

**NOTE: As provided in LFC policy, this report is intended for use by the standing finance committees of the legislature. The Legislative Finance Committee does not assume responsibility for the accuracy of the information in this report when used in any other situation.**

**Only the most recent FIR version, excluding attachments, is available on the Intranet. Previously issued FIRs and attachments may be obtained from the LFC office in Suite 101 of the State Capitol Building North.**

## FISCAL IMPACT REPORT

SPONSOR: Varela DATE TYPED: 2/15/01 HB 104  
 SHORT TITLE: Failure to Disclose Vehicle Damages SB \_\_\_\_\_  
 ANALYST: Rael

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
No Fiscal Impact					

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

Administrative Office of the Courts (AOC)  
 LFC Files

### SUMMARY

#### Synopsis of Bill

The Failure to Disclose Vehicle Damages bill amends the Unfair Trade Practices Act to provide that the seller is not liable for failure to disclose damage if the seller has obtained a statement in writing from the person from whom the vehicle was purchased that the vehicle had not been damaged at the time of that sale; or the seller does not have actual knowledge of the damage; the repairs have been made to exterior metal, glass, rubber, or plastic parts that have been replaced with new ones and would not be revealed by an actual inspection.

This bill provides for an additional remedy when a vehicle was damaged and the damage was required to be disclosed but the seller is not liable pursuant to the parameters listed above. The purchaser may demand that the seller of the vehicle rescind the transaction if the vehicle purchased can be delivered back to the seller in substantially the same condition as it was in when delivered to the purchaser.

### FISCAL IMPLICATIONS

No fiscal impact.

**OTHER SUBSTANTIVE ISSUES**

In 1999, the governor vetoed a similar bill stating:

"This legislation would create an exception to the liability a car dealer has when selling a damaged automobile . . . . I believe this exception would shift the responsibility of proper inspection and quality assurance from the auto dealer to the consumer. Clearly the auto dealer is better equipped to handle this task and assure the quality of their product."

The Attorney General's Office objected to the 1999 bill because it believed it was wrong to shift the risk of loss from the car dealer to the consumer. The dealer has control over the wholesaler and has the power to deal only with reputable wholesalers. The consumer has no control in this situation. Motor vehicle dealers are experts at detecting problems with vehicles. They can look at a paint job or an alignment, or put a vehicle on a hoist, and they can tell whether there are problems. Dealers also are in the best position to know their sellers (for example, auctions or wholesalers) and the quality of vehicles typically sold by those sellers. In contrast, the average automobile purchaser is not as knowledgeable about whether a vehicle has been in an accident. This bill shifts most of the responsibility to the ill-equipped buyer.

The Attorney General's office also reports this bill may have a negative impact on reputable used car dealers. The best car dealers care about their customers. They don't want their customers driving bad vehicles, because they want those customers coming back to them for their next car. The best dealers stand behind what they sell. They do inspect their trade-ins, and they tell their customers what they know about the cars they sell. This bill allows the unscrupulous car dealers a competitive edge over the honest car dealers. It protects the bad guys and penalizes the good guys.

Finally, the protection offered by the bill may not be adequate. Many people do not find out about a vehicle's defects until they are involved in an auto accident. At this point, they are precluded from ascertain the remedy in the bill.

FAR/njw