

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1225 Motor Vehicle Manufacturers, Importers, Distributors, and Dealers  
**SPONSOR(S):** Economic Expansion & Infrastructure Council, R. Garcia  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1206

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Infrastructure</u>	<u>8 Y, 0 N</u>	<u>Owen</u>	<u>Miller</u>
2) <u>Economic Expansion &amp; Infrastructure Council</u>	<u>14 Y, 0 N, As CS</u>	<u>Owen</u>	<u>Tinker</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

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.

CS/HB 1225 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.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

Reduce Government: CS/HB 1225 creates additional requirements and obligations on automobile manufacturers regarding aspects of their agreements with franchised motor vehicle dealers in Florida.

### B. EFFECT OF PROPOSED CHANGES:

#### 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 that 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.

There are 28 states with provisions in their laws that address manufacturer reimbursement for warranty parts at retail rates. (see table below)

Alabama	Arkansas	Georgia	Illinois
Kentucky	Louisiana	Maine	Maryland
Minnesota	Montana	Nebraska	Nevada
New Hampshire	New Jersey	New Mexico	New York
North Carolina	Ohio	Oklahoma	Oregon
Rhode Island	South Dakota	Texas	Utah
Vermont	Virginia	West Virginia	Wisconsin

#### Proposed Changes:

CS/HB 1225 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 that the reasonable compensation by the manufacturer must be equal to 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 that 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.

### C. SECTION DIRECTORY:

Section 1. Amends s. 320.696, F.S., by revising the requirement that certain motor vehicle manufacturers and distributors compensate a dealer for work performed to rectify product or warranty defects or fulfill delivery and preparation obligations; revising provisions for determination of

compensation amount to specify that work includes labor and parts; prohibiting the manufacturer or distributor from imposing certain charges on the dealer to recover costs of the compensation.

Section 2. Provides an effective date of July 1, 2007.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Indeterminate. To the extent that 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 the state of 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.

### **D. FISCAL COMMENTS:**

There is no fiscal impact on state or local governments.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable because the bill does not appear to: require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

#### **2. Other:**

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 that 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 that 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 that such practices violate the New Jersey statute.

Meanwhile, *Acadia v. Ford Motor Co.*, 44 F.3d 1050 (1<sup>st</sup> Cir.1995) held that the practice did not violate the Maine statute. In response to *Acadia*, Maine amended their statute with language similar to HB 1225’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 that Maine’s new provision relating to surcharges did not violate the U.S. Constitution.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**Comments:**

The Florida Automobile Dealer’s Association (FADA) supports the bill. They claim that manufacturers currently reimburse Florida dealers for parts at levels set by the manufacturers, which are typically well 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.

They also claim 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 that 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 CS/HB 1225 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.

The Alliance of Automobile Manufacturers (AAM) opposes the bill. They claim there is no problem in Florida of dealers seeking to recover retail reimbursement rates and manufacturers refusing to comply. They claim the bill places an unreasonable and expensive burden on manufacturers when there are no cost controls imposed on a dealer.

Finally, the AAM states that making it a statutory violation for a manufacturer to require a dealer to pay a surcharge when the dealer seeks to recover an excessive reimbursement amount for parts used unfairly mandates that a manufacturer subsidize any unreasonably high warranty parts price the dealer chooses to charge.

D. STATEMENT OF THE SPONSOR

No statement submitted.

#### **IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

On April 12, 2007, this bill was considered by the Economic Expansion & Infrastructure Council. One amendment was adopted which specified that the amount of reasonable compensation by the manufacturer is to be equal to the amount charged by the dealer for like work to retail customers. The bill was reported favorably as a Council substitute.