

By Senator Campbell

32-754-05

See HB

1                                   A bill to be entitled  
2           An act relating to the sale of used motor  
3           vehicles; providing a popular name; creating  
4           the "Used Motor Vehicle Warranty Act";  
5           providing legislative intent; providing  
6           definitions; requiring express warranties with  
7           respect to the sale of used motor vehicles;  
8           providing exceptions; providing requirements  
9           for used motor vehicle dealers in honoring  
10          warranties; providing for extension of warranty  
11          terms under certain circumstances; providing  
12          for inability of dealer to conform the motor  
13          vehicle to the warranty; providing certain  
14          remedies; providing for duties of the  
15          Department of Legal Affairs; providing for  
16          establishment of resource center and toll-free  
17          consumer number; providing liability for  
18          bad-faith claims; declaring certain agreements  
19          void; declaring violation by a dealer of the  
20          act an unfair and deceptive trade practice;  
21          providing for application of the Used Motor  
22          Vehicle Warranty Act; amending s. 320.27, F.S.;  
23          providing additional circumstances under which  
24          the Department of Highway Safety and Motor  
25          Vehicles may suspend certain vehicle dealers'  
26          licenses; providing for collection of a fee on  
27          each sale of a used motor vehicle; providing  
28          for deposit of fee proceeds into the Motor  
29          Vehicle Warranty Trust Fund; providing an  
30          effective date.  
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1 Be It Enacted by the Legislature of the State of Florida:

2  
3 Section 1. Popular name.--Sections 1-12 of this act  
4 may be cited as the "Used Motor Vehicle Warranty Act."

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

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

26 (1) "Collateral expenses" means those additional  
27 expenses incurred by the consumer as a result of acquiring the  
28 motor vehicle, and all earned finance and credit charges  
29 incurred by the consumer.

30 (2) "Comparable motor vehicle" means, with respect to  
31 a replacement motor vehicle, a used motor vehicle similar or

1 equivalent in price to the price for which the replaced motor  
2 vehicle was purchased.

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

8 (4) "Dealer" means a motor vehicle dealer as defined  
9 in section 320.27(1)(c), Florida Statutes, and subject to  
10 licensure under section 320.27(2), Florida Statutes.

11 (5) "Department" means the Department of Legal  
12 Affairs.

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

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

23 (8) "Purchase price" means the cash price as defined  
24 in section 520.31(2), Florida Statutes, inclusive of any net  
25 allowance for a trade-in vehicle.

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

29 (10) "Service contract" means a written contract to  
30 perform, over a fixed period of time or for a specified  
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1 duration, services relating to the maintenance or repair, or  
2 both, of a consumer product.

3 (11) "Used motor vehicle" means a used or secondhand  
4 motor vehicle as defined in section 320.60(13), Florida  
5 Statutes.

6 (12) "Warranty" means any undertaking in writing,  
7 excluding a service contract, in connection with the sale by a  
8 dealer of a used motor vehicle, to refund, repair, replace,  
9 maintain, or take other action with respect to a used motor  
10 vehicle and provided at no extra charge beyond the purchase  
11 price, or any affirmation of fact or promise made by the  
12 dealer in connection with the sale of a used motor vehicle to  
13 a consumer upon which the consumer relied in entering into the  
14 transaction.

15 Section 4. Express warranties.--

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

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

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

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

11 (a) Is in writing.

12 (b) Is conspicuous and in plain language.

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

15 (d) Is signed by both the consumer and dealer prior to  
16 sale.

17 (5) This section does not apply to:

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

20 (b) The sale of a used motor vehicle with over 100,000  
21 miles at the time of sale if the mileage is indicated in  
22 writing at the time of sale. If the true mileage of the  
23 vehicle is unknown, the exemption provided by this paragraph  
24 does not apply.

25 (6) Except as otherwise provided, the obligations of a  
26 manufacturer under an express warranty issued by the  
27 manufacturer are not diminished. The warranty created by this  
28 section does not require a nonauthorized dealer to repair a  
29 defect or condition if the defect or condition is covered by a  
30 manufacturer's warranty, or the manufacturer otherwise agrees  
31 to repair, unless the manufacturer or its agent refuses or is

1 unable to repair. Repairs by a manufacturer or dealer under  
2 this subsection may be considered as repair attempts under  
3 section 7.

4 Section 5. Duty of dealer.--

5 (1) A dealer or his or her agent shall honor any  
6 warranty required by section 4, notwithstanding the fact that  
7 the warranty period has expired, if the consumer notifies the  
8 dealer of a defect or condition within the applicable warranty  
9 period.

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

13 (3) If the defect or condition occurs at a location  
14 that makes it impossible or unreasonable to return the vehicle  
15 to the dealer, the consumer may have the repair completed  
16 elsewhere with the consent of the dealer, which consent may  
17 not be unreasonably withheld.

18 (4) If a dealer fails to provide the written warranty  
19 as required by section 4, the dealer is deemed to have given  
20 such warranty.

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

3 (6) A dealer may not refuse any consumer the  
4 opportunity to have an independent prepurchase inspection of  
5 any used motor vehicle offered for sale. If the consumer  
6 requests an inspection, it shall be conducted by a person  
7 chosen by the consumer, but the dealer may establish  
8 reasonable conditions regarding the place, time, and extent of  
9 the inspection.

10 Section 6. Extension of warranty term.--

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

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

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

25 Section 7. Inability of the dealer to conform the  
26 motor vehicle to the warranty.--

27 (1) If the dealer is unable to conform the motor  
28 vehicle to the terms of the warranty by curing any defect or  
29 condition that substantially impairs the use, value, or safety  
30 of the vehicle after a reasonable number of attempts, the  
31 dealer, at the dealer's option, shall either replace the motor

1 vehicle with a comparable motor vehicle acceptable to the  
2 consumer or refund to the consumer the purchase price and all  
3 reasonably incurred collateral and incidental expenses, less a  
4 reasonable offset for use. A refund shall be made to the  
5 consumer and lienholder of record, if any, as their interests  
6 may appear. Upon receipt of such refund or replacement, the  
7 consumer or lienholder must furnish to the dealer clear title  
8 to and possession of the motor vehicle. The Department of  
9 Revenue shall refund to the dealer any sales tax which the  
10 dealer refunded the consumer or lienholder under this section,  
11 if the dealer provides to the Department of Revenue a written  
12 request for a refund and evidence that the sales tax was paid  
13 when the vehicle was purchased and that the dealer refunded  
14 the sales tax to the consumer or lienholder.

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

19 (a) The same defect or condition has been subject to  
20 repair three or more times and such defect or condition  
21 continues to exist; or

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

24 Section 8. Consumer remedies.--

25 (1) Any violation of this act by a dealer for which a  
26 consumer suffers any loss constitutes a violation of chapter  
27 320, Florida Statutes, for which a consumer may resort to the  
28 provisions of section 320.27, Florida Statutes, for relief.

29 (2) A consumer may file an action to recover damages  
30 caused by a violation of this act. The court shall award a  
31 consumer who prevails in such action damages, costs,



1 reasonable attorney's fees, and appropriate equitable relief.  
2 If the consumer establishes that the dealer's failure to  
3 comply with this chapter was willful, the judgment may include  
4 a civil penalty which shall not exceed two times the amount of  
5 actual damages.

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

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

11 Section 9. Department duties.--

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

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

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

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

27 Section 11. Certain agreements void.--Except as  
28 otherwise provided in this act, any agreement entered into by  
29 a consumer that waives, limits, or disclaims the rights set  
30 forth in this act is void as contrary to public policy.  
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1           Section 12. Unfair or deceptive trade practice.--A  
2 violation by a dealer of this act is an unfair and deceptive  
3 trade practice as defined in part II of chapter 501, Florida  
4 Statutes.

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

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

10           320.27 Motor vehicle dealers.--

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

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

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

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

30           3. Misrepresentation or false, deceptive, or  
31 misleading statements with regard to the sale or financing of

1 | motor vehicles which any motor vehicle dealer has, or causes  
2 | to have, advertised, printed, displayed, published,  
3 | distributed, broadcast, televised, or made in any manner with  
4 | regard to the sale or financing of motor vehicles.

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

10 |         5. Failure of any motor vehicle dealer to comply with  
11 | the terms of any bona fide written, executed agreement,  
12 | pursuant to the sale of a motor vehicle.

13 |         6. Failure to apply for transfer of a title as  
14 | prescribed in s. 319.23(6).

15 |         7. Use of the dealer license identification number by  
16 | any person other than the licensed dealer or his or her  
17 | designee.

18 |         8. Failure to continually meet the requirements of the  
19 | licensure law.

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

26 |         10. Requirement by any motor vehicle dealer that a  
27 | customer or purchaser accept equipment on his or her motor  
28 | vehicle which was not ordered by the customer or purchaser.

29 |         11. Requirement by any motor vehicle dealer that any  
30 | customer or purchaser finance a motor vehicle with a specific  
31 | financial institution or company.

1           12. Requirement by any motor vehicle dealer that the  
2 purchaser of a motor vehicle contract with the dealer for  
3 physical damage insurance.

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

9           14. Violation of any of the provisions of s. 319.35 by  
10 any motor vehicle dealer.

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

17           16. Willful failure to comply with any administrative  
18 rule adopted by the department.

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

25           18. Failure to comply with the terms of the Used Motor  
26 Vehicle Warranty Act.

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

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

3           Section 15. Fees.--A \$1 fee shall be collected by a  
4 motor vehicle dealer from the consumer at the consummation of  
5 the sale of a used motor vehicle. Such fees shall be remitted  
6 to the county tax collector acting as agent for the  
7 department. All fees shall be transferred to the Department of  
8 Legal Affairs for deposit into the Motor Vehicle Warranty  
9 Trust Fund.

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