

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: Transportation Committee

BILL: SB 1206

INTRODUCER: Senator Atwater

SUBJECT: Warranty Responsibility/MV Dealers

DATE: April 3, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Meyer	TR	Favorable
2.			CM	
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 “work” and “repairs and service” performed in rectifying warranty defects.

SB 1206 amends s. 320.696, F.S., to also require manufacturers to provide reasonable compensation to dealers for “labor and parts” used in rectifying warranty defects.

The bill prohibits manufacturers from imposing a charge or surcharge to the wholesale price of any product, including motor vehicles and parts, to recover any of its costs for compensating a dealer for warranty work, including labor and parts.

The bill has no fiscal impact on state or local governments and is effective July 1, 2007.

This bill substantially amends section 320.696 of the Florida Statutes.

II. Present Situation:

According to current law found in s. 320.696, F.S., manufacturers are required to provide reasonable compensation 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.”

Current law does not address manufacturers imposing a charge or surcharge to the wholesale price of a product, to recover its costs for compensating a dealer for warranty work.

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.

Specifically, the bill provides the reasonable compensation by the manufacturer may be no less than the amount charged by the dealer for like work for nonwarranty repairs or service, “including labor and parts.” And in a proceeding before the Department of Highway Safety and Motor Vehicles, the manufacturer is required to demonstrate the dealer’s retail charges for labor “and parts” are improper.

The bill 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.

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 the bill 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 the bill will prohibit 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.

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.

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 language found in the bill addresses this issue by prohibiting manufacturers from using a surcharge in Florida to avoid paying a retail market rate for warranty repairs, including labor and parts.

Related Court Rulings

Pursuant to a legal challenge to the practice of manufacturers reimbursing dealers for labor and parts at levels below market prices charged to retail customers, the Court in *Brandon Chrysler Plymouth Jeep Eagle, Inc. v. Chrysler Corp.*, 898 F. Supp. 858 (M.D. Fla. 1995), found the express terms of the statute did not require a manufacturer to reimburse a dealer for "parts" utilized in performing warranty work. The Court opined if the Florida legislature intended to bring parts within the scope of the statutory language, the word "parts" would have specifically been used.

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 SB 1206's language, 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.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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