

By the Committee on Transportation and Senator Bronson

306-1823A-00

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

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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, but does not include a motor vehicle auction as  
31 defined in s. 320.27(1)(c)4.

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. 1232, including the  
6 retail delivery 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 truck  
11 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 motor vehicles with a gross vehicle weight of 14,001 pounds or  
15 more.

16           (e) "Replacement item" means a tire, a bumper, bumper  
17 fascia, glass, in-dashboard equipment, seats or upholstery  
18 covers or trim, or any readily detachable component that is  
19 not structural in nature, including, but not limited to,  
20 exterior illumination units, grilles, sunroofs, external  
21 mirrors, and external body 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 paragraph (e) which are original vehicle manufacturer  
26 equipment.

27           (2) RESPONSIBILITIES OF MANUFACTURER.--

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

1 manufacturing process was completed, but before delivery of  
2 the vehicle to the dealer, if the cost of repairing the damage  
3 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 was 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, in writing, of the damage within 3  
14 business days after the date the vehicle is delivered to the  
15 dealer; and

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

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

25 (c) It is unlawful for any manufacturer to fail to  
26 compensate, or provide compensation by the manufacturer's  
27 transportation agent to, any dealer for repairs effected by  
28 the dealer to a damaged motor vehicle or to a motor vehicle  
29 damaged in transit or otherwise damaged before delivery to the  
30 dealer, provided that written authorization is given to the  
31 dealer by the manufacturer.

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 exceeds the threshold amount. For purposes of this  
20 subsection, the threshold amount shall be calculated at the  
21 rate of the dealer's authorized warranty rate for labor and  
22 parts. The disclosure must be acknowledged by the purchaser  
23 in writing on a form presented by the dealer. The dealer  
24 shall retain a copy of the acknowledgement for his or her  
25 records.

26           (4) CONSUMER REMEDIES.--

27           (a) If disclosure is required under this section and  
28 the motor vehicle dealer fails to make the required  
29 disclosure, a purchaser either may seek recovery of damages  
30 under subparagraph 1. or, if within 30 days from the date of  
31 purchase, may rescind the sales contract under subparagraph 2.

1           1. In an action to recover damages under this  
2 paragraph, the court shall award a purchaser who prevails in  
3 such action the amount of any pecuniary loss, litigation  
4 costs, and reasonable attorney's fees. The action must be  
5 commenced within 1 year after the discovery of the damage or  
6 within 1 year after the time discovery reasonably should have  
7 been made by the purchaser. A motor vehicle purchaser seeking  
8 recovery of damages under this paragraph is not precluded from  
9 pursuing remedies available under any other law, including  
10 remedies available under chapter 681; or

11           2. To rescind the sales contract, the buyer must  
12 return the motor vehicle to the dealer within 30 days from the  
13 date of purchase with an accompanying written notice of the  
14 grounds for rescission. The dealer shall accept the motor  
15 vehicle and refund any payments made to the dealer or  
16 financial institution in connection with the transaction, less  
17 a reasonable allowance for the purchaser's use of the motor  
18 vehicle as defined in s. 681.102(20).

19           (b) If disclosure is not required under this section,  
20 a purchaser may not bring a civil action against the dealer or  
21 manufacturer or rescind a sales contract based solely upon the  
22 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.

12  
13 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
14 COMMITTEE SUBSTITUTE FOR  
15 SB 938

16 The CS excludes auctions from the definition of the word  
17 "dealer."

18 The CS includes seats, upholstery and covers or trim in the  
19 definition of "replacement items."

20 The CS requires the dealer to notify the manufacturer, in  
21 writing, of any damage within three days.

22 The CS provides the threshold amount for purposes of dealer  
23 disclosure is calculated at the rate of the dealer's  
24 authorized warranty rate for labor and parts. The disclosure  
25 must be in writing and the buyer must acknowledge receipt of  
26 the disclosure in writing, and the dealer must retain a copy  
27 of the acknowledgment for his or her records.