

By Senator Lawson

6-1359-04

1 A bill to be entitled
2 An act relating to the sale of used motor
3 vehicles; creating the "Used Motor Vehicle
4 Warranty Act"; providing legislative intent;
5 providing definitions; requiring express
6 warranties with respect to the sale of used
7 motor vehicles; providing exceptions; providing
8 requirements for used motor vehicle dealers in
9 honoring warranties; providing for extension of
10 warranty terms under certain circumstances;
11 providing for inability of a dealer to conform
12 the motor vehicle to the warranty; providing
13 certain remedies; providing for duties of the
14 Department of Legal Affairs; providing for
15 establishment of a resource center and
16 toll-free consumer number; providing liability
17 for bad-faith claims; providing for application
18 of the Used Motor Vehicle Warranty Act;
19 amending s. 320.27, F.S.; providing additional
20 circumstances under which the Department of
21 Highway Safety and Motor Vehicles may suspend
22 certain vehicle dealers' licenses; providing
23 for collection of a fee on each sale of a used
24 motor vehicle; providing an effective date.

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

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28 Section 1. Short title.--Sections 1-13 of this act may
29 be cited as the "Used Motor Vehicle Warranty Act."

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31 Section 2. Legislative intent.--The Legislature
recognizes that the procurement of a used motor vehicle is a

1 major consumer purchase and that a defective used motor
2 vehicle undoubtedly creates a hardship for the consumer. The
3 Legislature recognizes that a dealer has superior knowledge
4 about the structural and mechanical condition of a used motor
5 vehicle which a consumer relies upon when purchasing such
6 vehicle. The Legislature also recognizes that a dealer has
7 superior knowledge of the warranty terms arising from the sale
8 of a used motor vehicle which a consumer relies upon when
9 purchasing such vehicle. It is the intent of the Legislature
10 to provide minimum warranty rights to consumers who purchase
11 used motor vehicles from dealers in this state. It is further
12 the intent of the Legislature that a consumer receive a
13 comparable motor vehicle or a full refund when a good-faith
14 warranty complaint cannot be resolved within a specified
15 period of time. However, this act does not limit or expand the
16 rights or remedies that are otherwise available to a consumer
17 under any other law.

18 Section 3. Definitions.--As used in this act, the
19 term:

20 (1) "Collateral expenses" means those additional
21 expenses incurred by the consumer as a result of acquiring the
22 motor vehicle, and all earned finance and credit charges
23 incurred by the consumer.

24 (2) "Comparable motor vehicle" means, with respect to
25 a replacement motor vehicle, a used motor vehicle similar or
26 equivalent in price to the price for which the replaced motor
27 vehicle was purchased.

28 (3) "Consumer" means any person who is not a dealer as
29 defined in section 320.27, Florida Statutes, excluding any
30 person who has purchased a leased vehicle as a result of the
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1 exercise of a purchase option in a lease-purchase agreement
2 that has a lease term of 1 year or more.

3 (4) "Dealer" means a licensed motor vehicle dealer
4 licensed under section 320.27, Florida Statutes.

5 (5) "Department" means the Department of Legal
6 Affairs.

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

10 (7) "Motor vehicle" means a motor vehicle propelled by
11 power other than muscular power, which is sold in this state,
12 with a gross vehicle weight rating of less than 8,500 lbs.,
13 but excludes recreational vehicles, motorcycles, mopeds,
14 traction engines, truck tractors, road rollers, trailers and
15 semitrailers, off-road vehicles, and vehicles run only upon
16 tracks or water.

17 (8) "Purchase price" means the cash price as defined
18 in section 520.31, Florida Statutes, inclusive of any net
19 allowance for a trade-in vehicle.

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

23 (10) "Service contract" means a written contract to
24 perform, over a fixed period of time or for a specified
25 duration, services relating to the maintenance or repair, or
26 both, of a consumer product.

27 (11) "Used motor vehicle" means a used or secondhand
28 motor vehicle as defined in section 320.60, Florida Statutes.

29 (12) "Warranty" means any undertaking in writing,
30 excluding a service contract, in connection with the sale by a
31 dealer of a used motor vehicle, to refund, repair, replace,

1 maintain, or take other action with respect to a used motor
2 vehicle and provided at no extra charge beyond the purchase
3 price, or any affirmation of fact or promise made by the
4 dealer in connection with the sale of a used motor vehicle to
5 a consumer upon which the consumer relied in entering into the
6 transaction.

7 Section 4. Express warranties.--

8 (1) Each contract entered into by a dealer for the
9 sale to a consumer of a used motor vehicle pursuant to this
10 act must include an express warranty, covering the full cost
11 of both parts and labor, that the vehicle is both structurally
12 and mechanically operational and sound and will remain so for
13 at least 60 days or 3,000 miles of operation, whichever period
14 ends first, but excluding routine maintenance items and damage
15 resulting from an accident or neglect or abuse of the vehicle
16 by the consumer, and that the dealer shall repair or replace
17 any defect or condition or, at the dealer's option, accept
18 return of the used motor vehicle from the consumer and replace
19 the vehicle with a comparable motor vehicle acceptable to the
20 consumer or provide a refund of the purchase price.

21 (2) An express warranty required pursuant to this
22 section may not contain language that attempts to exclude or
23 modify the consumer's remedy for breach of an express
24 warranty.

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

29 (4) The consumer may waive a warranty required by this
30 section only as to a particular defect in the vehicle which
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1 the dealer has disclosed to the consumer as being defective.
2 The waiver is not effective unless the waiver:
3 (a) Is in writing.
4 (b) Is conspicuous and in plain language.
5 (c) Identifies the particular disclosed defect in the
6 vehicle for which such warranty is to be waived.
7 (d) Is signed by both the consumer and dealer prior to
8 sale.
9 (5) This section does not apply to:
10 (a) The sale of a used motor vehicle having a purchase
11 price of less than \$3,000; or
12 (b) The sale of a used motor vehicle with over 100,000
13 miles at the time of sale if the mileage is indicated in
14 writing at the time of sale.
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16 If the true mileage of the vehicle is unknown, then only
17 paragraph (a) applies.
18 (6) Except as otherwise provided, the obligations of a
19 manufacturer under an express warranty issued by the
20 manufacturer are not diminished. The warranty created by this
21 section does not require a nonauthorized dealer to repair a
22 defect or condition if the defect or condition is covered by a
23 manufacturer's warranty, or the manufacturer otherwise agrees
24 to repair it, unless the manufacturer or its agent refuses or
25 is unable to repair it. Repairs by a manufacturer or dealer
26 under this subsection may be considered as repair attempts
27 under section 7.
28 Section 5. Duty of dealer.--
29 (1) A dealer or his agent shall honor any warranty
30 required by section 4, notwithstanding the fact that the
31 warranty period has expired, if the consumer notifies the

1 dealer of a defect or condition within the applicable warranty
2 period.

3 (2) If a dealer does not have a repair facility, the
4 dealer shall designate a reasonably accessible facility to
5 which the vehicle must be taken for repair.

6 (3) If the defect or condition occurs at a location
7 that makes it impossible or unreasonable to return the vehicle
8 to the dealer, the consumer may have the repair completed
9 elsewhere with the consent of the dealer, which consent may
10 not be unreasonably withheld.

11 (4) If a dealer fails to provide the written warranty
12 as required by section 4, the dealer is deemed to have given
13 such warranty.

14 (5) A dealer or the dealer's agent shall provide to
15 the consumer, each time a used motor vehicle is returned for
16 examination or repair under the warranty, a fully itemized,
17 legible statement or repair order indicating any test drive
18 performed and the approximate length of the test drive, any
19 diagnosis made, and all work performed on the vehicle,
20 including, but not limited to, a general description of the
21 problem reported by the consumer or an identification of the
22 defect or condition, parts and labor, the date, the odometer
23 reading when the motor vehicle was submitted for examination
24 or repair, and the date when the repair or examination was
25 completed.

26 (6) A dealer may not refuse any consumer the
27 opportunity to have an independent prepurchase inspection of
28 any used motor vehicle offered for sale. If the consumer
29 requests an inspection it shall be conducted by a person
30 chosen by the consumer, but the dealer may establish

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1 reasonable conditions regarding the place, time, and extent of
2 the inspection.

3 Section 6. Extension of warranty term.--

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

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

14 (3) The term of any such warranty shall be extended by
15 any time during which repair services are not available to the
16 consumer due to war, invasion, strike, fire, flood, or natural
17 disaster.

18 Section 7. Inability of the dealer to conform the
19 motor vehicle to the warranty.--

20 (1) If the dealer is unable to conform the motor
21 vehicle to the terms of the warranty by curing any defect or
22 condition that substantially impairs the use, value, or safety
23 of the vehicle after a reasonable number of attempts, the
24 dealer, at the dealer's option, shall replace the motor
25 vehicle with a comparable motor vehicle acceptable to the
26 consumer or refund to the consumer the purchase price and all
27 reasonably incurred collateral and incidental expenses, less a
28 reasonable offset for use. A refund shall be made to the
29 consumer and lienholder of record, if any, as their interests
30 may appear. Upon receipt of such refund or replacement, the
31 consumer or lienholder must furnish to the dealer clear title

1 to and possession of the motor vehicle. The Department of
2 Revenue shall refund to the dealer any sales tax that the
3 dealer refunded to the consumer or lienholder under this
4 section if the dealer provides to the Department of Revenue a
5 written request for a refund and evidence that the sales tax
6 was paid when the vehicle was purchased and that the dealer
7 refunded the sales tax to the consumer or lienholder.

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

12 (a) The same defect or condition has been subject to
13 repair three or more times and such defect or condition
14 continues to exist; or

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

17 Section 8. Consumer remedies.--

18 (1) Any violation of this act by a dealer for which a
19 consumer suffers any loss constitutes a violation of chapter
20 320, Florida Statutes, for which a consumer may resort to the
21 provisions of section 320.27, Florida Statutes, for relief.

22 (2) A consumer may file an action to recover damages
23 caused by a violation of this act. The court shall award a
24 consumer who prevails in such action damages, costs,
25 reasonable attorney's fees, and appropriate equitable relief.
26 If the consumer establishes that the dealer's failure to
27 comply with this chapter was willful, the judgment may include
28 a civil penalty, which shall not exceed two times the amount
29 of actual damages.

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

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

6 Section 9. Department duties.--

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

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

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

16 Section 10. Bad-faith claims.--Any claim by a consumer
17 which is found by the court to have been filed in bad faith or
18 solely for the purpose of harassment shall result in the
19 consumer being liable for costs and reasonable attorney's fees
20 incurred by the dealer as a direct result of the bad-faith
21 claim.

22 Section 11. Certain agreements void.--Except as
23 otherwise provided in this act, any agreement entered into by
24 a consumer which waives, limits, or disclaims the rights set
25 forth in this act is void as contrary to public policy.

26 Section 12. Unfair or deceptive trade practice.--A
27 violation by a dealer of this act is an unfair and deceptive
28 trade practice as defined in part II of chapter 501, Florida
29 Statutes.

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1 Section 13. The Used Motor Vehicle Warranty Act
2 applies to used motor vehicles sold in this state on or after
3 January 1, 2005.

4 Section 14. Paragraph (b) of subsection (9) of section
5 320.27, Florida Statutes, is amended to read:

6 320.27 Motor vehicle dealers.--

7 (9) DENIAL, SUSPENSION, OR REVOCATION.--

8 (b) The department may deny, suspend, or revoke any
9 license issued hereunder or under the provisions of s. 320.77
10 or s. 320.771 upon proof that a licensee has committed, with
11 sufficient frequency so as to establish a pattern of
12 wrongdoing on the part of a licensee, violations of one or
13 more of the following activities:

14 1. Representation that a demonstrator is a new motor
15 vehicle, or the attempt to sell or the sale of a demonstrator
16 as a new motor vehicle without written notice to the purchaser
17 that the vehicle is a demonstrator. For the purposes of this
18 section, a "demonstrator," a "new motor vehicle," and a "used
19 motor vehicle" shall be defined as under s. 320.60.

20 2. Unjustifiable refusal to comply with a licensee's
21 responsibility under the terms of the new motor vehicle
22 warranty issued by its respective manufacturer, distributor,
23 or importer. However, if such refusal is at the direction of
24 the manufacturer, distributor, or importer, such refusal shall
25 not be a ground under this section.

26 3. Misrepresentation or false, deceptive, or
27 misleading statements with regard to the sale or financing of
28 motor vehicles which any motor vehicle dealer has, or causes
29 to have, advertised, printed, displayed, published,
30 distributed, broadcast, televised, or made in any manner with
31 regard to the sale or financing of motor vehicles.

1 4. Failure by any motor vehicle dealer to provide a
2 customer or purchaser with an odometer disclosure statement
3 and a copy of any bona fide written, executed sales contract
4 or agreement of purchase connected with the purchase of the
5 motor vehicle purchased by the customer or purchaser.

6 5. Failure of any motor vehicle dealer to comply with
7 the terms of any bona fide written, executed agreement,
8 pursuant to the sale of a motor vehicle.

9 6. Failure to apply for transfer of a title as
10 prescribed in s. 319.23(6).

11 7. Use of the dealer license identification number by
12 any person other than the licensed dealer or his or her
13 designee.

14 8. Failure to continually meet the requirements of the
15 licensure law.

16 9. Representation to a customer or any advertisement
17 to the public representing or suggesting that a motor vehicle
18 is a new motor vehicle if such vehicle lawfully cannot be
19 titled in the name of the customer or other member of the
20 public by the seller using a manufacturer's statement of
21 origin as permitted in s. 319.23(1).

22 10. Requirement by any motor vehicle dealer that a
23 customer or purchaser accept equipment on his or her motor
24 vehicle which was not ordered by the customer or purchaser.

25 11. Requirement by any motor vehicle dealer that any
26 customer or purchaser finance a motor vehicle with a specific
27 financial institution or company.

28 12. Requirement by any motor vehicle dealer that the
29 purchaser of a motor vehicle contract with the dealer for
30 physical damage insurance.

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1 13. Perpetration of a fraud upon any person as a
2 result of dealing in motor vehicles, including, without
3 limitation, the misrepresentation to any person by the
4 licensee of the licensee's relationship to any manufacturer,
5 importer, or distributor.

6 14. Violation of any of the provisions of s. 319.35 by
7 any motor vehicle dealer.

8 15. Sale by a motor vehicle dealer of a vehicle
9 offered in trade by a customer prior to consummation of the
10 sale, exchange, or transfer of a newly acquired vehicle to the
11 customer, unless the customer provides written authorization
12 for the sale of the trade-in vehicle prior to delivery of the
13 newly acquired vehicle.

14 16. Willful failure to comply with any administrative
15 rule adopted by the department.

16 17. Violation of chapter 319, this chapter, or ss.
17 559.901-559.9221, which has to do with dealing in or repairing
18 motor vehicles or mobile homes. Additionally, in the case of
19 used motor vehicles, the willful violation of the federal law
20 and rule in 15 U.S.C. s. 2304, 16 C.F.R. part 455, pertaining
21 to the consumer sales window form.

22 18. Any violation of the terms of the Used Motor
23 Vehicle Warranty Act.

24 19. Failure to comply with a court decision rendered
25 pursuant to the Used Motor Vehicle Warranty Act, irrespective
26 of whether the failure occurs with sufficient frequency so as
27 to establish a pattern of wrongdoing on the part of the
28 licensee.

29 20. Failure to display the Buyer's Guide set forth in
30 Title 16, Code of Federal Regulations, Part 455.

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