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A bill to be entitled  
 An act relating to the sale of used motor vehicles;  
 providing a popular name; creating the "Used Motor Vehicle  
 Warranty Act"; providing legislative intent; providing  
 definitions; requiring express warranties with respect to  
 the sale of used motor vehicles; providing exceptions;  
 providing requirements for used motor vehicle dealers in  
 honoring warranties; providing for extension of warranty  
 terms under certain circumstances; providing for inability  
 of dealer to conform the motor vehicle to the warranty;  
 providing certain remedies; providing for duties of the  
 Department of Legal Affairs; providing for establishment  
 of resource center and toll-free consumer number;  
 providing liability for bad faith claims; declaring  
 certain agreements void; declaring violation by a dealer  
 of the act an unfair and deceptive trade practice;  
 providing for application of the Used Motor Vehicle  
 Warranty Act; amending s. 320.27, F.S.; providing  
 additional circumstances under which the Department of  
 Highway Safety and Motor Vehicles may suspend certain  
 vehicle dealers' licenses; providing for collection of a  
 fee on each sale of a used motor vehicle; providing for  
 deposit of fee proceeds into the Motor Vehicle Warranty  
 Trust Fund; providing an effective date.

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

Section 1. Popular name.--Sections 1-12 of this act may be

29 cited as the "Used Motor Vehicle Warranty Act."

30 Section 2. Legislative intent.--The Legislature recognizes  
31 that the procurement of a used motor vehicle is a major consumer  
32 purchase and that a defective used motor vehicle undoubtedly  
33 creates a hardship for the consumer. The Legislature recognizes  
34 that a dealer has superior knowledge about the structural and  
35 mechanical condition of a used motor vehicle which a consumer  
36 relies upon when purchasing such vehicle. The Legislature also  
37 recognizes that a dealer has superior knowledge of the warranty  
38 terms arising from the sale of a used motor vehicle which a  
39 consumer relies upon when purchasing such vehicle. It is the  
40 intent of the Legislature to provide minimum warranty rights to  
41 consumers who purchase used motor vehicles from dealers in this  
42 state. It is further the intent of the Legislature that a  
43 consumer receive a comparable motor vehicle or a full refund  
44 when a good faith warranty complaint cannot be resolved within a  
45 specified period of time. However, this act does not limit or  
46 expand the rights or remedies that are otherwise available to a  
47 consumer under any other law.

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

49 (1) "Collateral expenses" means those additional expenses  
50 incurred by the consumer as a result of acquiring the motor  
51 vehicle, and all earned finance and credit charges incurred by  
52 the consumer.

53 (2) "Comparable motor vehicle" means, with respect to a  
54 replacement motor vehicle, a used motor vehicle similar or  
55 equivalent in price to the price for which the replaced motor  
56 vehicle was purchased.

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

62       (4) "Dealer" means a motor vehicle dealer as defined in s.  
63 320.27(1)(c), Florida Statutes, and subject to licensure under  
64 s. 320.27(2), Florida Statutes.

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

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

69       (7) "Motor vehicle" means a motor vehicle propelled by  
70 power other than muscular power, which is sold in this state,  
71 with a gross vehicle weight rating of less than 8,500 lbs., but  
72 excludes recreational vehicles, motorcycles, mopeds, traction  
73 engines, truck tractors, road rollers, trailers, and  
74 semitrailers, off-road vehicles, and vehicles run only upon  
75 tracks or water.

76       (8) "Purchase price" means the cash price as defined in s.  
77 520.31(2), Florida Statutes, inclusive of any net allowance for  
78 a trade-in vehicle.

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

82       (10) "Service contract" means a written contract to  
83 perform, over a fixed period of time or for a specified  
84 duration, services relating to the maintenance or repair, or

85 both, of a consumer product.

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

88 (12) "Warranty" means any undertaking in writing,  
 89 excluding a service contract, in connection with the sale by a  
 90 dealer of a used motor vehicle, to refund, repair, replace,  
 91 maintain, or take other action with respect to a used motor  
 92 vehicle and provided at no extra charge beyond the purchase  
 93 price, or any affirmation of fact or promise made by the dealer  
 94 in connection with the sale of a used motor vehicle to a  
 95 consumer upon which the consumer relied in entering into the  
 96 transaction.

97 Section 4. Express warranties.--

98 (1) Each contract entered into by a dealer for the sale to  
 99 a consumer of a used motor vehicle pursuant to this act must  
 100 include an express warranty, covering the full cost of both  
 101 parts and labor, that the vehicle is both structurally and  
 102 mechanically operational and sound and will remain so for at  
 103 least 60 days or 3,000 miles of operation, whichever period ends  
 104 first, but excluding routine maintenance items and damage  
 105 resulting from an accident or neglect or abuse of the vehicle by  
 106 the consumer, and that the dealer shall repair or replace any  
 107 defect or condition, or, at the dealer's option, accept return  
 108 of the used motor vehicle from the consumer and replace the  
 109 vehicle with a comparable motor vehicle acceptable to the  
 110 consumer or provide a refund of the purchase price.

111 (2) An express warranty required pursuant to this section  
 112 may not contain language that attempts to exclude or modify the

113 consumer's remedy for breach of an express warranty.

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

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

122 (a) Is in writing.

123 (b) Is conspicuous and in plain language.

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

126 (d) Is signed by both the consumer and dealer prior to  
 127 sale.

128 (5) This section does not apply to:

129 (a) The sale of a used motor vehicle having a purchase  
 130 price of less than \$2,000; or

131 (b) The sale of a used motor vehicle with over 100,000  
 132 miles at the time of sale if the mileage is indicated in writing  
 133 at the time of sale. If the true mileage of the vehicle is  
 134 unknown, the exemption provided by this paragraph does not  
 135 apply.

136 (6) Except as otherwise provided, the obligations of a  
 137 manufacturer under an express warranty issued by the  
 138 manufacturer are not diminished. The warranty created by this  
 139 section does not require a nonauthorized dealer to repair a  
 140 defect or condition if the defect or condition is covered by a

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141 manufacturer's warranty, or the manufacturer otherwise agrees to  
142 repair, unless the manufacturer or its agent refuses or is  
143 unable to repair. Repairs by a manufacturer or dealer under this  
144 subsection may be considered as repair attempts under section 7.

145 Section 5. Duty of dealer.--

146 (1) A dealer or his or her agent shall honor any warranty  
147 required by section 4, notwithstanding the fact that the  
148 warranty period has expired, if the consumer notifies the dealer  
149 of a defect or condition within the applicable warranty period.

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

153 (3) If the defect or condition occurs at a location that  
154 makes it impossible or unreasonable to return the vehicle to the  
155 dealer, the consumer may have the repair completed elsewhere  
156 with the consent of the dealer, which consent may not be  
157 unreasonably withheld.

158 (4) If a dealer fails to provide the written warranty as  
159 required by section 4, the dealer is deemed to have given such  
160 warranty.

161 (5) A dealer or the dealer's agent shall provide to the  
162 consumer, each time a used motor vehicle is returned for  
163 examination or repair under the warranty, a fully itemized,  
164 legible statement or repair order indicating any test drive  
165 performed and the approximate length of the test drive, any  
166 diagnosis made, and all work performed on the vehicle,  
167 including, but not limited to, a general description of the  
168 problem reported by the consumer or an identification of the

169 defect or condition, parts and labor, the date, the odometer  
 170 reading when the motor vehicle was submitted for examination or  
 171 repair, and the date when the repair or examination was  
 172 completed.

173 (6) A dealer may not refuse any consumer the opportunity  
 174 to have an independent prepurchase inspection of any used motor  
 175 vehicle offered for sale. If the consumer requests an  
 176 inspection, it shall be conducted by a person chosen by the  
 177 consumer, but the dealer may establish reasonable conditions  
 178 regarding the place, time, and extent of the inspection.

179 Section 6. Extension of warranty term.--

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

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

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

194 Section 7. Inability of the dealer to conform the motor  
 195 vehicle to the warranty.--

196 (1) If the dealer is unable to conform the motor vehicle

197 to the terms of the warranty by curing any defect or condition  
 198 that substantially impairs the use, value, or safety of the  
 199 vehicle after a reasonable number of attempts, the dealer, at  
 200 the dealer's option, shall either replace the motor vehicle with  
 201 a comparable motor vehicle acceptable to the consumer or refund  
 202 to the consumer the purchase price and all reasonably incurred  
 203 collateral and incidental expenses, less a reasonable offset for  
 204 use. A refund shall be made to the consumer and lienholder of  
 205 record, if any, as their interests may appear. Upon receipt of  
 206 such refund or replacement, the consumer or lienholder must  
 207 furnish to the dealer clear title to and possession of the motor  
 208 vehicle. The Department of Revenue shall refund to the dealer  
 209 any sales tax which the dealer refunded the consumer or  
 210 lienholder under this section, if the dealer provides to the  
 211 Department of Revenue a written request for a refund and  
 212 evidence that the sales tax was paid when the vehicle was  
 213 purchased and that the dealer refunded the sales tax to the  
 214 consumer or lienholder.

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

218 (a) The same defect or condition has been subject to  
 219 repair three or more times and such defect or condition  
 220 continues to exist; or

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

223 Section 8. Consumer remedies.--

224 (1) Any violation of this act by a dealer for which a



225 consumer suffers any loss constitutes a violation of chapter  
 226 320, Florida Statutes, for which a consumer may resort to the  
 227 provisions of s. 320.27, Florida Statutes, for relief.

228 (2) A consumer may file an action to recover damages  
 229 caused by a violation of this act. The court shall award a  
 230 consumer who prevails in such action damages, costs, reasonable  
 231 attorney's fees, and appropriate equitable relief. If the  
 232 consumer establishes that the dealer's failure to comply with  
 233 this chapter was willful, the judgment may include a civil  
 234 penalty which shall not exceed two times the amount of actual  
 235 damages.

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

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

241 Section 9. Department duties.--

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

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

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

251 Section 10. Bad faith claims.--Any claim by a consumer  
 252 which is found by the court to have been filed in bad faith or

253 solely for the purpose of harassment shall result in the  
 254 consumer being liable for costs and reasonable attorney's fees  
 255 incurred by the dealer, as a direct result of the bad faith  
 256 claim.

257 Section 11. Certain agreements void.--Except as otherwise  
 258 provided in this act, any agreement entered into by a consumer  
 259 that waives, limits, or disclaims the rights set forth in this  
 260 act is void as contrary to public policy.

261 Section 12. Unfair or deceptive trade practice.--A  
 262 violation by a dealer of this act is an unfair and deceptive  
 263 trade practice as defined in part II of chapter 501, Florida  
 264 Statutes.

265 Section 13. The Used Motor Vehicle Warranty Act applies to  
 266 used motor vehicles sold in this state on or after January 1,  
 267 2006.

268 Section 14. Paragraph (b) of subsection (9) of section  
 269 320.27, Florida Statutes, is amended to read:

270 320.27 Motor vehicle dealers.--

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

272 (b) The department may deny, suspend, or revoke any  
 273 license issued hereunder or under the provisions of s. 320.77 or  
 274 s. 320.771 upon proof that a licensee has committed, with  
 275 sufficient frequency so as to establish a pattern of wrongdoing  
 276 on the part of a licensee, violations of one or more of the  
 277 following activities:

278 1. Representation that a demonstrator is a new motor  
 279 vehicle, or the attempt to sell or the sale of a demonstrator as  
 280 a new motor vehicle without written notice to the purchaser that

281 the vehicle is a demonstrator. For the purposes of this section,  
 282 a "demonstrator," a "new motor vehicle," and a "used motor  
 283 vehicle" shall be defined as under s. 320.60.

284 2. Unjustifiable refusal to comply with a licensee's  
 285 responsibility under the terms of the new motor vehicle warranty  
 286 issued by its respective manufacturer, distributor, or importer.  
 287 However, if such refusal is at the direction of the  
 288 manufacturer, distributor, or importer, such refusal shall not  
 289 be a ground under this section.

290 3. Misrepresentation or false, deceptive, or misleading  
 291 statements with regard to the sale or financing of motor  
 292 vehicles which any motor vehicle dealer has, or causes to have,  
 293 advertised, printed, displayed, published, distributed,  
 294 broadcast, televised, or made in any manner with regard to the  
 295 sale or financing of motor vehicles.

296 4. Failure by any motor vehicle dealer to provide a  
 297 customer or purchaser with an odometer disclosure statement and  
 298 a copy of any bona fide written, executed sales contract or  
 299 agreement of purchase connected with the purchase of the motor  
 300 vehicle purchased by the customer or purchaser.

301 5. Failure of any motor vehicle dealer to comply with the  
 302 terms of any bona fide written, executed agreement, pursuant to  
 303 the sale of a motor vehicle.

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

306 7. Use of the dealer license identification number by any  
 307 person other than the licensed dealer or his or her designee.

308 8. Failure to continually meet the requirements of the

309 licensure law.

310 9. Representation to a customer or any advertisement to  
 311 the public representing or suggesting that a motor vehicle is a  
 312 new motor vehicle if such vehicle lawfully cannot be titled in  
 313 the name of the customer or other member of the public by the  
 314 seller using a manufacturer's statement of origin as permitted  
 315 in s. 319.23(1).

316 10. Requirement by any motor vehicle dealer that a  
 317 customer or purchaser accept equipment on his or her motor  
 318 vehicle which was not ordered by the customer or purchaser.

319 11. Requirement by any motor vehicle dealer that any  
 320 customer or purchaser finance a motor vehicle with a specific  
 321 financial institution or company.

322 12. Requirement by any motor vehicle dealer that the  
 323 purchaser of a motor vehicle contract with the dealer for  
 324 physical damage insurance.

325 13. Perpetration of a fraud upon any person as a result of  
 326 dealing in motor vehicles, including, without limitation, the  
 327 misrepresentation to any person by the licensee of the  
 328 licensee's relationship to any manufacturer, importer, or  
 329 distributor.

330 14. Violation of any of the provisions of s. 319.35 by any  
 331 motor vehicle dealer.

332 15. Sale by a motor vehicle dealer of a vehicle offered in  
 333 trade by a customer prior to consummation of the sale, exchange,  
 334 or transfer of a newly acquired vehicle to the customer, unless  
 335 the customer provides written authorization for the sale of the  
 336 trade-in vehicle prior to delivery of the newly acquired

337 vehicle.

338 16. Willful failure to comply with any administrative rule  
339 adopted by the department.

340 17. Violation of chapter 319, this chapter, or ss.  
341 559.901-559.9221, which has to do with dealing in or repairing  
342 motor vehicles or mobile homes. Additionally, in the case of  
343 used motor vehicles, the willful violation of the federal law  
344 and rule in 15 U.S.C. s. 2304, 16 C.F.R. part 455, pertaining to  
345 the consumer sales window form.

346 18. Failure to comply with the terms of the Used Motor  
347 Vehicle Warranty Act.

348 19. Failure to comply with a court decision rendered  
349 pursuant to the Used Motor Vehicle Warranty Act, irrespective of  
350 whether the failure occurs with sufficient frequency so as to  
351 establish a pattern of wrongdoing on the part of the licensee.

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

354 Section 15. Fees.--A \$1 fee shall be collected by a motor  
355 vehicle dealer from the consumer at the consummation of the sale  
356 of a used motor vehicle. Such fees shall be remitted to the  
357 county tax collector acting as agent for the department. All  
358 fees shall be transferred to the Department of Legal Affairs for  
359 deposit into the Motor Vehicle Warranty Trust Fund.

360 Section 16. This act shall take effect July 1, 2005.