARY

15 Provides for the duty of motor vehicle manufacturers and
16 dealers to disclose and to repair certain damages to new
17 motor vehicles. Provides remedies, including injunctive
18 relief and the award of attorney's fees. Revises
19 provisions relating to denial, suspension, or revocation
20 of a motor vehicle dealer's license. See bill for
21 details.
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