**The Florida Senate**

# PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Commerce Committee

| | |
|---|---|
| BILL: | CS/SB 1206 |
| INTRODUCER: | Commerce Committee and Senator Atwater |
| SUBJECT: | Warranty Responsibility/MV Dealers |
| DATE: | April 17, 2007 REVISED: |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Davis | Meyer | TR | **Favorable** |
| 2. | Pugh | Cooper | CM | **Fav/CS** |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

## I. Summary:

Currently, s. 320.696, F.S., requires motor vehicle manufacturers to provide reasonable compensation to motor vehicle dealers for warranty "work" and "repairs and service."

CS/SB 1206 amends s. 320.696, F.S., to clarify that "labor and parts'' are included in warranty work, repairs, and service. It specifies that motor vehicle manufacturers shall compensate motor vehicle dealers for warranty work at rates equal to the dealer's retail rates.

The CS also prohibits manufacturers from imposing a charge or surcharge to the wholesale price of any product it sells to dealers to recover any of its costs for compensating a dealer for warranty work, including labor and parts.

CS/SB 1206 substantially amends section 320.696 of the Florida Statutes.

## II. Present Situation:

Under s. 320.696, F.S., manufacturers are required to provide reasonable compensation in a timely fashion to dealers for "work" performed in rectifying warranty defects by way of reasonable compensation. The standard for "reasonable compensation" requires the compensation by the manufacturer be no less than the amount charged by the dealer for like "work" for nonwarranty "repairs and service." Reimbursement taking longer than 30 days is presumed to be untimely.

A determination of "reasonable compensation," according to the statute, involves consideration of a number of factors:

- What other manufacturers pay their dealers;
- The prevailing wage rate paid by dealers to their mechanics; and
- The prevailing wage rate paid by other dealers in the same city or community.

Manufacturers wishing to contest what their dealers are charging for warranty work have the option to prove in an administrative hearing before the Department of Highway Safety and Motor Vehicles (DHSMV) that the charges are improper in light of "economic circumstances."[1]

Case law related to this statute is sparse:[2]

- In *Brandon Chrysler Plymouth Jeep Eagle, Inc. v. Chrysler Corp.*, 898 F. Supp. 858 (M.D. Fla. 1995), the court concluded that the requirements as to reimbursement for "work" extended to "repairs and service" but not to the price of warranty parts. The court reasoned -- based on various principles of statutory construction, upon case law from other jurisdictions, and upon comparable statutes in other states -- that the Legislature did not intend to include parts in the requirement that reimbursement be not less than the rate charged to non-warranty customers.
- In *Gates v. Chrysler Corp.*, 397 So. 2d 1187 (Fla. 1st DCA 1981), the court found that potential violations of the Magnuson-Moss Warranty Act would nonetheless not provide access to treble damages and attorney's fees under s. 320.697, F.S., as a violation of s. 320.696, F.S.
- In *Jagodnik v. Renault, Inc.*, 328 So. 2d 211 (Fla. 1st DCA 1976), the court found that implied warranties were not covered by the statute. That court declined to rule on whether a consumer could claim damage and attorney's fees under s. 320.697, F.S., for a manufacturer's failure to properly reimburse its dealer for express warranty repairs.

## III. Effect of Proposed Changes:

**Section 1** amends s. 320.696, F.S., to require manufacturers to compensate dealers for work, "including labor and parts," to rectify warranty defects.

CS/SB 1206 specifies that reasonable compensation to dealers by manufacturers for warranty work equal the amount charged by the dealer for similar work for non-warranty repairs or service, "including labor and parts."

Also, if a dispute on warranty compensation is taken to an administrative proceeding before DHSMV, the manufacturer is required to demonstrate the dealer's retail charges for labor "and parts" are improper.

CS/SB 1206 also prohibits a manufacturer from recovering any of its costs for compensating a dealer for warranty work, including labor and parts, by imposing a charge or surcharge to the wholesale price paid by the dealer for any product, such as the vehicle and vehicle parts.

[1] Section 320.696, F.S.
[2] "Summary of Florida's Motor Vehicle Dealer Protection Act" by John W. Forehand and Walter E. Forehand. Found on website of Lewis, Longman& Walker, P.A,.www.llw-law.com. (Last visited April 12, 2007).

**Section 2** provides this act shall take effect July 1, 2007.

## 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:

Indeterminate. To the extent that CS/SB 1206 will require motor vehicle manufacturers to provide additional compensation to motor vehicle dealers for warranty work, including labor and parts, there may be an increase in expenditures for manufacturers who currently compensate dealers for warranty labor and parts at levels below market prices. In the same respect, dealers in Florida may see an increase in revenues due to the increase in the level of reimbursement received for warranty work from manufacturers.

To the extent that CS/SB 1206 prohibits manufacturers from using a surcharge to recover its costs for compensating a dealer for warranty work, there may be a fiscal impact to those manufacturers who currently engage in the practice of using such a surcharge.

C. Government Sector Impact:

There is no fiscal impact on state or local governments.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

The Florida Automobile Dealer's Association (FADA) claims manufacturers currently reimburse Florida dealers for parts at levels set by the manufacturers, which are typically below the market prices charged to retail customers for parts used in connection with non-warranty repairs. Dealers

are required by manufacturers under their franchise agreement to provide warranty repairs. As such, FADA claims the manufacturers should be required to pay market rates for such repairs, including labor and parts.

The Alliance of Automobile Manufacturers (alliance) says parts used for warranty repairs are made available to dealers at the wholesale price, plus a markup generally in the amount of 40 percent.

FADA also claims the current system in Florida effectively forces the ordinary consumer (who has to pay market rates for the parts used in non-warranty repairs) to subsidize the manufacturers.

The alliance says that, based on the wording of SB 1206, allowing a dealer to charge a manufacturer "no less than" the amount charge to retail customers, will allow dealers to set a price for warranty parts at whatever amount they choose. The alliance also says automobile owners paying for non-warranty work could be penalized if dealers raise their retail prices to justify seeking higher warranty-work reimbursements.

FADA also claims one of the more recent trends among manufacturers, in states where they are required to reimburse for parts at market rates, has been to avoid the statutory requirement by imposing surcharges on each vehicle sold by a dealer and thereby recouping the incremental cost of paying the retail rate for warranty parts.

The alliance says that preventing manufacturers from assessing surcharges to recover what they consider to be excessive reimbursement rates for warranty parts means the manufacturers, in effect, amounts to a subsidy for the dealers.

There appear to be no Florida court cases on warranty subsidies. The practice of manufacturers surcharging dealers to recover its warranty work costs has been addressed by courts in at least two states with statutes similar to the current s. 320.696, F.S., with differing results. *Liberty Lincoln Mercury v. Ford Motor Co.*, 134 F.3d 557 (3d Cir. 1998) and *Liberty Lincoln-Mercury, Inc. v. Ford Motor Co.*, 2006 WL 1098178 (D.N.J. March 31, 2006) both found such practices violate the New Jersey statute.

Meanwhile, *Acadia v. Ford Motor Co.*, 44 F.3d 1050 (1st Cir.1995) held the practice did not violate the Maine statute. In response to *Acadia*, Maine amended its statute with language similar to that in SB 1206, prohibiting a manufacturer from surcharging a dealer to recover costs for warranty work. In *Alliance of Auto. Mfrs. v. Gwadowsky*, 430 F.3d 30 (1st Cir. 2005), the First Circuit held Maine's new provision relating to surcharges did not violate the U.S. Constitution.

# VIII. Summary of Amendments:

None.