

By Representative Bense

1 A bill to be entitled
2 An act relating to motor vehicles dealers;
3 providing definitions; prohibiting certain
4 unfair or deceptive acts by such dealers;
5 providing for the award of attorney's fees and
6 court costs; repealing s. 320.27(9)(n), F.S.;
7 relating to licensure sanctions for dealers who
8 fail to disclose certain new vehicle damages to
9 a purchaser; providing application; providing
10 an effective date.

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

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14 Section 1. Definitions.--As used in this act, the
15 term:

16 (1) "Customer" includes a customer's designated agent.

17 (2) "Dealer" means a motor vehicle dealer as defined
18 in section 320.27, Florida Statutes, but does not include a
19 motor vehicle auction as defined in section 320.27(1)(c)4.,
20 Florida Statutes.

21 (3) "Replacement item" means a tire, bumper, bumper
22 fascia, glass, in-dashboard equipment, seat or upholstery
23 cover or trim, exterior illumination unit, grill, sunroof,
24 external mirror, and external body cladding. The replacement
25 of up to three of these items does not constitute repair of
26 damage if each item is replaced because of a product defect or
27 damaged due to vandalism while the vehicle is under the
28 control of the dealer and the items are replaced with original
29 manufacturer equipment, unless an item is replaced due to a
30 crash, collision, or accident.

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1 (4) "Threshold amount" means 3 percent of the
2 manufacturer's suggested retail price of a motor vehicle or
3 \$650, whichever is less.

4 (5) "Vehicle" means a new motor vehicle as defined in
5 section 320.60(10), Florida Statutes.

6 Section 2. (1) It is an unfair or deceptive act or
7 practice, actionable under the Florida Deceptive and Unfair
8 Trade Practices Act, for a dealer to:

9 (a) Represent directly or indirectly that a motor
10 vehicle is a factory executive vehicle or executive vehicle
11 unless such vehicle was purchased directly from the
12 manufacturer or a subsidiary of the manufacturer and the
13 vehicle was used exclusively by the manufacturer, its
14 subsidiary, or a dealer for the commercial or personal use of
15 the manufacturer's, subsidiary's, or dealer's employees.

16 (b) Represent directly or indirectly that a vehicle is
17 a demonstrator unless the vehicle was driven by prospective
18 customers of a dealership selling the vehicle and such vehicle
19 complies with the definition of a demonstrator in section
20 320.60(11), Florida Statutes.

21 (c) Represent the previous usage or status of a
22 vehicle to be something that it was not, or make usage or
23 status representations unless the dealer has correct
24 information regarding the history of the vehicle to support
25 the representations.

26 (d) Represent the quality of care, regularity of
27 servicing, or general condition of a vehicle unless known by
28 the dealer to be true and supportable by material fact.

29 (e) Represent orally or in writing that a particular
30 vehicle has not sustained structural or substantial skin
31 damage unless the statement is made in good faith and the

1 vehicle has been inspected by the dealer or his agent to
2 determine whether the vehicle has incurred such damage.
3 (f) Sell a vehicle without fully and conspicuously
4 disclosing in writing at or before the consummation of sale
5 any warranty or guarantee terms, obligations, or conditions
6 that the dealer or manufacturer has given to the buyer. If the
7 warranty obligations are to be shared by the dealer and the
8 buyer, the method of determining the percentage of repair
9 costs to be assumed by each party must be disclosed. If the
10 dealer intends to disclaim or limit any expressed or implied
11 warranty, the disclaimer must be in writing in a conspicuous
12 manner and in laymen's terms in accordance with chapter 672,
13 Florida Statutes, and the "Magnuson-Moss Warranty - Federal
14 Trade Commission Improvement Act."
15 (g) Provide an express or implied warranty and faith
16 to honor such warranty unless properly disclaimed pursuant to
17 paragraph (f).
18 (h) Misrepresent warranty coverage, application
19 period, or any warranty transfer cost or conditions to a
20 customer.
21 (i) Obtain signatures from a customer on contracts
22 that are not fully completed at the time the customer signs or
23 which do not reflect accurately the negotiations and agreement
24 between the customer and the dealer.
25 (j) Require or accept a deposit from a prospective
26 customer prior to entering into a binding contract for the
27 purchase and sale of a vehicle unless the customer is given a
28 written receipt that states how long the dealer will hold the
29 vehicle from other sale and the amount of the deposit, and
30 clearly and conspicuously states whether and upon what
31 conditions the deposit is refundable or nonrefundable.

1 (k) Add to the cash price of a vehicle as defined in
2 section 520.02(6), Florida Statutes, any fee or charge other
3 than those provided in that section and in section 3D-50.01,
4 Florida Administrative Code. All fees or charges permitted to
5 be added to the cash price by section 3D-50.01, Florida
6 Administrative Code, must be fully disclosed to customers in
7 all binding contracts concerning the vehicle's selling price.

8 (l) Alter or change the odometer mileage of a vehicle.

9 (m) Sell a vehicle without disclosing to the customer
10 the actual year and model of the vehicle.

11 (n) File a lien against a new vehicle purchased with a
12 check unless the dealer fully discloses to the purchaser that
13 a lien will be filed if purchase is made by check and fully
14 discloses to the buyer the procedures and cost to the buyer
15 for gaining title to the vehicle after the lien is filed.

16 (o) Increase the price of the vehicle after having
17 accepted an order of purchase or a contract from a buyer,
18 notwithstanding subsequent receipt of an official price change
19 notification. The price of a vehicle may be increased after a
20 dealer accepts an order of purchase or a contract from a buyer
21 if:

22 1. A trade-in vehicle is reappraised because it
23 subsequently is damaged, or parts or accessories are removed;

24 2. The price increase is caused by the addition of new
25 equipment, as required by state or federal law;

26 3. The price increase is caused by the revaluation of
27 the U.S. dollar by the Federal Government, in the case of a
28 foreign-made vehicle;

29 4. The price increase is caused by state or federal
30 tax rate changes; or

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1 5. Price protection is not provided by the
2 manufacturer, importer, or distributor.

3 (p) Advertise the price of a vehicle unless the
4 vehicle is identified by year, make, model, and a commonly
5 accepted trade, brand, or style name. The advertised price
6 must include all fees or charges that the customer shall pay,
7 including freight or destination charge, dealer preparation
8 charge, and charges for undercoating or rustproofing. State
9 and local taxes, tags, registration fees, and title fees,
10 unless otherwise required by local law or standard, need not
11 be disclosed in the advertisement. When two or more dealers
12 advertise jointly, with or without participation of the
13 franchiser, the advertised price need not include fees and
14 charges that are variable among the individual dealers
15 cooperating in the advertisement, but the nature of all
16 charges that are not included in the advertised price shall be
17 disclosed in the advertisement.

18 (q) Charge a customer for any pre-delivery service
19 required by the manufacturer, distributor, or importer for
20 which the dealer is reimbursed by the manufacturer,
21 distributor, or importer.

22 (r) Charge a customer for any pre-delivery service
23 without having printed on all documents that include a line
24 item for pre-delivery service the following disclosure: "This
25 charge represents costs and profit to the dealer for items
26 such as inspecting, cleaning, and adjusting vehicles, and
27 preparing documents related to the sale."

28 (s) Fail to disclose damage to a new motor vehicle, of
29 which the dealer had actual knowledge, if the dealer's actual
30 cost of repairs exceeds the threshold amount, excluding
31 replacement items.

1 (2)(a) If a vehicle is available for physical
2 inspection by a potential purchaser, the dealer may attach a
3 conspicuous label to the window specifying any charge for
4 pre-delivery services and describing the charges as
5 pre-delivery services, delivery and handling, dealer
6 preparation, or in similar terms the dealer's charge for each
7 dealer installed option, and a total price line.

8 (b) A dealer that discloses the pre-delivery service
9 charge as described in paragraph (a) may not add an additional
10 charge for pre-delivery service on any sales documents.

11 Section 3. (1) In any civil litigation resulting from
12 an act or practice involving a violation of this act, the
13 prevailing party, after judgment in the trial court and
14 exhaustion of any appeal, may receive reasonable attorney's
15 fees and costs from the nonprevailing party.

16 (2) The attorney for the prevailing party shall submit
17 a sworn affidavit of the time spent on the case and costs
18 incurred for all the motions, hearings, and appeals to the
19 trial judge who presided over the civil case.

20 (3) The trial judge may award the prevailing party
21 reasonable costs incurred in the action plus a reasonable
22 legal fee for the hours spent as sworn to in an affidavit. In
23 evaluating the reasonableness of the fee, the trial judge
24 shall take into consideration the amount of compensatory
25 damages in relation to the time spent.

26 (4) Any award of attorney's fees or costs shall become
27 a part of the judgement and subject to execution pursuant to
28 law.

29 (5) In any civil litigation initiated by the enforcing
30 authority, the court may award to the prevailing party
31 reasonable attorney's fees and costs if the court finds a

1 complete absence of a justifiable issue of law or fact raised
2 by the losing party or if the court finds bad faith on the
3 part of the losing party.

4 (6) In any administrative proceeding or other
5 nonjudicial action initiated by an enforcing authority, the
6 attorney for the enforcing authority may certify by sworn
7 affidavit the number of hours and cost thereof to the
8 enforcing authority for the time spent in the investigation
9 and litigation of the case, plus cost reasonably incurred in
10 the action. Payment to the enforcing authority of such costs
11 may be made, by stipulation of the parties, a part of the
12 final order or decree disposing of the matter. The affidavit
13 must be attached to and becomes a part of such order.

14 Section 4. Paragraph (n) of subsection (9) of section
15 320.27, Florida Statutes, is repealed.

16 Section 5. This act applies to any vehicle sold after
17 October 1, 2001.

18 Section 6. This act shall take effect October 1, 2001.

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21 SENATE SUMMARY

22 Prohibits certain acts by a motor vehicle dealer which
23 are defined as unfair or deceptive acts and provides for
24 the award of attorney's fees and court costs in actions
25 to enforce these provisions. Repeals a provision that
26 provides for licensure sanctions of motor vehicle dealers
27 who fail to disclose certain damage to new cars. (See
28 bill for details.)
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