

Bill No. SB 2240

Amendment No. Barcode 495538

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
---------------	----------------	--------------

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

.
.
.
.
.

Senators Lawson and Garcia moved the following amendment:

Senate Amendment (with title amendment)

On page 33, between lines 6 and 7,

insert:

Section 27. Short title.--Sections 27-39 of this act may be cited as the "Used Motor Vehicle Warranty Act."

Section 28. Legislative intent.--The Legislature recognizes that the procurement of a used motor vehicle is a major consumer purchase and that a defective used motor vehicle undoubtedly creates a hardship for the consumer. The Legislature recognizes that a dealer has superior knowledge about the structural and mechanical condition of a used motor vehicle which a consumer relies upon when purchasing such vehicle. The Legislature also recognizes that a dealer has superior knowledge of the warranty terms arising from the sale of a used motor vehicle which a consumer relies upon when purchasing such vehicle. It is the intent of the Legislature to provide minimum warranty rights to consumers who purchase used motor vehicles from dealers in this state. It is further

Bill No. SB 2240

Amendment No. ____ Barcode 495538

1 the intent of the Legislature that a consumer receive a
2 comparable motor vehicle or a full refund when a good faith
3 warranty complaint cannot be resolved within a specified
4 period of time. However, this act does not limit or expand the
5 rights or remedies that are otherwise available to a consumer
6 under any other law.

7 Section 29. Definitions.--As used in this act, the
8 term:

9 (1) "Collateral expenses" means those additional
10 expenses incurred by the consumer as a result of acquiring the
11 motor vehicle, and all earned finance and credit charges
12 incurred by the consumer.

13 (2) "Comparable motor vehicle" means, with respect to
14 a replacement motor vehicle, a used motor vehicle similar or
15 equivalent in price to the price for which the replaced motor
16 vehicle was purchased.

17 (3) "Consumer" means any person who is not a dealer as
18 defined in s. 320.27(1)(c), Florida Statutes, excluding any
19 person who has purchased a leased vehicle as a result of the
20 exercise of a purchase option in a lease-purchase agreement
21 that has a lease term of 1 year or more.

22 (4) "Dealer" means a licensed motor vehicle dealer
23 licensed under s. 320.27(1)(c), Florida Statutes.

24 (5) "Department" means the Department of Legal
25 Affairs.

26 (6) "Incidental expenses" means those reasonable costs
27 incurred by the consumer which are directly caused by a defect
28 in or condition of the vehicle.

29 (7) "Motor vehicle" means a motor vehicle propelled by
30 power other than muscular power, which is sold in this state,
31 with a gross vehicle weight rating of less than 8,500 lbs.,

Bill No. SB 2240

Amendment No. Barcode 495538

1 but excludes recreational vehicles, motorcycles, mopeds,
2 traction engines, truck tractors, road rollers, trailers, and
3 semitrailers, off-road vehicles, and vehicles run only upon
4 tracks or water.

5 (8) "Purchase price" means the cash price as defined
6 in s. 520.31(1), Florida Statutes, inclusive of any net
7 allowance for a trade-in vehicle.

8 (9) "Reasonable offset for use" means an amount not
9 exceeding 10 cents per mile driven or 10 percent of the
10 purchase price, whichever is less.

11 (10) "Service contract" means a written contract to
12 perform, over a fixed period of time or for a specified
13 duration, services relating to the maintenance or repair, or
14 both, of a consumer product.

15 (11) "Used motor vehicle" means a used or secondhand
16 motor vehicle as defined in s. 320.60(13), Florida Statutes.

17 (12) "Warranty" means any undertaking in writing,
18 excluding a service contract, in connection with the sale by a
19 dealer of a used motor vehicle, to refund, repair, replace,
20 maintain, or take other action with respect to a used motor
21 vehicle and provided at no extra charge beyond the purchase
22 price, or any affirmation of fact or promise made by the
23 dealer in connection with the sale of a used motor vehicle to
24 a consumer upon which the consumer relied in entering into the
25 transaction.

26 Section 30. Express warranties.--

27 (1) Each contract entered into by a dealer for the
28 sale to a consumer of a used motor vehicle pursuant to this
29 act must include an express warranty, covering the full cost
30 of both parts and labor, that the vehicle is both structurally
31 and mechanically operational and sound and will remain so for

Bill No. SB 2240

Amendment No. ____ Barcode 495538

1 at least 60 days or 3,000 miles of operation, whichever period
2 ends first, but excluding routine maintenance items and damage
3 resulting from an accident or neglect or abuse of the vehicle
4 by the consumer, and that the dealer shall repair or replace
5 any defect or condition, or at the dealer's option, accept
6 return of the used motor vehicle from the consumer and replace
7 the vehicle with a comparable motor vehicle acceptable to the
8 consumer or provide a refund of the purchase price.

9 (2) An express warranty required pursuant to this
10 section may not contain language that attempts to exclude or
11 modify the consumer's remedy for breach of an express
12 warranty.

13 (3) A dealer may not limit a warranty required by this
14 section by the use of such phrases as "fifty-fifty," "labor
15 only," "drive train only," or other words attempting to
16 disclaim the dealer's responsibility.

17 (4) The consumer may waive a warranty required by this
18 section only as to a particular defect in the vehicle which
19 the dealer has disclosed to the consumer as being defective.
20 Such waiver is not effective unless the waiver:

21 (a) Is in writing.

22 (b) Is conspicuous and in plain language.

23 (c) Identifies the particular disclosed defect in the
24 vehicle for which such warranty is to be waived.

25 (d) Is signed by both the consumer and dealer prior to
26 sale.

27 (5) This section does not apply to:

28 (a) The sale of a used motor vehicle having a purchase
29 price of less than \$3,000; or

30 (b) The sale of a used motor vehicle with over 100,000
31 miles at the time of sale if the mileage is indicated in

Bill No. SB 2240

Amendment No. ____ Barcode 495538

1 writing at the time of sale.

2

3 If the true mileage of the vehicle is unknown, then only
4 paragraph (a) applies.

5 (6) Except as otherwise provided, the obligations of a
6 manufacturer under an express warranty issued by the
7 manufacturer are not diminished. The warranty created by this
8 section does not require a nonauthorized dealer to repair a
9 defect or condition if the defect or condition is covered by a
10 manufacturer's warranty, or the manufacturer otherwise agrees
11 to repair, unless the manufacturer or its agent refuses or is
12 unable to repair. Repairs by a manufacturer or dealer under
13 this subsection may be considered as repair attempts under
14 section 7.

15 Section 31. Duty of dealer.--

16 (1) A dealer or his agent shall honor any warranty
17 required by section 4 notwithstanding the fact that the
18 warranty period has expired, if the consumer notifies the
19 dealer of a defect or condition within the applicable warranty
20 period.

21 (2) If a dealer does not have a repair facility, the
22 dealer shall designate a reasonably accessible facility where
23 the vehicle must be taken for repair.

24 (3) If the defect or condition occurs at a location
25 that makes it impossible or unreasonable to return the vehicle
26 to the dealer, the consumer may have the repair completed
27 elsewhere with the consent of the dealer, which consent may
28 not be unreasonably withheld.

29 (4) If a dealer fails to provide the written warranty
30 as required by section 4, the dealer is deemed to have given
31 such warranty.

Bill No. SB 2240

Amendment No. Barcode 495538

1 (5) A dealer or the dealer's agent shall provide to
2 the consumer, each time a used motor vehicle is returned for
3 examination or repair under the warranty, a fully itemized,
4 legible statement or repair order indicating any test drive
5 performed and the approximate length of the test drive, any
6 diagnosis made, and all work performed on the vehicle,
7 including, but not limited to, a general description of the
8 problem reported by the consumer or an identification of the
9 defect or condition, parts and labor, the date, the odometer
10 reading when the motor vehicle was submitted for examination
11 or repair, and the date when the repair or examination was
12 completed.

13 (6) A dealer may not refuse any consumer the
14 opportunity to have an independent prepurchase inspection of
15 any used motor vehicle offered for sale. If the consumer
16 requests an inspection it shall be conducted by a person
17 chosen by the consumer, but the dealer may establish
18 reasonable conditions regarding the place, time, and extent of
19 the inspection.

20 Section 32. Extension of warranty term.--

21 (1) The term of any warranty required by section 4
22 shall be extended by any time period during which the used
23 motor vehicle is in the possession of the dealer or the
24 dealer's agent for the purpose of repairing the used motor
25 vehicle under the terms and obligations of the warranty.

26 (2) The term of the warranty shall be extended by any
27 time period during which the consumer has requested the dealer
28 or the dealer's agent to repair the vehicle under the terms
29 and provisions of the warranty and the repairs are not made or
30 replacement parts are not available.

31 (3) The term of any such warranty shall be extended by

Bill No. SB 2240

Amendment No. Barcode 495538

1 any time during which repair services are not available to the
2 consumer due to war, invasion, strike, fire, flood, or natural
3 disaster.

4 Section 33. Inability of the dealer to conform the
5 motor vehicle to the warranty.--

6 (1) If the dealer is unable to conform the motor
7 vehicle to the terms of the warranty by curing any defect or
8 condition that substantially impairs the use, value, or safety
9 of the vehicle after a reasonable number of attempts, the
10 dealer, at the dealer's option, shall either replace the motor
11 vehicle with a comparable motor vehicle acceptable to the
12 consumer, or refund to the consumer the purchase price and all
13 reasonably incurred collateral and incidental expenses, less a
14 reasonable offset for use. A refund shall be made to the
15 consumer and lienholder of record, if any, as their interests
16 may appear. Upon receipt of such refund or replacement, the
17 consumer or lienholder must furnish to the dealer clear title
18 to and possession of the motor vehicle. The Department of
19 Revenue shall refund to the dealer any sales tax which the
20 dealer refunded the consumer or lienholder under this section,
21 if the dealer provides to the Department of Revenue a written
22 request for a refund and evidence that the sales tax was paid
23 when the vehicle was purchased and that the dealer refunded
24 the sales tax to the consumer or lienholder.

25 (2) It shall be presumed that there has been a
26 reasonable opportunity to correct a defect or condition within
27 the term of the warranty as set forth under subsection (1) of
28 section 4 and section 6 if:

29 (a) The same defect or condition has been subject to
30 repair three or more times and such defect or condition
31 continues to exist; or

Bill No. SB 2240

Amendment No. Barcode 495538

1 (b) The vehicle has been out of service by reason of
2 repair for a cumulative total of 15 or more days.

3 Section 34. Consumer remedies.--

4 (1) Any violation of this act by a dealer for which a
5 consumer suffers any loss, constitutes a violation of chapter
6 320, Florida Statutes, for which a consumer may resort to the
7 provisions of s. 320.27, Florida Statutes, for relief.

8 (2) A consumer may file an action to recover damages
9 caused by a violation of this act. The court shall award a
10 consumer who prevails in such action damages, costs,
11 reasonable attorney's fees, and appropriate equitable relief.

12 If the consumer establishes that the dealer's failure to
13 comply with this chapter was willful, the judgment may include
14 a civil penalty which shall not exceed two times the amount of
15 actual damages.

16 (3) An action brought under this act must be commenced
17 within 6 months from the expiration of the warranty, or 1 year
18 from the date of purchase, whichever occurs later.

19 (4) This act does not prohibit a consumer from
20 pursuing other rights or remedies under any other law.

21 Section 35. Department duties.--

22 (1) The Department of Legal Affairs shall establish a
23 resource center which, at a minimum, shall include a toll-free
24 number which a consumer can contact for information concerning
25 the consumer's rights or to file a complaint under this act.

26 (2) The department shall prepare brochures and other
27 educational materials to be distributed to consumers informing
28 them of their rights and remedies under this act.

29 (3) The department may contract with an independent
30 entity to perform the services pursuant to this section.

31 Section 36. Bad faith claims.--Any claim by a consumer

Bill No. SB 2240

Amendment No. ____ Barcode 495538

1 which is found by the court to have been filed in bad faith or
2 solely for the purpose of harassment shall result in the
3 consumer being liable for costs and reasonable attorney's fees
4 incurred by the dealer, as a direct result of the bad faith
5 claim.

6 Section 37. Certain agreements void.--Except as
7 otherwise provided in this act, any agreement entered into by
8 a consumer that waives, limits, or disclaims the rights set
9 forth in this act is void as contrary to public policy.

10 Section 38. Unfair or deceptive trade practice.--A
11 violation by a dealer of this act is an unfair and deceptive
12 trade practice as defined in part II of chapter 501, Florida
13 Statutes.

14 Section 39. The Used Motor Vehicle Warranty Act
15 applies to used motor vehicles sold in this state on or after
16 January 1, 1999.

17 Section 40. Paragraphs (v), (w), and (x) are added to
18 subsection (9) of section 320.27, Florida Statutes, to read:

19 320.27 Motor vehicle dealers.--

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

26 (v) Any violation of the terms of the Used Motor
27 Vehicle Warranty Act.

28 (w) Failure to comply with a court decision rendered
29 pursuant to the Used Motor Vehicle Warranty Act, irrespective
30 of whether the failure occurs with sufficient frequency so as
31 to establish a pattern of wrongdoing on the part of the

Bill No. SB 2240

Amendment No. Barcode 495538

1 licensee.

2 (x) Failure to display the Buyer's Guide set forth in
3 Title 16, Code of Federal Regulations, Part 455.

4 Section 41. Fees.--A \$1 fee shall be collected by a
5 motor vehicle dealer from the consumer at the consummation of
6 the sale of a used motor vehicle. Such fees shall be remitted
7 to the county tax collector acting as agent for the
8 department. All fees shall be transferred to the Department
9 of Legal Affairs for deposit into the Motor Vehicle Warranty
10 Trust Fund.

11
12 (Redesignate subsequent sections.)

13
14
15 ===== T I T L E A M E N D M E N T =====

16 And the title is amended as follows:

17 On page 3, line 28, after the semicolon

18
19 insert:

20 creating the "Used Motor Vehicle Warranty Act";
21 providing legislative intent; providing
22 definitions; requiring express warranties with
23 respect to the sale of used motor vehicles;
24 providing exceptions; providing requirements
25 for used motor vehicle dealers in honoring
26 warranties; providing for extension of warranty
27 terms under certain circumstances; providing
28 for inability of dealer to conform the motor
29 vehicle to the warranty; providing certain
30 remedies; providing for duties of the
31 Department of Legal Affairs; providing for

Bill No. SB 2240

Amendment No. ____ Barcode 495538

1 establishment of resource center and toll-free
2 consumer number; providing liability for bad
3 faith claims; providing for application of the
4 Used Motor Vehicle Warranty Act; amending s.
5 320.27, F.S.; providing additional
6 circumstances under which the Department of
7 Highway Safety and Motor Vehicles may suspend
8 certain vehicle dealers' licenses; providing
9 for collection of a fee on each sale of a used
10 motor vehicle;

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31