

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 344

SPONSOR: Senator Latvala

SUBJECT: Motor Vehicles

DATE: January 8, 2002

REVISED: \_\_\_\_\_

|    | ANALYST  | STAFF DIRECTOR | REFERENCE | ACTION    |
|----|----------|----------------|-----------|-----------|
| 1. | Vickers  | Meyer          | TR        | Favorable |
| 2. | Birnholz | Maclure        | CM        | Favorable |
| 3. |          |                | JU        |           |
| 4. |          |                |           |           |
| 5. |          |                |           |           |
| 6. |          |                |           |           |

## I. Summary:

Section 29 of chapter 2001-196, Laws of Florida, [Senate Bill 1956 (2001)] provides that certain motor vehicle dealer practices are actionable under the Florida Deceptive and Unfair Trade Practices Act. This provision codified violations proscribed in a repealed Department of Legal Affairs administrative rule regarding motor vehicle sales.

However, when the language of SB 1956 was revised during the bill drafting process in an attempt to provide greater clarity and consistency, the underlying administrative rule's provision allowing for dealer disclosure of pre-delivery service charges via window sticker was inadvertently turned into a requirement. According to industry representatives, this new requirement is extremely burdensome to several types of dealers, which do not use window stickers but, instead, follow the standard industry practice of disclosing pre-delivery service charges on sales documents prior to consummation of sale. This bill retroactively repeals the subsection of s. 29 of ch. 2001-196, L.O.F., which makes it a deceptive and unfair trade practice to add an additional charge for pre-delivery service other than those shown on a window sticker affixed to the vehicle.

This bill repeals subsection (19) of s. 29 of ch. 2001-196, L.O.F., [s. 501.976(19), F.S.].

## II. Present Situation:

### Florida Deceptive and Unfair Trade Practices Act

Florida has numerous laws to protect individual and business consumers. One of these laws is ch. 501, part II, F.S., known as the Florida Deceptive and Unfair Trade Practices Act (FDUTPA). FDUTPA provides that unfair methods of competition, unconscionable acts or practices, and

unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful (s. 501.204, F.S.). Although laws may be passed or rules adopted that specify acts or practices that violate FDUTPA, rule 2-2.001, F.A.C., in repealing several chapters of code related to FDUTPA, states:

It is neither possible nor necessary to codify every conceivable deceptive and unfair trade practice prohibited by Part II, Chapter 501, Florida Statutes. (See *Department of Legal Affairs v. Father & Son Moving & Storage*, 643 So.2d 22 (Fla. 4th DCA 1994)). The repeal by the Department of Legal Affairs of the following rule chapters shall not modify or restrict the application of Part II, Chapter 501, Florida Statutes, to deceptive and unfair trade practices....

### **Section 29 of chapter 2001-196, Laws of Florida**

One of the rules repealed by rule 2-2.001, F.A.C., was rule 2-19.005, F.A.C., Motor Vehicle Sales. In part, the rule provided that where a motor vehicle is available for inspection by a prospective purchaser, the dealer has the *option* of attaching a window sticker that specifies pre-delivery service charges. If the dealer opted to utilize the window sticker to make the pre-delivery service charges disclosure, he or she was prohibited from adding additional pre-delivery service charges on other sales documents.

During the 2001 Regular Session, the language contained in the repealed rule 2-19.005, F.A.C., was incorporated into SB 1956 (ch. 2001-196, L.O.F.). During the bill drafting process, the language was revised in an attempt to provide greater clarity and consistency. However, this revision inadvertently changed the rule's window-sticker provision from optional to mandatory. Currently, subsection (19) of s. 29, ch. 2001-196, L.O.F., states that it is an unfair or deceptive act to:

Add an additional charge for pre-delivery service other than those shown on a conspicuous label attached to the window of the vehicle specifying any charges for pre-delivery services and describing the charges as pre-delivery services, delivery and handling, dealer preparation, or in similar terms the dealer's charge for each dealer-installed option, and a total price line.<sup>1</sup>

According to representatives of the Florida Automobile Dealers Association, the mandatory window sticker provision often runs counter to established industry practice and, thus, is burdensome and detrimental. The industry standard is to disclose pre-delivery service charges on sales documents prior to consummation of sale. However, many dealers (especially those selling used cars, motorcycles, and recreational vehicles) do not currently use applicable window stickers.

According to a representative of the Attorney General's Office, the office views this bill as a cleanup of a clerical error in SB 1956 (2001) and does not object to the repealing of subsection

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<sup>1</sup> See s. 501.976(19), F.S.

(19) of s. 29, ch. 2001-196, L.O.F. As noted above, specific violations of FDUTPA do not necessarily have to be codified to be actionable.

Under s. 30, ch. 2001-196, L.O.F., subsection (19) of s. 29, ch. 2001-196, L.O.F., applies to any vehicle sold after October 1, 2001.

### **III. Effect of Proposed Changes:**

This bill repeals subsection (19) of s. 29 of ch. 2001-196, L.O.F, which makes it a deceptive and unfair trade practice to add an additional charge for pre-delivery service other than those shown on a window sticker affixed to the vehicle.

The bill shall take effect upon becoming a law and shall apply retroactively to any motor vehicle sold on or after October 1, 2001.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Economic Impact and Fiscal Note:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

By repealing a provision of law that makes it a deceptive and unfair trade practice to add an additional charge for pre-delivery service other than those shown on a window sticker affixed to the vehicle, this bill would delete a requirement that is considered burdensome by many motor vehicle dealers that do not currently use applicable window stickers. The industry standard is to disclose pre-delivery service charges on sales documents prior to consummation of sale.

The impact of the bill on consumers is unclear given that the affected law has only been in effect since October 1, 2001. It should be noted that, as described in the “Present Situation” section of this analysis, specific violations of the Florida Deceptive and Unfair Trade Practices Act do not necessarily have to be codified to be actionable.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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