

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 9, 1998 Revised: \_\_\_\_\_

Subject: Motor Vehicle Damage Disclosure

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Vickers</u>	<u>Johnson</u>	<u>TR</u>	<u>Favorable/CS</u>
2.	<u>Maclure</u>	<u>Austin</u>	<u>CM</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

The committee substitute requires that a manufacturer provide a written disclosure to a motor vehicle dealer when a motor vehicle is damaged at any time after the manufacturing process is complete, but before delivery of the vehicle to the dealer. This disclosure is required if the cost to repair the vehicle exceeds 3 percent of the manufacturer's suggested retail price or \$650, whichever is less. Certain replacement items (tires, bumpers, bumper fascia, glass, in-dash equipment, and detachable components) are excluded, provided that these items are replaced with identical manufacturer's original equipment. Dealers are required to provide the same written disclosure to the buyer. Dealers are required to notify manufacturers when such damage is discovered and request authorization to make repairs. If the manufacturer fails to make a timely response, ownership of the damaged vehicle transfers back to the manufacturer. The committee substitute also provides a cause of action on the part of the buyer for damages resulting from a failure to give notice or make necessary repairs. Failure to provide proper notice to the buyer also constitutes grounds for the rescission of a sale.

The committee substitute creates section 501.98, Florida Statutes.

**II. Present Situation:**

Section 320.27(9)(n), F.S., provides that the Department of Highway Safety and Motor Vehicles may deny, suspend, or revoke the license of a motor vehicle dealer who fails to disclose certain damages to a new motor vehicle if the dealer had actual knowledge and if the dealer's actual cost of repair, excluding tires, bumpers, and glass, exceeds 3 percent of the manufacturer's suggested retail price. However, if only the application of exterior paint is involved, disclosure is required if the application of touch-up paint exceeds \$100. Under the statute, the department may take such

action if the failure to make required disclosures occurs with sufficient frequency so as to establish a pattern of wrongdoing on the licensee's part (s. 320.27(9), F.S.).

There is currently no provision in statute that addresses consumer remedies if the required disclosures are not made by the dealer.

### **III. Effect of Proposed Changes:**

The committee substitute creates s. 501.98, F.S., governing new motor vehicle damage and disclosure, which includes the following principal provisions.

#### **Responsibilities of Manufacturer**

The committee substitute requires that a manufacturer provide a written disclosure to a dealer at the time of delivery of a motor vehicle of damage and repair to the motor vehicle that is known to the manufacturer and that occurred at any time after the manufacturing process is complete, but before delivery of the vehicle to the dealer. This disclosure is required if the cost of repairing the damage, excluding the cost of replacing certain replacement items if identical manufacturer's original equipment was used, exceeds the specified threshold amount. For purposes of this section, replacement items include tires, bumpers, bumper fascia, glass, in-dashboard equipment, or any readily detachable component that is not structural in nature. The threshold amount is set at 3 percent of the manufacturer's suggested retail price or \$650, whichever is less, based on the actual cost of repair to the vehicle.

The committee substitute provides that unless the dealer determines the method of transportation, the manufacturer is liable for any and all damage to a motor vehicle before it is delivered to a dealer. Whenever a new motor vehicle is damaged in transit the dealer is required to notify the manufacturer within seven business days and request authorization from the manufacturer to replace the components, parts, and accessories damaged or to otherwise repair the damage.

It is unlawful for any manufacturer to fail to assume responsibility for any liability resulting from structural or production defects. In addition, it is unlawful for any manufacturer to fail to compensate any dealer for repairs made to a motor vehicle damaged in manufacture or transit to the dealer when the carrier is designated by the manufacturer. If the manufacturer refuses or fails to authorize the repair of any damage within 10 days after receiving notification or within any additional time as specified in the franchise agreement, ownership of the motor vehicle will revert to the manufacturer, and the dealer will have no obligation, except that the manufacturer may elect to repurchase the motor vehicle or provide reasonable and adequate compensation to the dealer to assist in selling or disposing of the vehicle.

If the dealer determines the method of transportation, the risk of loss passes to the dealer upon delivery of a motor vehicle to the carrier. In every other case, the risk of loss remains with the manufacturer until the dealer or his designee accepts the motor vehicle from the carrier.

### **Responsibilities of Dealer**

The committee substitute provides that in addition to any other disclosure requirement provided by law, a dealer must disclose to the purchaser, including a purchaser for resale, prior to entering into a sales contract, any damage and repair to the vehicle if the cost of repair exceeds 3 percent of the manufacturer's suggested retail price or \$650, whichever is less. The disclosure must be in writing, and the buyer must acknowledge receipt of the disclosure in writing. A dealer is not required to disclose to a purchaser that specified replacement items have been replaced, provided that the items have been replaced with identical manufacturer's original equipment.

### **Consumer Remedies**

The committee substitute provides that a motor vehicle buyer may file an action to recover damages caused by a violation of the disclosure requirements contained in this measure. The court must award a buyer who prevails in such action the amount of any pecuniary loss, litigation costs, reasonable attorney's fees, and appropriate equitable relief. An action brought under this section must be commenced within one year after the discovery of the damage or within one year after the time discovery reasonably should have been made by the consumer. This section does not preclude a motor vehicle purchaser from pursuing other rights or remedies under any law, including an action under the Motor Vehicle Warranty Enforcement Act.

Failure by the dealer to disclose any corrected damage that must be disclosed and that is within the knowledge of the dealer constitutes grounds for rescission of the sales contract, provided that, within 30 days after the purchase, the motor vehicle is returned to the dealer with a written notice of the grounds for rescission. In case of rescission under this section, the dealer must accept the vehicle and refund any payments made to the dealer in connection with the transaction, less a reasonable allowance for the buyer's use of the motor vehicle. If the purchaser elects to pursue a rescission of the sales contract, this provision is the purchaser's exclusive remedy.

The committee substitute includes a legislative request that the Division of Statutory Revision designate the proposed s. 501.98, F.S., as part VI of ch. 501, F.S.

The committee substitute provides for an effective date of July 1, 1998.

## **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:

The committee substitute provides for consumer protection and remedies where a consumer discovers that a new motor vehicle was damaged but the dealer did not make proper disclosure. The measure also specifies certain rights and obligations as between motor vehicle dealers and manufacturers relating to the disclosure of damage and repair information. The exact economic impact of these provisions on the private sector is not known.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The American Automobile Manufacturers Association reports that 35 states have laws requiring that pre-sale damage to new motor vehicles must be disclosed to consumers.

**VIII. Amendments:**

None.