

By the Committees on Judiciary, Transportation and Senator Bronson

308-2082A-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.

18  
19 Be It Enacted by the Legislature of the State of Florida:

20  
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, 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) "Threshold amount" means 3 percent of the  
17 manufacturer's suggested retail price of a motor vehicle or  
18 \$650, whichever is less.

19           (2) RESPONSIBILITIES OF MANUFACTURER.--

20           (a) A manufacturer shall disclose, in writing, to a  
21 dealer at the time of delivery of a motor vehicle, damage and  
22 repair to the motor vehicle which is actually known to the  
23 manufacturer and which occurred at any time after the  
24 manufacturing process was completed, but before delivery of  
25 the vehicle to the dealer, if the cost of repairing the  
26 damage, including diminution in value, exceeds the threshold  
27 amount.

28           (b)1. Notwithstanding the terms of any franchise  
29 agreement, the manufacturer is liable for any and all damage  
30 to a motor vehicle which is actually known to the manufacturer  
31

1 and which occurred at any time after the manufacturing process  
2 was complete, but before or during delivery to the dealer.

3 2. Whenever a new motor vehicle is damaged in transit  
4 or otherwise damaged before delivery to the dealer, the dealer  
5 shall:

6 a. Notify the manufacturer, or the manufacturer's  
7 transportation agent, in writing, of the damage within 3  
8 business days after the date the vehicle is delivered to the  
9 dealer; and

10 b. Request from the manufacturer, or the  
11 manufacturer's transportation agent, in writing, authorization  
12 to replace the components, parts, and accessories damaged or  
13 to otherwise repair the damage.

14  
15 Nothing in this section relieves the dealer's obligation to  
16 cooperate with the manufacturer as necessary on filing any  
17 transportation damage claim with the manufacturer's  
18 transportation agent.

19 (c) It is unlawful for any manufacturer to fail to  
20 compensate, or provide compensation by the manufacturer's  
21 transportation agent to, any dealer for repairs effected by  
22 the dealer to a damaged motor vehicle or to a motor vehicle  
23 damaged in transit or otherwise damaged before delivery to the  
24 dealer, provided that written authorization is given to the  
25 dealer by the manufacturer. Compensation shall include:

26 1. The sum of any sublet for repairs or, if the dealer  
27 repairs the vehicle, the dealer's warrant rate for parts and  
28 labor; and

29 2. Diminution in value of the vehicle if the dealer is  
30 to retain and sell the vehicle by agreement between the dealer  
31 and 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 may either 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 only the amount of any pecuniary loss, litigation  
4 costs, and reasonable attorney's fees. The court shall not  
5 award damages for loss of use, lost profit, incidental damage,  
6 or any other claim. The action must be commenced within 1 year  
7 after the discovery of the damage or within 1 year after the  
8 time discovery reasonably should have been made by the  
9 purchaser, but in no event shall the action be brought more  
10 than 2 years or 30,000 miles after delivery of the vehicle to  
11 the purchaser. A motor vehicle purchaser seeking recovery of  
12 damages under this section is not precluded from pursuing  
13 remedies available under any other law, including remedies  
14 available under chapter 681; or

15           2. To rescind the sales contract, the buyer must  
16 return the motor vehicle to the dealer within 30 days from the  
17 date of purchase with an accompanying written notice of the  
18 grounds for rescission. The dealer shall accept the motor  
19 vehicle and refund any payments made to the dealer or  
20 financial institution in connection with the transaction, less  
21 a reasonable allowance for the purchaser's use of the motor  
22 vehicle based upon the mileage attributable to the consumer as  
23 of the date of return of the motor vehicle to the dealer,  
24 multiplied by the purchase price of the vehicle and divided by  
25 120,000. The dealer shall also pay off the balance of any loan  
26 due to the lienholder as of the date the vehicle is returned  
27 and any costs for early lease termination.

28           (b) If disclosure is not required under this section,  
29 the purchaser may not bring a civil action against the dealer  
30 or manufacturer for damages or rescind a sales contract as  
31 provided in subsection (4) based solely upon the fact that the

1 new motor vehicle was damaged and repaired before completion  
2 of the sale.

3 Section 2. Paragraph (n) of subsection (9) of section  
4 320.27, Florida Statutes, is amended to read:

5 320.27 Motor vehicle dealers.--

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

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

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

1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2                   COMMITTEE SUBSTITUTE FOR  
3                   CS/SB 938

4     The bill addresses circumstances where a new motor vehicle is  
5     damaged after it has been manufactured but before the vehicle  
6     is delivered to a dealer for sale.

7     The CS for CS removes from the bill the definition of  
8     "replacement parts" which were parts of the vehicle not  
9     included in determining the dollar amount of damage to the  
10    vehicle for purposes of determining when damage had to be  
11    disclosed by the manufacturer to the dealer and by the dealer  
12    to the purchaser.

13    The period for which the manufacturer must disclose damage to  
14    the dealer is amended to include damage during delivery as  
15    well as prior to delivery. The definition of damage for  
16    purposes of the threshold that requires disclosure is amended  
17    to include diminution in value of the vehicle in addition to  
18    the cost of repairs.

19    The amount the court may award a buyer who prevails in an  
20    action to recover damages is limited to only the amount of any  
21    pecuniary loss, litigation costs and reasonable attorney's  
22    fees. The court is prohibited from awarding damages for loss  
23    of use, lost profit, incidental damages, or other claims.

24    The CS for CS provides that an action under the bill may not  
25    be brought more than 2 years or 30,000 miles after purchase of  
26    the vehicle.

27    When a vehicle is returned to a dealer for failure to  
28    disclose, a definition is provided to determine the reasonable  
29    allowance for the purchaser's use of the motor vehicle during  
30    the period prior to the time the vehicle is returned to the  
31    dealer.

32    The bill further limits the right of a purchaser to bring an  
33    action under the bill if the dealer is not required to  
34    disclose the damage because it is less than the threshold  
35    amount.