

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 33

Short Title: Car Damage Discl. Reqmnts.

(Public)

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Sponsors: Senators Speed, Odom, and Shaw.

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Referred to: Judiciary II.

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February 6, 1991

A BILL TO BE ENTITLED

AN ACT TO EQUALIZE THE DAMAGE DISCLOSURE REQUIREMENTS FOR  
AUTO MANUFACTURERS AND NEW CAR DEALERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-305.1 reads as rewritten:

**"§ 20-305.1. Automobile dealer warranty obligations.**

(a) Each motor vehicle manufacturer, factory branch, distributor or distributor branch, shall specify in writing to each of its motor vehicle dealers licensed in this State the dealer's obligations for preparation, delivery and warranty service on its products, the schedule of compensation to be paid such dealers for parts, work, and service in connection with warranty service, and the time allowances for the performance of such work and service. In no event shall such schedule of compensation fail to include reasonable compensation for diagnostic work as well as repair service and labor. Time allowances for the performance of warranty work and service shall be reasonable and adequate for the work to be performed. In the determination of what constitutes reasonable compensation under this section, the factors to be given consideration shall include, among others, the compensation being paid by other manufacturers to their dealers, the prevailing wage rates being paid by dealers, and the prevailing labor rate being charged by dealers, in the community in which the dealer is doing business.

(b) Notwithstanding the terms of any franchise agreement, it is unlawful for any motor vehicle manufacturer, factory branch, distributor, or distributor branch to fail to perform any of its warranty obligations with respect to a motor vehicle, to fail to compensate its motor vehicle dealers licensed in this State for warranty parts, or, in service in accordance with the schedule of compensation provided the dealer pursuant to

1 subsection (a) above, and to fail to indemnify and hold harmless its franchised dealers  
2 licensed in this State against any judgment for damages or settlements agreed to by the  
3 manufacturer, including, but not limited to, court costs and reasonable attorneys' fees of  
4 the motor vehicle dealer, arising out of complaints, claims or lawsuits including, but not  
5 limited to, strict liability, negligence, misrepresentation, express or implied warranty, or  
6 rescission or revocation of acceptance of the sale of a motor vehicle as defined in G.S. 25-  
7 2-608, to the extent that the judgment or settlement relates to the alleged defective  
8 negligent manufacture, assembly or design of new motor vehicles, parts or accessories  
9 or other functions by the manufacturer, factory branch, distributor or distributor branch,  
10 beyond the control of the dealer.

11 (c) In the event there is a dispute between the manufacturer, factory branch,  
12 distributor, or distributor branch, and the dealer with respect to any matter referred to in  
13 subsections (a) and (b) above and subsection (d) below, either party may petition the  
14 Commissioner in writing, within 30 days after either party has given written notice of  
15 the dispute to the other, for a hearing on the subject and the decision of the  
16 Commissioner shall be binding on the parties, subject to rights of judicial review and  
17 appeal as provided in Chapter 150B of the General Statutes; provided, however, that  
18 nothing contained herein shall give the Commissioner any authority as to the content of  
19 any manufacturer's or distributor's warranty.

20 (d) Transportation damages. –

- 21 (1) Notwithstanding the terms, provisions or conditions of any agreement  
22 or franchise, the manufacturer is liable for all damages to motor  
23 vehicles before delivery to a carrier or transporter.
- 24 (2) If a new motor vehicle dealer determines the method of transportation,  
25 the risk of loss passes to the dealer upon delivery of the vehicle to the  
26 carrier.
- 27 (3) In every other instance, the risk of loss remains with the manufacturer  
28 until such time as the new motor vehicle dealer or his designee accepts  
29 the vehicle from the carrier.
- 30 (4) Whenever a motor vehicle is damaged while in transit when the carrier  
31 or the means of transportation is designated by the manufacturer or  
32 distributor, or whenever a motor vehicle is otherwise damaged prior to  
33 delivery to the dealer, the dealer must:
- 34 a. Notify the manufacturer or distributor of such damage within  
35 three working days or within such additional time as authorized  
36 by the franchise agreement of the occurrence of the delivery of  
37 the motor vehicle as defined in subsection (1) of this section;  
38 and
- 39 b. Must request from the manufacturer or distributor authorization  
40 to repair the damages sustained or to replace the parts or  
41 accessories damaged.
- 42 (5) In the event the manufacturer or distributor refuses or fails to authorize  
43 repair or replacement of any such damage within ten working days  
44 after receipt of notification of damage by the dealer, ownership of the

1 motor vehicle shall revert to the manufacturer or distributor, and the  
2 dealer shall incur no obligation, financial or otherwise, for such  
3 damage to the motor vehicle.

4 (5a) No manufacturer shall fail to disclose in writing to a new motor  
5 vehicle dealer, at the time of delivery of a new motor vehicle, the  
6 nature and extent of any and all damage and post-manufacturing  
7 repairs made to such motor vehicle while in the possession or under  
8 the control of the manufacturer if the cost of such post-manufacturing  
9 repairs exceeds three percent (3%) of the manufacturer's suggested  
10 retail price. A manufacturer is not required to disclose to a new motor  
11 vehicle dealer that any glass, tires or bumper of a new motor vehicle  
12 was damaged at any time if the damaged item has been replaced with  
13 original or comparable equipment.

14 (6) Nothing in this subsection (d) shall relieve the dealer of the obligation  
15 to cooperate with the manufacturer as necessary in filing any  
16 transportation damage claim with the carrier.

17 (e) Damage/Repair Disclosure. – Notwithstanding the provisions of subdivision  
18 (d)(4) of this section and in supplementation thereof, a new motor vehicle dealer shall  
19 disclose in writing to a purchaser of the new motor vehicle prior to entering into a sales  
20 contract any damage and repair to the new motor vehicle if the damage exceeds ~~five~~  
21 three percent (3%) (5%) of the manufacturer's suggested retail price as calculated at the  
22 rate of the dealer's authorized warranty rate for labor and parts.

23 (1) A new motor vehicle dealer is not required to disclose to a purchaser  
24 that any glass, tires or bumper of a new motor vehicle was damaged at  
25 any time if the damaged item has been replaced with original or  
26 comparable equipment.

27 (2) If disclosure is not required under this section, a purchaser may not  
28 revoke or rescind a sales contract due solely to the fact that the new  
29 motor vehicle was damaged and repaired prior to completion of the  
30 sale.

31 (3) For purposes of this section, 'manufacturer's suggested retail price'  
32 means the retail price of the new motor vehicle suggested by the  
33 manufacturer including the retail delivered price suggested by the  
34 manufacturer for each accessory or item of optional equipment  
35 physically attached to the new motor vehicle at the time of delivery to  
36 the new motor vehicle dealer which is not included within the retail  
37 price suggested by the manufacturer for the new motor vehicle.

38 (f) The provisions of subsections (d) and (e) shall not apply to manufacturers and  
39 dealers of 'motorcycles' as defined in G.S. 20-4.01(27)."

40 Sec. 2. This act is effective upon ratification and applies to new automobiles  
41 sold on or after that date.