

DISCLOSURE BY AUTO DEALERS

Senate Bill 864 with House committee
amendment
First Analysis (6-14-94)

Sponsor: Sen. Paul Wartner
Senate Committee: Transportation &
Tourism
House Committee: Transportation

THE APPARENT PROBLEM:

Auto dealers sometimes receive new vehicles from the manufacturer that have been damaged in one way or another. For instance, a new vehicle could be damaged while in transport between the manufacturer and the dealer. In other instances, dealers may receive from the manufacturer vehicles that had been used as "program" vehicles (that is, vehicles that, when brand-new, had been sold to rental vehicle companies, used for no more than a year, and bought back by the manufacturer); if these vehicles had been damaged in any substantial way, the dealer usually will simply replace the damaged parts with new ones and offer the vehicles as "new." What dealers then must decide is whether a new vehicle's repair or replacement of parts is significant enough to warrant notifying a potential buyer of the vehicle of its repair history. Reportedly, dealers have different policies about what they will and will not disclose regarding any parts replacement that may have occurred to a new vehicle they are selling. Occasionally, a consumer will purchase a new vehicle unaware that it was previously damaged and repaired, only to discover later that the vehicle is running poorly or that its body is quickly deteriorating. A new-car buyer faced with such a dilemma usually has the vehicle replaced, though sometimes a case ends up in court if a dealer feels he or she was not obligated to tell the vehicle's buyer of its previous repair history. What is needed, some say, is a provision in law that would require dealers, before entering into a contract to sell a vehicle, to disclose to someone thinking of buying it about repairs that had been made to it (if the dealer knew of any) if the cumulative cost of repairs exceeded a certain threshold of the manufacturer's suggested retail price of the vehicle. Similar laws currently exist in over 25 other states.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Vehicle Code (MCL 257.233b) to require that a person who sells new motor vehicles (a "dealer"), before entering into a sales contract, give a vehicle purchaser written disclosure (including an itemization of repairs) if a vehicle had been damaged and repaired, if the dealer knew of the damage and repairs and if the cumulative cost of the repairs exceeded 6% of the manufacturer's suggested retail price of the vehicle, as calculated at the rate of the dealer's authorized warranty rate for labor and parts. This requirement would apply to a new motor vehicle, demonstrator, executive or manufacturer's vehicle, or program vehicle. A dealer would not be required to disclose that any glass, tires, wheels, bumpers, audio equipment, or in-dash components were damaged at any time if the damaged item had been replaced with original manufacturer's parts and materials. If a dealer failed to comply with the bill, the purchaser would retain all applicable remedies available under the Uniform Commercial Code.

Repaired damage to a motor vehicle not exceeding 6 percent of the manufacturer's suggested retail price would not constitute grounds for revocation of acceptance by the purchaser. The purchaser's right of revocation would cease upon his or her acceptance of delivery of the vehicle.

The terms "distributor" and "manufacturer" would be defined as they are in Public Act 118 of 1981, which regulates motor vehicle manufacturers, distributors, wholesalers, and dealers. "Program vehicle" would mean a motor vehicle from either the current model year or the immediately preceding model year, that was repurchased by a manufacturer or distributor from a rental car company.

The bill would take effect January 2, 1995.

HOUSE COMMITTEE ACTION:

The House Transportation Committee adopted a minor amendment to the Senate-passed version of the bill. Under the Senate-passed bill, a dealer would not have to disclose that certain items (i.e., glass, tires, wheels, bumpers, audio equipment or in-dash components) on a new vehicle had been damaged at any time if the damaged items had been replaced with original manufacturer's "or comparable equipment." The House committee altered this language to instead say that disclosure would not be required as long as such damaged items had been replaced with original manufacturer's "parts and materials."

FISCAL IMPLICATIONS:

The Department of State says the bill would not affect state or local budget expenditures. (6-10-94)

ARGUMENTS:

For:

The bill would require those who deal in new motor vehicles, before entering into a sales contract, to give someone who was buying a vehicle from them a written disclosure statement if a newly-manufactured vehicle had been damaged and repaired, if the cost of the repairs exceeded six percent of the vehicle's manufacturer's suggested retail price (MSRP), as calculated at the dealer's authorized warranty rate for labor and parts. This requirement would only apply to new motor vehicles, demonstrator, executive or manufacturer's vehicles, or program vehicles, and only if the dealer knew that damage and repairs had been made. Also, the bill's provisions would not apply to certain other items in a new vehicle that had been damaged as long as they were replaced by original manufacturer's parts and materials. At present, when dealers receive damaged new vehicles from the manufacturer, they typically repair them to look like new but may or may not tell a potential buyer of this fact, depending on the extent of the repairs made. The most ethical dealers, of course, will notify potential customers of even the most minor repairs or parts replacements made to a new vehicle. By requiring disclosure to be made for all repairs that exceeded six percent of a vehicle's MSRP (based on the dealer's authorized warranty rate for labor and parts), the bill would establish a uniform disclosure standard that could not vary from dealer to dealer. Thus, consumers of new

vehicles could be assured that if a new vehicle had even a modest repair history they would have to be told about it. Twenty-eight other states reportedly have adopted similar new vehicle dealer disclosure laws and Michigan should, too.

Against:

The bill, rather than enhance consumer protection, would in fact work against the interests of new vehicle buyers as it would place the burden of determining whether or not a new vehicle had been previously damaged (if the cost of that damage fell under the six percent threshold) on consumers. Under present law, if a new-vehicle dealer fails to disclose any damages and repairs made to a new vehicle, someone who buys it may file a complaint against him or her with the Bureau of Automotive Regulation within the Department of State. If, upon investigation, the bureau determines that fraud had been committed by the dealer, it will take appropriate action against him or her, including revoking the dealer's license. A dissatisfied customer also could pursue various remedies established under the Uniform Commercial Code. The bill, however, would circumvent consumer protections provided under the UCC by adding provisions to the Michigan Vehicle Code that are intended primarily to protect dealers. Specifically, the bill provides that a new vehicle purchaser's right to revoke a purchase would cease upon his or her acceptance of the new vehicle's delivery, as long as any repairs made to it did not exceed the threshold established in the bill.

Against:

The bill's six percent threshold is too high, at the upper end of the average threshold established by states that have a similar law. Some states, in fact, have thresholds as low as three percent of the vehicle's MSRP, and a few impose a dollar threshold as low as \$300. For example, under the bill if damage to a \$20,000 vehicle (which is not far above what many new vehicles cost today) amounted to \$1,200, the dealer could sell it as "new" to a buyer who, justifiably, may assume it had no previous problems. According to information provided by the secretary of state, however, auctions that specialize in selling "program" and other used vehicles to dealers generally require disclosure of any damage over \$500. This would suggest that even dealers believe that damage over \$500 sustained by used cars they are buying in order to sell at a profit is substantial enough to warrant disclosure.

POSITIONS:

The Michigan Automobile Dealers Association
supports the bill. (6-10-94)

The Department of State does not support the bill.
(6-10-94)