

By Senator Latvala

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

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

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

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

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

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

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. 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           (1) 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 vehicle  
13 was used exclusively by the manufacturer, its subsidiary, or a  
14 dealer for the commercial or personal use of the  
15 manufacturer's, subsidiary's, or dealer's employees.

16           (2) 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           (3) 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           (4) 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           (5) 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 (6) 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 (7) Provide an express or implied warranty and faith  
16 to honor such warranty unless properly disclaimed pursuant to  
17 subsection (6).

18 (8) Misrepresent warranty coverage, application  
19 period, or any warranty transfer cost or conditions to a  
20 customer.

21 (9) 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 (10) 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           (11) 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           (12) Alter or change the odometer mileage of a  
9 vehicle.

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

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

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

24           (a) A trade-in vehicle is reappraised because it  
25 subsequently is damaged, or parts or accessories are removed;

26           (b) The price increase is caused by the addition of  
27 new equipment, as required by state or federal law;

28           (c) The price increase is caused by the revaluation of  
29 the U.S. dollar by the Federal Government, in the case of a  
30 foreign-made vehicle;

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1       (d) The price increase is caused by state or federal  
2 tax rate changes; or

3       (e) Price protection is not provided by the  
4 manufacturer, importer, or distributor.

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

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

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

30       (19) If a vehicle is available for physical inspection  
31 by a potential purchaser, the dealer may attach a conspicuous

1 label to the window specifying any charge for pre-delivery  
2 services and describing the charges as pre-delivery services,  
3 delivery and handling, dealer preparation, or in similar terms  
4 the dealer's charge for each dealer-installed option, and a  
5 total price line.

6 (20) A dealer that discloses the pre-delivery service  
7 charge as described in paragraph (19) may not add an  
8 additional charge for pre-delivery service on any sales  
9 documents.

10 (21) Fail to disclose damage to a new motor vehicle,  
11 of which the dealer had actual knowledge, if the dealer's  
12 actual cost of repairs exceeds the threshold amount, excluding  
13 replacement items.

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

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

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

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

