

Tab 1	CS/SB 282 by CA, Artiles ; (Compare to CS/H 00193) Towing and Storage Fees
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Tab 2	CS/SB 832 by CJ, Young ; (Similar to CS/H 01027) Drones
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Tab 3	SB 1678 by Garcia ; (Compare to H 01047) Motor Vehicle Dealers
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

TRANSPORTATION
Senator Gainer, Chair
Senator Rouson, Vice Chair

MEETING DATE: Tuesday, April 4, 2017

TIME: 9:30—11:30 a.m.

PLACE: James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building

MEMBERS: Senator Gainer, Chair; Senator Rouson, Vice Chair; Senators Baxley, Galvano, Hukill, and Rader

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 282 Community Affairs / Artiles (Compare CS/H 193)	Towing and Storage Fees; Prohibiting counties and municipalities from imposing additional charges, costs, expenses, fines, fees, or penalties on a registered owner or lienholder of a vehicle, etc. CA 03/22/2017 Fav/CS TR 04/04/2017 Favorable AFT AP	Favorable Yeas 4 Nays 0
2	CS/SB 832 Criminal Justice / Young (Similar CS/H 1027)	Drones; Citing this act as "Unmanned Aircraft Systems Act"; providing that, except as provided in federal regulations, authorizations, or exemptions, the authority to regulate the operation of unmanned aircraft systems is vested in the state; prohibiting a person from knowingly and willfully operating a drone over or allowing a drone to make contact with or come within a certain distance of certain critical infrastructure facilities; providing that the use of a drone by a communications service provider or contractor is not prohibited under certain provisions of ch. 934, etc. CJ 03/21/2017 Fav/CS TR 04/04/2017 Favorable CU RC	Favorable Yeas 4 Nays 0
3	SB 1678 Garcia (Compare H 1047, CS/H 1175)	Motor Vehicle Dealers; Providing an exception to the requirement that a specified provision does not affect certain contracts between a licensee and any of its dealers; providing that a motor vehicle dealer who completes certain approved construction or changes to or installation on the dealer's facility in reliance upon a certain program, standard, or policy, or bonus, incentive, rebate, or other benefit is deemed to be in full compliance with all of an applicant's or licensee's requirements related to the facility, sign, and image for a specified period, etc. TR 03/22/2017 Temporarily Postponed TR 03/28/2017 Temporarily Postponed TR 04/04/2017 Fav/CS CM RC	Fav/CS Yeas 3 Nays 1

COMMITTEE MEETING EXPANDED AGENDA

Transportation

Tuesday, April 4, 2017, 9:30—11:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Transportation

BILL: CS/SB 282

INTRODUCER: Community Affairs Committee and Senator Artiles

SUBJECT: Towing and Storage Fees

DATE: April 3, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cochran	Yeatman	CA	Fav/CS
2.	Jones	Miller	TR	Favorable
3.			AFT	
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 282 prohibits a county or municipality from adopting or maintaining a rule or ordinance that imposes a charge, cost, expense, fine, fee, or penalty, other than the reasonable costs of towing and storage incurred by an authorized wrecker operator, on the registered owner of a vehicle removed and impounded by an authorized wrecker operator. A county or municipality may impose a reasonable fee or charge for towing and storage not to exceed maximum rates if the county or municipality has caused the owner's vehicle to be towed to and impounded at a facility owned by the county or municipality.

The bill may have a negative fiscal impact to local governments that currently impose fees for towing and storage in excess of the reasonable costs incurred or maximum rates set for towing and storage.

The bill takes effect July 1, 2017.

II. Present Situation:

County and Municipal Wrecker Operator Systems

A county or municipal government may contract with one or more wrecker operators to tow or remove wrecked, disabled, or abandoned vehicles from streets, highways, and accident sites.¹ After the establishment of such contract(s), the county or municipality must create a “wrecker operator system” to apportion towing assignments between the contracted wrecker services. This apportionment may occur through the creation of geographic zones, a rotation schedule, or a combination of those methods. Any wrecker operator that is included in the wrecker operator system is an “authorized wrecker operator” in the jurisdiction, while any wrecker operation not included is an “unauthorized wrecker operator.”²

Unauthorized wrecker operators are not permitted to initiate contact with a wrecked or disabled vehicle.³ If the operator of a disabled vehicle initiates contact, an unauthorized wrecker operator must disclose in writing, before the vehicle is connected to the towing apparatus:

- Their full name;
- Driver’s license number;
- That they are not a member of the wrecker operator system;
- That the vehicle is not being towed for the owner’s insurance company or lienholder;
- Whether they have an insurance policy providing \$300,000 in liability coverage and \$50,000 in on-hook cargo coverage; and
- Maximum rates for towing and storage.⁴

The unauthorized wrecker operator is also required to disclose this information to any law enforcement officer present.⁵ It is a second degree misdemeanor for an unauthorized wrecker operator to initiate contact or to fail to provide required information after contact has been initiated. An unauthorized wrecker operator misrepresenting his or her status as an authorized wrecker operator commits a first degree misdemeanor.⁶ Unauthorized wrecker operators also are prohibited from monitoring police radios to determine the location of wrecked or disabled vehicles.⁷

Counties are required to establish maximum rates for the towing and storage of vehicles removed from private property, removed from the scene of an accident, or where the vehicle is towed at the request of a law enforcement officer.⁸ Municipalities are also authorized to adopt maximum rate ordinances.⁹

¹ Section 323.002(1)(c), F.S.

² Section 323.002(1)(a)-(b), F.S.

³ Section 323.002(2)(b), F.S.

⁴ Section 323.002(2)(c), F.S.

⁵ *Id.*

⁶ Section 323.002(2)(d), F.S.

⁷ Section 323.002(2)(a), F.S.

⁸ Section 125.0103(1)(c), F.S.

⁹ Section 166.043(1)(c), F.S.

Vehicle Holds and Wrecker Operator Storage Facilities

An investigating agency may place a hold on a motor vehicle stored within a wrecker operator's storage facility for up to 5 business days.¹⁰ A hold may be applied where the officer has probable cause to believe the vehicle:

- Should be seized under the Florida Contraband Forfeiture Act or ch. 379, F.S.;
- Was used as the means of committing a crime;
- Is evidence that tends to show a crime has been committed; or
- Was involved in a traffic accident resulting in death or personal injury.¹¹

An officer may also apply a hold when the vehicle is impounded pursuant to ss. 316.193 or 322.34, F.S., and when the officer is complying with a court order.¹² The hold must be in writing and include:

- The name and agency of the law enforcement officer placing the hold;
- The date and time the hold is placed on the vehicle;
- A general description of the vehicle;
- The specific reason for the hold;
- The condition of the vehicle;
- The location where the vehicle is being held; and
- The name and contact information for the wrecker operator and storage facility.¹³

The investigating agency must inform the wrecker operator within the 5-day holding period if the agency intends to hold the vehicle for a longer period of time.¹⁴ The vehicle owner is liable for towing and storage charges for the first 5 days. If the vehicle is to be held beyond 5 days, the investigating agency may choose to have the vehicle stored at a designated impound lot or to pay for storage at the wrecker operator's storage facility.¹⁵

Authority for Local Governments to Charge Fees

Counties and cities do not have authority to levy taxes, other than ad valorem taxes, except as provided by general law.¹⁶ However, local governments possess the authority to impose user fees or assessments by local ordinance; as such, authority is within the constitutional and statutory home rule powers of local governments.¹⁷ The key distinction between a tax and a fee is that fees are voluntary and benefit particular individuals in a manner not shared by others in the public.¹⁸ On the other hand, a tax is a "forced charge or imposition, operating whether we like it or not and in no sense depends on the will or contract of the one on whom it is imposed."¹⁹ Usually a fee is applied for the use of a service. The fee rate is tied directly to the cost of maintaining the

¹⁰ Section 323.001(1), F.S.

¹¹ Section 323.001(4)(a)-(e), F.S.

¹² Section 323.001(4)(f)-(g), F.S.

¹³ Section 323.001(5), F.S.

¹⁴ Section 323.001(2), F.S.

¹⁵ Section 323.001(2)(a)-(b), F.S.

¹⁶ Art. VII, s. 1(a), Fla. Const.

¹⁷ *City of Boca Raton v. State*, 595 So. 2d 25, 30 (Fla. 1992).

¹⁸ *City of Miami v. Quik Cash Jewelry & Pawn, Inc.*, 811 So.2d 756, 758 (Fla. 3rd DCA 2002).

¹⁹ *Id.* at 758-59.

service. Money collected from a fee is generally not applied to uses other than to provide the service for which the fee is applied.

Administrative Fees Related to Towing and Storage

Some municipalities charge administrative fees when a vehicle is towed in connection with certain misdemeanors or felonies.

The City of Sarasota seizes the vehicle of those arrested for crimes related to drugs or prostitution.²⁰ The registered owner of the vehicle is then given two options:

- The registered owner may request a hearing where the city must show by a preponderance of the evidence that the vehicle was used to facilitate the commission of an act of prostitution or any violation of ch. 893, F.S., the Florida Comprehensive Drug Abuse Prevention and Control Act. The owner may post a bond equal to the civil penalty (\$500), hearing costs (\$50), and towing and storage fees (\$125 plus \$25 per day) to receive the vehicle back pending the outcome of the hearing, or the owner may leave the vehicle in impound, incurring additional fees.
- The registered owner may waive the right to a hearing and pay the civil penalty (\$500).

If the registered owner of the vehicle is unable to pay the administrative penalty within 35 days, the city disposes of the vehicle. The same process and rate structure is employed by the City of Bradenton.²¹

Other municipalities have enacted ordinances charging an administrative fee for any vehicle impoundment associated with an arrest. For example, the City of Sweetwater imposes an “impoundment administrative fee” on all vehicles seized incident to an arrest. The fee is \$500 if the impoundment stems from a felony arrest and \$250 if the impoundment stems from a misdemeanor.²²

The City of Winter Springs imposes an administrative fee for impoundment arising from 12 offenses enumerated in the authorizing ordinance, ranging from prostitution to dumping litter weighing more than 15 pounds.²³ The registered owner may request a hearing, accruing additional storage fees either pending the hearing or posting a bond equal to the amount of the administrative fee (\$550). If the registered owner waives the right to a hearing, the administrative fee is reduced to \$250. These fees are payable to the city but are collected by towing companies.²⁴

²⁰ Sarasota Police Department, *Vehicle Seizure Program*, available at <http://www.sarasotapd.org/vehicle-seizure-program/> (last visited Mar. 29, 2017).

²¹ Bradenton, FL Code of Ordinances, ch. 54, art. IV (2016).

²² Sweetwater, FL Code of Ordinances, ch. 42-1, s. 42.1(c) (2017).

²³ City of Winter Springs, Ordinance No. 2016-01 (effective October 23, 2016).

²⁴ Florida House of Representatives, *House Bill 193 Staff Analysis* (Feb. 22, 2017) Winter Springs, FL Notice of Right to Hearing Form available at <http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h0193c.TIS.DOCX&DocumentType=Analysis&BillNumber=0193&Session=2017> at p. 7.

III. Effect of Proposed Changes:

The bill prohibits a county or municipality from adopting or maintaining an ordinance or rule that imposes a charge, cost, expense, fine, fee, or penalty, other than the reasonable costs of towing and storage incurred by an authorized wrecker operator, on the registered owner or lienholder of a vehicle removed and impounded by an authorized wrecker operator.

The bill allows a county or municipality to impose a reasonable fee or charge for towing and storage expenses, not to exceed the maximum rates approved by ordinance or rule under ss. 125.0103 or 166.043, F.S., on the legal owner of a vehicle if a county or municipal law enforcement officer has caused the owner's vehicle to be towed to and impounded at a facility owned by the county or municipality.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

If counties and municipalities can no longer impose certain fees on vehicle owners, there is likely to be a positive benefit to certain citizens.

C. Government Sector Impact:

There is likely to be a negative fiscal impact on local governments, to the extent they are using fees connected to towing as a revenue source.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 323.002 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on March 22, 2017:

Provides that a county or municipality may not adopt or maintain an ordinance or rule that imposes a charge, cost, expense, fine, fee or penalty other than the reasonable costs of towing and storage incurred by an authorized wrecker operator, on the registered owner of a vehicle removed and impounded by an authorized wrecker operator. However, a county or municipality may impose a reasonable fee or charge for towing and storage not to exceed maximum rates if the county or municipality has caused the owner's vehicle to be towed to and impounded at a facility owned by the county or municipality.

B. Amendments:

None.

By the Committee on Community Affairs; and Senator Artiles

578-02733-17

2017282c1

A bill to be entitled

An act relating to towing and storage fees; amending
s. 323.002, F.S.; prohibiting counties and
municipalities from imposing additional charges,
costs, expenses, fines, fees, or penalties on a
registered owner or lienholder of a vehicle; providing
an exception; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (5) is added to section 323.002,
Florida Statutes, to read:

323.002 County and municipal wrecker operator systems;
penalties for operation outside of system.—

(5) (a) Except as provided in paragraph (b), a county or
municipality may not adopt or maintain in effect an ordinance or
rule that imposes a charge, cost, expense, fine, fee, or
penalty, other than the reasonable costs of towing and storage
incurred by an authorized wrecker operator, on the registered
owner or lienholder of a vehicle removed and impounded by an
authorized wrecker operator under this chapter.

(b) A county or municipality may impose a reasonable fee or
charge for towing and storage expenses, not to exceed the
maximum rates approved by ordinance or rule under s. 125.0103 or
s. 166.043, on the legal owner of a vehicle if a county or
municipal law enforcement officer has caused the owner's vehicle
to be towed to and impounded at a facility owned by the county
or municipality.

Section 2. This act shall take effect July 1, 2017.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/4/17
Meeting Date

282
Bill Number (if applicable)

Topic Towing + Storage Fees

Amendment Barcode (if applicable)

Name Jose Diaz

Job Title _____

Address 108 E Jefferson St
Street
Tallahassee FL 3239
City State Zip

Phone 850-681-0254

Email jdiaz@j-aol.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Professional Wrecker Operators of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/4/17

Meeting Date

6B 282

Bill Number (if applicable)

Topic Towing & Storage Fees

Amendment Barcode (if applicable)

Name Rebecca Delarosa

Job Title Legislative Director

Address 304 N Olive Ave 1101

Phone 850 284 7235

Street

West Palm Beach

Email rdelarosa@pbgov.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Palm Beach County

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Transportation

BILL: CS/SB 832

INTRODUCER: Transportation Committee; Criminal Justice Committee; and Senator Young

SUBJECT: Drones

DATE: April 4, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Hrdlicka	CJ	Fav/CS
2.	Price	Miller	TR	Favorable
3.			CU	
4.			RC	

Please see Section IX. for Additional Information:

PLEASE MAKE SELECTION

I. Summary:

CS/SB 832 creates s. 330.41, F.S., relating to the lawful use of unmanned aircraft systems (drones) around and over critical infrastructure facilities. The bill creates new misdemeanor crimes prohibiting a person from knowingly and willfully operating a drone over or around certain critical infrastructure facilities.

The bill provides an exception from the prohibition against a person operating a drone over a critical infrastructure facility to allow a drone in transit for commercial purposes to fly over the facility.

The bill requires adherence to Federal Aviation Authority (FAA) regulatory authority by a facility seeking designation as a critical infrastructure facility for purposes of flight pattern regulation. The bill appears to exempt governmental entities and law enforcement agencies, under certain circumstances, from the drone airspace prohibition created in the bill.

The bill defines a “critical infrastructure facility” as:

- An electrical power generation or transmission facility, substation, switching station, or electrical control center;
- A natural gas compressor station, storage facility, or natural gas pipeline;
- A liquid natural gas terminal or storage facility;
- Any portion of an aboveground oil or gas pipeline; or

- A wireless communications facility, including tower, antennae, support structures, and all associated ground-based equipment.

The bill preempts local government authority to regulate the operation of unmanned aircraft systems but carves out exceptions for local government authority not specifically related to the use of drones.

The bill also amends s. 934.50, F.S., to add an exception to the prohibited uses of drones for communications service providers or their contractors for routing, siting, installation, maintenance, or inspection of facilities used to provide communications services.

II. Present Situation:

Drones typically range in size from wingspans of 6 inches to 246 feet and can weigh from approximately 4 ounces to over 25,600 pounds.¹ They may be controlled manually or through an autopilot which uses a data link to connect the drone's pilot to the drone.² Although "drone" has become almost a household word, the devices are also called Unmanned Aerial Vehicles (UAVs) and Unmanned Aerial Systems (UASs).

Some examples of non-military uses for drones have included earthquake damage assessment at Japan's Fukushima power plant, volcano activity assessment of Mount St. Helens in Washington for the U.S. Geological Survey, and surveying wild fires in Texas.³ At the University of Florida, the Unmanned Aerial Systems Research Group has developed an 11-pound drone having a 9-foot wingspan, which is called "Nova 2.1." According to researchers, it can be used to safely and accurately gather data that will be helpful to wildlife biologists and many others.⁴

The drone industry is motivated to move into more civilian markets.⁵ It also appears that civilian markets are ready to adopt the drone industry. According to the Consumer Electronics Association, drone shipments will increase from 250,000 units in 2014 to nearly a million in 2018.⁶

Congress has vested the FAA with authority to regulate the areas of airspace use, management and efficiency, air traffic control, safety, navigational facilities, and aircraft noise at its source.⁷

¹ 14 CFR Part 91, Docket No. FAA-2006-25714, 72 FR 6689, Department of Transportation, Federal Aviation Administration, *Unmanned Aircraft Operations in the National Airspace System*, February 13, 2007.

² *Id.*

³ James Chiles, *Drones for Hire*, Air & Space Smithsonian, January 2013, <http://www.airspacemag.com/flight-today/drones-for-hire-125909361/?all>, (last visited March 17, 2017).

⁴ James Dean, *Florida Hopes to Fill Its Skies with Unmanned Aircraft*, Florida Today, June 23, 2012, <http://usatoday30.usatoday.com/news/nation/story/2012-06-23/increased-drone-use-privacy-concerns/55783066/1>, (last visited March 17, 2017). Mickie Anderson, *UF Team's Work Pays Off With Unmanned-flight System that Captures Valuable Data*, Phys Org, October 20, 2010, <http://phys.org/news/2010-10-uf-team-unmanned-flight-captures-valuable.html>. (last visited March 17, 2017).

⁵ James Chiles, *Drones for Hire*, Air & Space Smithsonian, January 2013, <http://www.airspacemag.com/flight-today/drones-for-hire-125909361/?all>, (last visited March 17, 2017).

⁶ Larry Downes, *What's Wrong with the FAA's New Drone Rules*, Harvard Business News, March 2, 2015.

⁷ 49 U.S.C. ss. 40103, 44502, and 44701-44735.

In February 2012, Congress passed the FAA Modernization and Reform Act of 2012, which required the FAA to safely open the nation's airspace to drones by September 2015.⁸

The FAA authorized the testing of UAS at six sites around the country as part of its efforts.⁹ Many companies and individuals have applied for approval by the FAA to operate UASs in national airspace. These included airworthiness certificates to film for motion pictures, precision agriculture, and real estate, and to inspect distribution towers, wiring, and infrastructure. Over 5,000 such grants had been approved before the end of 2016, including companies such as Amazon Logistics, Inc., and Alphabet, Inc. (Google).¹⁰ Amazon is working on a package delivery system called "Prime Air."¹¹ Alphabet's Project Wing has been testing delivery of food and other perishables.¹²

In June of 2016, the FAA adopted rules for the operation of small UASs.¹³ Small UASs must be operated in accordance with the following limitations:

- Cannot be flown faster than a groundspeed of 87 knots (100 miles per hour);
- Cannot be flown higher than 400 feet above ground level, unless flown within a 400-foot radius of a structure and does not fly higher than 400 feet above the structure's immediate uppermost limit;
- Minimum visibility, as observed from the location of the control station, may not be less than 3 statute miles; and
- Minimum distance from clouds being no less than 500 feet below a cloud and no less than 2000 feet horizontally from the cloud.¹⁴

⁸ Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012; Richard Thompson, *Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Legislative Responses*, Congressional Research Service, April 3, 2013, available at www.fas.org/sgp/crs/natsec/R42701.pdf (last visited March 17, 2017).

⁹ Federal Aviation Administration, *Fact Sheet – FAA UAS Test Site Program*, December 30, 2013, available at https://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=15575 (last visited March 17, 2017).

¹⁰ Federal Aviation Administration, *It's (a) Grand! FAA Passes 1,000 UAS Section 333 Exemptions*, August 4, 2015, available at <https://www.faa.gov/news/updates/?newsId=83395> (last visited March 17, 2017); *Section 333*, as of September 28, 2016, available at https://www.faa.gov/uas/beyond_the_basics/section_333/ (last visited March 17, 2017); *Amazon Gets Experimental Airworthiness Certificate*, March 19, 2015, available at <https://www.faa.gov/news/updates/?newsId=82225> (last visited March 17, 2017). Additionally, realtors and real estate-related drone operators in Texas, California, and Pennsylvania have been issued testing certificates by the FAA. Matt Carter, *FAA approves more real estate drone flights, but there's a catch*, March 9, 2015, available at <http://www.inman.com/2015/03/09/faa-approves-more-real-estate-drone-flights> (last visited March 17, 2017).

¹¹ Matt McFarland, *Amazon's delivery drones may drop packages via parachute*, CNN Tech, February 14, 2017, available at <http://money.cnn.com/2017/02/14/technology/amazon-drone-patent/> (last visited March 17, 2017).

¹² Mark Bergen, *Alphabet Taps Breaks on Drone Project, Nixes Starbucks Partnership*, Bloomberg Technology, November 8, 2016, available at <https://www.bloomberg.com/news/articles/2016-11-08/alphabet-taps-brakes-on-drone-project-nixing-starbucks-partnership> (last visited March 17, 2017).

¹³ Title 14 CFR Part 107, Small Unmanned Aircraft Systems.

¹⁴ U.S. Department of Transportation, Federal Aviation Administration, *Advisory Circular No. 107-2*, June 21, 2016, pages 5-8 and 5-9.

Florida enacted legislation in 2012 and 2015 to regulate the use of drones.¹⁵ The focus of the legislation was law enforcement use of drones, general privacy issues, and the authorization of some commercial use.¹⁶

III. Effect of Proposed Changes:

The bill creates s. 330.41, F.S., relating to the lawful use of UASs around and over critical infrastructure facilities.

The bill also amends s. 934.50, F.S. to add an exception to the prohibited uses of drones for communications service providers or their contractors for routing, siting, installation, maintenance, or inspection of facilities used to provide communications services.

Protection of “Critical Infrastructure Facilities” from Interference by Drones (Section 1)

The bill creates new misdemeanor crimes prohibiting a person from knowingly and willfully operating a drone over or around certain critical infrastructure facilities.

The bill provides an exception from the prohibition that allows for operating a drone over a critical infrastructure facility if the drone is in transit for commercial purposes and complies with FAA requirements.

A “critical infrastructure facility” is defined in the bill as:

- An electrical power generation or transmission facility, substation, switching station, or electrical control center;
- A natural gas compressor station, storage facility, or natural gas pipeline;
- A liquid natural gas terminal or storage facility;
- Any portion of an aboveground oil or gas pipeline; or
- A wireless communications facility, including tower, antennae, support structures, and all associated ground-based equipment.

The definition requires that the facility be completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders, or clearly marked with a sign or signs indicating that entry is forbidden which are posted on the property in a manner reasonably likely to come to the attention of intruders.

The definition of “drone” in s. 934.50(2), F.S., is adopted by the bill.¹⁷

¹⁵ Section 934.50, F.S.

¹⁶ Uses that are not prohibited by Florida law include: the use of drones by property appraisers to assess property for ad valorem taxation; to capture images by or for an electric, water, or natural gas utility for specified purposes; and to deliver cargo. s. 934.50(4)(e), (f), and (h), F.S.

¹⁷ “Drone” means a powered, aerial vehicle that: does not carry a human operator; uses aerodynamic forces to provide vehicle lift; can fly autonomously or be piloted remotely; can be expendable or recoverable; and can carry a lethal or nonlethal payload. s. 934.50(2)(a), F.S.

“Unmanned aircraft system” is defined by the bill as a drone and its associated elements, including communication links and the components used to control the drone which are required for the pilot in command to operate the drone safely and efficiently.

The bill creates a second degree misdemeanor offense¹⁸ prohibiting a person from knowingly or willfully:

- Operating a drone over a critical infrastructure facility;
- Allowing a drone to make contact with a critical infrastructure facility, including any person or object on the premises of or within the facility; or
- Allowing a drone to come within a distance of a critical infrastructure facility that is close enough to interfere with the operations of or cause a disturbance to the facility.

It is a first degree misdemeanor to commit a second or subsequent violation of the prohibition.¹⁹

The bill provides that s. 330.41(4), F.S., does not apply to these actions committed by the following:

- A federal, state, or other governmental entity, or a person under contract or otherwise acting under the direction of a federal, state, or other governmental entity;
- A law enforcement agency that is in compliance with s. 934.50, F.S., or a person under contract with or otherwise acting under the direction of such law enforcement agency; or
- An owner, operator, or occupant of the critical infrastructure facility, or a person who has prior written consent of such owner, operator, or occupant.

The bill provides that a person or governmental entity seeking to restrict or limit the operation of drones in close proximity to “infrastructure or facilities” that the person or entity owns or operates must apply to the Federal Aviation Administration (FAA) for such affirmative designation pursuant to Section 2209 of the FAA Extension, Safety, and Security Act of 2016 (the FAA Act).²⁰

The FAA Act states that only the following may be considered by the Secretary of Transportation to be “fixed site facilities”:

- Critical infrastructure, such as energy production, transmission, and distribution facilities and equipment;
- Oil refineries and chemical facilities;
- Amusement parks; and
- Other locations that warrant such restrictions.²¹

The FAA administrator may consider aviation safety, protection of persons and property on the ground, national security, or homeland security in determining whether to grant the application for designation as a fixed site facility.²²

¹⁸ A second degree misdemeanor is punishable by up to 60 days in jail and up to a \$500 fine. ss. 775.082 and 775.083, F.S.

¹⁹ A first degree misdemeanor is punishable by up to a year in jail and up to a \$1,000 fine. ss. 775.082 and 775.083, F.S.

²⁰ Although s. 330.41(3)(d), F.S., of Section 1 of the bill refers to “infrastructure or facilities,” presumably this part of the bill is referring to “critical infrastructure facilities” as defined in the bill.

²¹ Public Law 114-190, Section 2209(b)(1)(C) (Applications for Designation); 49 USC 40101 (UAS Safety, Sec. 2209).

²² Public Law 114-190, Section 2209(b)(2)(C) (Applications for Designation); 49 USC 40101 (UAS Safety, Sec. 2209).

An affirmative designation by the FAA will outline the boundaries for UAS operation near the fixed site facility and such other limitations that the FAA administrator determines may be appropriate.²³

Preemption

The bill vests in the state the authority to regulate the operation of UAS's.

The bill does not, however, limit local government authority to enact and enforce local ordinances that do not specifically relate to the use of a UAS. This type of ordinance includes acts addressing nuisances, voyeurism, harassment, reckless endangerment, property damage, or other illegal acts arising from the use of UAS's.

The bill provides that a county or municipality may not enact or enforce an ordinance or resolution relating to the:

- Design;
- Manufacture;
- Testing;
- Maintenance;
- Licensing;
- Registration;
- Certification; or
- Operation of an unmanned aircraft system, including:
 - Airspace, altitude, flight paths, equipment or technology requirements;
 - Purpose of operations; and
 - Pilot, operator, or observer qualifications, training, and certification.

The bill also requires that the new statute (s. 330.41, F.S.) be construed in accordance with standards imposed by federal statutes, regulations, and FAA guidance on UAS's.

Exception Created in s. 934.50, F.S. (Section 2)

The bill amends s. 934.50(4), F.S., to create a new exception to the statutory prohibitions on the use of drones.

The bill allows a drone to be used by a communication service provider or its contractor for routing, siting, installation, maintenance, or inspection of facilities used to provide communication services.

Effective Date (Section 3)

The bill is effective on July 1, 2017.

²³ Public Law 114-190, Section 2209(b)(2)(B) (Applications for Designation); 49 USC 40101 (UAS Safety, Sec. 2209).

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Local governments that have adopted local ordinances regulating the use of UAS's that are determined to be in conflict with the provisions of the bill will need to be amended or repealed.

Examples of local ordinances include:

- Defuniak Springs has created second degree misdemeanor penalties for the violation of its ordinance which includes a requirement that commercial users of UAV's register with and notify the Defuniak Springs Police Department at least four hours prior to each commercial use.²⁴
- The Town of Palm Beach requires a permit, permit fee, \$1 million of liability insurance, and approval of the Director of Public Safety to operate a drone.²⁵

²⁴ Section 22-52, Defuniak Springs, Florida City Code (Ord. No. 866, May 23, 2016).

²⁵ Chapter 14, Article II, Section 14-35, Town of Palm Beach, Florida Code (Ord. No. 08-2016, June 14, 2016).

VIII. Statutes Affected:

This bill substantially amends section 934.50 of the Florida Statutes.

This bill creates section 330.41 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 21, 2017:

The CS:

- Deleted the definition of “person” used in the bill;
- Eliminated the provision wherein the state would preempt authority from local governments over unmanned aircraft systems (UAS) ownership;
- Recognized the federal government’s authority to regulate the “airspace” by including a reference to federal regulations, authorizations, or exemptions;
- Added an exception to the bill to allow for drones operating in transit for commercial purposes in compliance with federal requirements to operate a drone over a “critical infrastructure facility,” as defined in the bill; and
- Made technical changes.

B. Amendments:

None.

By the Committee on Criminal Justice; and Senator Young

591-02666-17

2017832c1

1 A bill to be entitled
 2 An act relating to drones; creating s. 330.41, F.S.;
 3 providing a short title; defining terms; providing
 4 that, except as provided in federal regulations,
 5 authorizations, or exemptions, the authority to
 6 regulate the operation of unmanned aircraft systems is
 7 vested in the state; prohibiting a political
 8 subdivision from enacting or enforcing certain
 9 ordinances or resolutions relating to unmanned
 10 aircraft systems; providing that the authority of
 11 local government to enact or enforce local ordinances
 12 relating to nuisances, voyeurism, harassment, reckless
 13 endangerment, property damage, or other illegal acts
 14 arising from the use of unmanned aircraft systems is
 15 not limited, subject to certain requirements;
 16 requiring persons seeking to restrict or limit the
 17 operation of drones in close proximity to certain
 18 infrastructure or facilities to apply to the Federal
 19 Aviation Administration; prohibiting a person from
 20 knowingly and willfully operating a drone over or
 21 allowing a drone to make contact with or come within a
 22 certain distance of certain critical infrastructure
 23 facilities; providing that such a violation is a
 24 misdemeanor punishable under specified provisions of
 25 ch. 775; providing an exemption from specified
 26 prohibited acts; providing construction; amending s.
 27 934.50, F.S.; providing that the use of a drone by a
 28 communications service provider or contractor is not
 29 prohibited under certain provisions of ch. 934;

Page 1 of 5

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

591-02666-17

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30 providing an effective date.
 31
 32 Be It Enacted by the Legislature of the State of Florida:
 33
 34 Section 1. Section 330.41, Florida Statutes, is created to
 35 read:
 36 330.41 Unmanned Aircraft Systems Act.—
 37 (1) SHORT TITLE.—This act may be cited as the “Unmanned
 38 Aircraft Systems Act.”
 39 (2) DEFINITIONS.—As used in this act, the term:
 40 (a) “Critical infrastructure facility” means any of the
 41 following, if completely enclosed by a fence or other physical
 42 barrier that is obviously designed to exclude intruders, or if
 43 clearly marked with a sign or signs which indicate that entry is
 44 forbidden and which are posted on the property in a manner
 45 reasonably likely to come to the attention of intruders:
 46 1. An electrical power generation or transmission facility,
 47 substation, switching station, or electrical control center.
 48 2. A natural gas compressor station, storage facility, or
 49 natural gas pipeline.
 50 3. A liquid natural gas terminal or storage facility.
 51 4. Any portion of an aboveground oil or gas pipeline.
 52 5. A wireless communications facility, including tower,
 53 antennae, support structures, and all associated ground-based
 54 equipment.
 55 (b) “Drone” has the same meaning as s. 934.50(2).
 56 (c) “Unmanned aircraft system” means a drone and its
 57 associated elements, including communication links and the
 58 components used to control the drone which are required for the

Page 2 of 5

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59 pilot in command to operate the drone safely and efficiently.

60 (3) REGULATION.—

61 (a) The authority to regulate the operation of unmanned
62 aircraft systems is vested in the state except as provided in
63 federal regulations, authorizations, or exemptions.

64 (b) Except as otherwise expressly provided, a political
65 subdivision may not enact or enforce an ordinance or resolution
66 relating to the design, manufacture, testing, maintenance,
67 licensing, registration, certification, or operation of an
68 unmanned aircraft system, including airspace, altitude, flight
69 paths, equipment or technology requirements; the purpose of
70 operations; and pilot, operator, or observer qualifications,
71 training, and certification.

72 (c) This subsection does not limit the authority of a local
73 government to enact or enforce local ordinances relating to
74 nuisances, voyeurism, harassment, reckless endangerment,
75 property damage, or other illegal acts arising from the use of
76 unmanned aircraft systems if such laws or ordinances are not
77 specifically related to the use of an unmanned aircraft system
78 for those illegal acts.

79 (d) A person or governmental entity seeking to restrict or
80 limit the operation of drones in close proximity to
81 infrastructure or facilities that the person or governmental
82 entity owns or operates must apply to the Federal Aviation
83 Administration for such designation pursuant to section 2209 of
84 the FAA Extension, Safety, and Security Act of 2016.

85 (4) PROTECTION OF CRITICAL INFRASTRUCTURE FACILITIES.—

86 (a) A person may not knowingly or willfully:

87 1. Operate a drone over a critical infrastructure facility;

591-02666-17

2017832c1

88 2. Allow a drone to make contact with a critical
89 infrastructure facility, including any person or object on the
90 premises of or within the facility; or

91 3. Allow a drone to come within a distance of a critical
92 infrastructure facility that is close enough to interfere with
93 the operations of or cause a disturbance to the facility.

94 (b) A person who violates paragraph (a) commits a
95 misdemeanor of the second degree, punishable as provided in s.
96 775.082 or s. 775.083. A person who commits a second or
97 subsequent violation commits a misdemeanor of the first degree,
98 punishable as provided in s. 775.082 or s. 775.083.

99 (c) This subsection does not apply to actions identified in
100 paragraph (a) which are committed by:

101 1. A federal, state, or other governmental entity, or a
102 person under contract or otherwise acting under the direction of
103 a federal, state, or other governmental entity.

104 2. A law enforcement agency that is in compliance with s.
105 934.50, or a person under contract with or otherwise acting
106 under the direction of such law enforcement agency.

107 3. An owner, operator, or occupant of the critical
108 infrastructure facility, or a person who has prior written
109 consent of such owner, operator, or occupant.

110 (d) Subparagraph (a)1. does not apply to a drone operating
111 in transit for commercial purposes in compliance with Federal
112 Aviation Administration regulations, authorizations, or
113 exemptions.

114 (5) CONSTRUCTION.—This section shall be construed in
115 accordance with standards imposed by federal statutes,
116 regulations, and Federal Aviation Administration guidance on

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117 unmanned aircraft systems.

118 Section 2. Paragraph (j) is added to subsection (4) of
119 section 934.50, Florida Statutes, to read:

120 934.50 Searches and seizure using a drone.—

121 (4) EXCEPTIONS.—This section does not prohibit the use of a
122 drone:

123 (j) By a communications service provider or a contractor
124 for a communications service provider for routing, siting,
125 installation, maintenance, or inspection of facilities used to
126 provide communications services.

127 Section 3. This act shall take effect July 1, 2017.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/4/17

Meeting Date

832

Bill Number (if applicable)

Topic DRONES

Amendment Barcode (if applicable)

Name LANCE PIERCE

Job Title ASST. DIRECTOR OF STATE LEGISLATIVE AFFAIRS

Address 310 W. COLLEGE AVE

Street

Phone 850 - 228 - 4088

TALLAHASSEE

City

FL

State

32301

Zip

Email LANCE.PIERCE@FFB.org

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FLORIDA FARM BUREAU

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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4/4/17

Meeting Date

832

Bill Number (if applicable)

Topic UNMANNED AIRCRAFT

Amendment Barcode (if applicable)

Name DAVID DANIEL

Job Title _____

Address 311 EAST PARK AVENUE
Street

Phone 224-5081

TALLAHASSEE FL 32301
City State Zip

Email ddaniel@smithbryanandmyer.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing UAS ASSOCIATION OF FLORIDA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

Oh 9/30 4015

APPEARANCE RECORD

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4
4/3/17

SB 832

Meeting Date

Bill Number (if applicable)

Topic Drones

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N Adams St

Phone 224-7173

Street

Tallahassee

FL

32301

City

State

Zip

Email bbevis@aif.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
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4/4/17

Meeting Date

CS/SB 832

Bill Number (if applicable)

Topic CS/SB 832

Amendment Barcode (if applicable)

Name Todd Sumner

Job Title Lobbyist

Address 1102 Mimosa Dr.

Street

Tallahassee

City

FL

State

32312

Zip

Phone 850-591-6119

Email Todd.Sumner@lawoffices.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing UAVSIC

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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4.4.17
Meeting Date

932
Bill Number (if applicable)

Topic D20N35

Amendment Barcode (if applicable)

Name TREY GOLDMAN

Job Title LEGISLATIVE COUNSEL

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Street

Phone 850/224-1400

TLH FL 32301
City State Zip

Email treyg@floridarealtors.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FLORIDA REALTORS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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4/13/17
Meeting Date

832
Bill Number (if applicable)

Topic Drones

Amendment Barcode (if applicable)

Name Megan Samples

Job Title Florida League Cities

Address _____
Street

Phone _____

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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4/13/17
Meeting Date

832
Bill Number (if applicable)

Topic Drones

Amendment Barcode (if applicable)

Name Eric Poole

Job Title Asst Leg Dir

Address 100 Monroe
Street

Phone _____

Tall FL 32311
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Florida Assoc. Counties

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/4/17
Meeting Date

832
SB 401
Bill Number (if applicable)

Topic Auto Franchise

Amendment Barcode (if applicable)

Name Ron Book

Job Title _____

Address 104 W. Jefferson St.
Street

Phone 850-224-3427

TCF 32301
City State Zip

Email Ron@RLBookPA.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Auto Nation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Transportation

BILL: CS/SB 1678

INTRODUCER: Transportation Committee and Senator Garcia

SUBJECT: Motor Vehicle Dealers

DATE: April 4, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Miller	TR	Fav/CS
2.			CM	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1678 addresses issues related to contractual agreements between licensed motor vehicle manufacturers, distributors, and importers (licensees) and motor vehicle dealers. The bill:

- Prohibits applicants or licensees from establishing or enforcing unfair, unreasonable, arbitrary, or inequitable sales or service performance measurements that have an adverse effect on a dealer;
- Provides that dealers who complete certain sales and service facility alterations are in full compliance with the applicant's or licensee's requirements related to such alterations for the following ten-year period;
- Provides that a dealer who has completed a prior approved facility incentive program, standard, or policy during the ten-year period, who does not comply with the provisions related to a new or revised facility, sign, or image program, is not eligible for the new benefits, but is entitled to all prior benefits plus any increase in benefits between the prior and revised or new programs for the remainder of the ten-year period; and
- Reenacts ss. 320.60-320.70, F.S., to incorporate changes made by the bill.

The bill does not appear to have a significant fiscal impact to state and local government.

The bill takes effect upon becoming law.

II. Present Situation:

Florida has substantially regulated motor vehicle manufacturers and motor vehicle dealers since before 1950.¹ Initially, the Florida Legislature approached the issue by implementing only consumer protections aimed at preventing consumer abuse by dealers.² In 1970, the Legislature passed more comprehensive legislation, embodied in ch. 320, F.S.,³ which regulates, in part, the contractual relationship between manufacturers and dealers,⁴ requires the licensing of manufacturers, and regulates numerous aspects of the contracts between the manufacturers and dealers.

Florida Automobile Dealers Act

A manufacturer, factory branch, distributor, or importer (licensee) must be licensed under s. 320.61(1), F.S., to engage in business in Florida. Sections 320.60-320.70, F.S., the “Florida Automobile Dealers Act”⁵ (act), primarily regulate the contractual business relationship between dealers and licensees. The act specifies, in part:

- The conditions and situations under which the Department of Highway Safety and Motor Vehicles (DHSMV) may deny, suspend, or revoke a regulated license;
- The process, timing, and notice requirements for licensees who wish to discontinue, cancel, modify, or otherwise replace a franchise agreement with a dealer, and the conditions under which the DHSMV may deny such a request;
- The procedures a licensee must follow to add a dealership in an area already served by a franchised dealer, the protest process, and the DHSMV’s role in these circumstances;
- The damages that can be assessed against a licensee who is in violation of Florida Statutes; and
- The DHSMV’s authority to adopt rules to implement these sections of law.

Applicability

Section 320.6992, F.S., provides that the act shall apply to all presently existing or future systems of distribution of motor vehicles in Florida, except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution. Generally, all agreements that are renewed, amended, or entered into subsequent to October 1, 1988, are governed by the act, including amendments to the act, unless the amendment specifically provides otherwise.

In 2009, the DHSMV held in an administrative proceeding that amendments to the act do not apply to dealers whose franchise agreements were signed prior to the effective date of various amendments to the act.⁶ The DHSMV has indicated that it will apply the *Motorsports* holding to

¹ Chapter 9157, L.O.F. (1923); Chapter 20236, L.O.F. (1941).

² Walter E. Forehand and John W. Forehand, *Motor Vehicle Dealer and Motor Vehicle Manufacturers: Florida Reacts to Pressures in the Marketplace*, 29 Fla. St. Univ. Law Rev. 1058, 1064 (2002), <http://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1632&context=lr> (last visited Mar. 9, 2017).

³ See ch. 70-424, L.O.F.

⁴ See s. 320.60(11), F.S.

⁵ Walter E. Forehand, *supra* note 2 at 1065.

⁶ See *Motorsports of Delray, LLC v. Yamaha Motor Corp., U.S.A.*, Case No. 09-0935 (Fla. DOAH Dec. 9, 2009). The DHSMV ruled that a 2006 amendment to the Florida Automobile Dealers Act does not apply to a dealer terminated in 2008

every amendment to the act. This may result in different protections accruing to dealers, depending on when they signed their franchise agreements.

Grounds for Denial, Suspension, or Revocation of a License

Section 320.64, F.S., currently includes 40 different subsections listing criteria that may cause the DHSMV to deny, suspend, or revoke the licensee's license. A licensee is prohibited from committing the following acts toward dealers:

- Being unable to carry out contractual obligations with motor vehicle dealers;
- Coercing or attempting to coerce dealers into accepting motor vehicles, parts, or accessories the dealer did not order;
- Coercing the dealer into any agreement with the licensee;
- Threatening to discontinue, cancel, or not renew a franchise agreement with a dealer in violation of s. 320.641, regarding the process for discontinuing, canceling, nonrenewing, modifying, or replacing franchise agreements;
- Threatening to, or replacing or modifying a franchise agreement in a way that would adversely alter the rights or obligations of the dealer, or which substantially impairs sales, service obligations, or investment of the dealer;
- Attempting to enter or entering into a franchise agreement with a dealer who does not have the proper facilities to provide services necessary to provide for new vehicle warranties;
- Requiring a dealer to make substantial changes to the dealer's sales or services facilities that are not considered reasonable or justified, except when offering, to its same line-make⁷ dealers a similar incentive for similar improvements, a written commitment to supply additional vehicles, a loan, or grant money;
- Coercing a dealer to provide installment financing for the dealer's purchasers using a specified financial institution;
- Preventing or refusing to accept the succession to any interest in a franchise agreement by any legal heir or devisee, as long as they meet the licensee's written, reasonable, and uniformly applied minimal standard qualifications for dealer applicants;
- Establishing or implementing a system of vehicle allocation or distribution which alters or reduces allocations or supplies of new motor vehicles to dealers in a way that is unfair, inequitable, unreasonably discriminatory, or not supported by reason and good cause;
- Without good and fair cause, delaying, refusing, or failing to provide a supply of vehicles by series in reasonable quantities;
- Threatening to require a dealer to prospectively assent to a release, assignment, novation, waiver, or estoppel intended to relieve any person from liability or obligation under this act;
- Threatening or coercing a dealer toward action whereby the dealer foregoes its right to protest the establishment or relocation of a dealer in the community;

because the dealer's franchise agreement was entered into prior to the effective date of the amendment. This Final Order was initially appealed but was later voluntarily dismissed. *See also, In re Am. Suzuki Motor Corp.*, 494 B.R. 466, 480 (Bankr. C.D. Cal. 2013).

⁷ Section 320.60(14), F.S., defines "Line-make vehicles" as motor vehicles offered for sale, lease, or distribution under a common name, trademark, service mark, or brand name of the manufacturer of same. However, motor vehicles sold or leased under multiple brand names or marks constitute a single line-make when they are included in a single franchise agreement and every dealer in this state authorized to sell or lease such vehicles has been offered the right to sell or lease the multiple brand names covered by a single franchise agreement.

- Refusing to deliver, in reasonable quantities and within a reasonable time motor vehicles or parts, to any dealer who has an agreement for the retail sale of such new vehicles or parts.⁸
- Performing audits on dealers outside of the required time-frames authorized in statute;
- Taking action against a dealer who sold or leased a vehicle that the customer then exported or resold, providing the dealer did not know the customer's intention;
- Making available dealer's confidential financial information without the dealer's consent;
- Failing to reimburse a dealer for the reasonable cost of providing a loaner vehicle, if the dealer is required by the licensee to provide a loaner;
- Offering a dealer a franchise agreement that:
 - Requires the dealer to bring administrative actions, legal actions, arbitration, or mediation in a venue outside of the state; or
 - Requires that a law of another state be applied to legal proceedings between the licensee and dealer;
- Including in any franchise agreement with a dealer, a mandatory obligation of the dealer to purchase, sell, lease, or offer any quantity of used motor vehicles;
- Refusing to sell vehicles to a dealer because the dealer has not purchased, sold, leased, or certified a certain quantity of used vehicles prescribed by the licensee;
- Failing to pay a dealer as required;
- Refusing to allow, limiting, or restricting dealers from acquiring or adding service or sale operations for another line-make of vehicles, without demonstrating justification for such refusal, limit, or restriction;
- Failing or refusing to offer an incentive or benefit, in whole or in part, to all its same line-make dealers, unless the program in this state is reasonably supported by substantially different economic or marketing considerations; and
- Requiring or coercing a dealer to purchase goods or services from a vendor selected by the licensee without making available to the dealer the option to obtain substantially similar goods or services from a vendor chosen by the dealer. This does not include:
 - Materials subject to the licensee's intellectual property rights;
 - Special tools or training required by the licensee;
 - Parts used in repairs under warranty obligations of the licensee;
 - Any good or services paid for entirely by the licensee; or
 - Any licensee's design or architectural review service.

Procedure for Administrative Hearings and Adjudications

A dealer who is directly and adversely affected by the action or conduct of a licensee which is alleged to be in violation of the act, may seek a declaration and adjudication of its rights by either filing a request with the DHSMV for a proceeding and administrative hearing, or filing a written objection or notice of protest with the DHSMV.⁹

⁸ Exceptions are provided for acts of God, work stoppage, delays due to a strike or labor difficulty, a freight embargo, product shortage, or other cause, which the licensee cannot control. Additionally, the licensee can reasonably require the dealer to purchase special tools to service such vehicles or service person training related to the vehicle.

⁹ Section 320.0699(1), F.S.

Hearings are held no sooner than 180 days nor later than 240 days from the date a written objection or notice of protest is filed, unless extended with good cause by the administrative law judge.¹⁰

Civil Damages

A motor vehicle dealer who can demonstrate that a violation of, or failure to comply with any of these provisions by an applicant or licensee will or can adversely and pecuniarily affect the dealer, is entitled to pursue an injunction against the licensee, treble damages, and attorney's fees.¹¹ The licensee has the burden to prove that such violation did not occur upon a prima facie showing by the person bringing the action.¹²

III. Effect of Proposed Changes:

Section 1 of the bill adds additional criteria in s. 320.64, F.S., that an applicant or licensee is prohibited from committing. A violation is grounds for the DHSMV to deny, suspend, or revoke the license. The bill:

Adds a new paragraph to subsection (10) to provide:

- A dealer who completes any licensee-approved program related to facility construction, improvements, renovations, expansion, remodeling, or alterations or installation of signs or other image elements is deemed to be in full compliance with the licensee's requirements related to the new, remodeled, improved, renovated, expanded, replaced, or altered facilities, signs, and image elements for a ten-year period following such completion; and
- A dealer who has completed a prior approved facility incentive program, standard, or policy during the ten-year period but does not comply with the provisions related to facility, sign, or image under a revised or new incentive program is not eligible for the revised or new benefits, but is entitled to all prior benefits plus any increase in benefits between the prior program and the revised or new programs during the remainder of the ten-year period.

Adds a new subsection (41) prohibiting an applicant or licensee from establishing, implementing, or enforcing criteria for measuring sales or service performance of franchised dealers which have a negative material or adverse effect on any dealer and are unfair, unreasonable, arbitrary, or inequitable, or which does not include all applicable local and regional criteria, data, and facts. A licensee, common entity, or affiliate thereof that seeks to establish, implement, or enforce such performance measurements must, upon request of the dealer, describe in writing how the performance measurement criteria were designed, calculated, established, and uniformly applied.

Section 2 reenacts s. 320.6992, F.S., concerning applicability of amendments made to the Florida Automobile Dealers Act.

Section 3 reenacts the remaining sections of the Florida Automobile Dealers Act (ss. 320.60-320.70, F.S.) to incorporate the amendments made by the bill.

¹⁰ Section 320.0699(2), F.S.

¹¹ See ss. 320.64, 320.694, and 320.697, F.S.

¹² Section 320.697, F.S.

Section 4 provides that the bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent the agreements between licensees and dealers change, the parties could experience a positive or negative impact.

C. Government Sector Impact:

The bill does not appear to have a significant fiscal impact on the government sector.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 320.64 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 320.60, 320.605, 320.61, 320.615, 320.62, 320.63, 320.6403, 320.6405, 320.641, 320.6412, 320.6415, 320.642, 320.643, 320.644, 320.645, 320.646, 320.664, 320.67, 320.68, 320.69, 320.695, 320.696, 320.697, 320.6975, 320.698, 320.699, 320.69915, 320.6992, and 320.70.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Transportation on April 4, 2017:

The CS removes provisions of the original bill, and reenacts ss. 320.60-320.70, F.S. Specifically, the CS:

- Removes language added to 320.64, F.S., authorizing the DHSMV to deny, suspend, or revoke an applicant or licensee's license for not "acting in good faith or dealing fairly" with franchise dealers;
- Removes the creation of s. 320.648, F.S., prohibiting licensees from committing discriminatory practices against dealers; and
- Removes language added to s. 320.699, F.S., allowing dealers to file with any court of competent jurisdiction when seeking a declaration and adjudication against a licensee.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/04/2017	.	
	.	
	.	
	.	

The Committee on Transportation (Garcia) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 320.64, Florida Statutes, is amended to
read:

320.64 Denial, suspension, or revocation of license;
grounds.—A license of a licensee under s. 320.61 may be denied,
suspended, or revoked within the entire state or at any specific
location or locations within the state at which the applicant or



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licensee engages or proposes to engage in business, upon proof that the section was violated with sufficient frequency to establish a pattern of wrongdoing, and a licensee or applicant shall be liable for claims and remedies provided in ss. 320.695 and 320.697 for any violation of any of the following provisions. A licensee is prohibited from committing the following acts:

(1) The applicant or licensee is determined to be unable to carry out contractual obligations with its motor vehicle dealers.

(2) The applicant or licensee has knowingly made a material misstatement in its application for a license.

(3) The applicant or licensee willfully has failed to comply with significant provisions of ss. 320.60-320.70 or with any lawful rule or regulation adopted or promulgated by the department.

(4) The applicant or licensee has indulged in any illegal act relating to his or her business.

(5) The applicant or licensee has coerced or attempted to coerce any motor vehicle dealer into accepting delivery of any motor vehicle or vehicles or parts or accessories therefor or any other commodities which have not been ordered by the dealer.

(6) The applicant or licensee has coerced or attempted to coerce any motor vehicle dealer to enter into any agreement with the licensee.

(7) The applicant or licensee has threatened to discontinue, cancel, or not to renew a franchise agreement of a licensed motor vehicle dealer, where the threatened discontinuation, cancellation, or nonrenewal, if implemented,



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would be in violation of any of the provisions of s. 320.641.

(8) The applicant or licensee discontinued, canceled, or failed to renew, a franchise agreement of a licensed motor vehicle dealer in violation of any of the provisions of s. 320.641.

(9) The applicant or licensee has threatened to modify or replace, or has modified or replaced, a franchise agreement with a succeeding franchise agreement which would adversely alter the rights or obligations of a motor vehicle dealer under an existing franchise agreement or which substantially impairs the sales, service obligations, or investment of the motor vehicle dealer.

(10)(a) The applicant or licensee has attempted to enter, or has entered, into a franchise agreement with a motor vehicle dealer who does not, at the time of the franchise agreement, have proper facilities to provide the services to his or her purchasers of new motor vehicles which are covered by the new motor vehicle warranty issued by the applicant or licensee.

(b) Notwithstanding any provision of a franchise, a licensee may not require a motor vehicle dealer, by agreement, program, policy, standard, or otherwise, to make substantial changes, alterations, or remodeling to, or to replace a motor vehicle dealer's sales or service facilities unless the licensee's requirements are reasonable and justifiable in light of the current and reasonably foreseeable projections of economic conditions, financial expectations, and the motor vehicle dealer's market for the licensee's motor vehicles.

(c) A licensee may, however, consistent with the licensee's allocation obligations at law and to its other same line-make



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motor vehicle dealers, provide to a motor vehicle dealer a commitment to supply additional vehicles or provide a loan or grant of money as an inducement for the motor vehicle dealer to expand, improve, remodel, alter, or renovate its facilities if the provisions of the commitment are contained in a writing voluntarily agreed to by the dealer and are made available, on substantially similar terms, to any of the licensee's other same line-make dealers in this state who voluntarily agree to make a substantially similar facility expansion, improvement, remodeling, alteration, or renovation.

(d) Except as provided in paragraph (c), subsection (36), or as otherwise provided by law, this subsection does not require a licensee to provide financial support for, or contribution to, the purchase or sale of the assets of or equity in a motor vehicle dealer or a relocation of a motor vehicle dealer because such support has been provided to other purchases, sales, or relocations.

(e) A licensee or its common entity may not take or threaten to take any action that is unfair or adverse to a dealer who does not enter into an agreement with the licensee pursuant to paragraph (c).

(f) This subsection does not affect any contract between a licensee and any of its dealers regarding relocation, expansion, improvement, remodeling, renovation, or alteration which exists on the effective date of this act.

(g) A licensee may set and uniformly apply reasonable standards for a motor vehicle dealer's sales and service facilities which are related to upkeep, repair, and cleanliness.

(h) A violation of paragraphs (b) through (g) is not a



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violation of s. 320.70 and does not subject any licensee to any criminal penalty under s. 320.70.

(i)1. If an applicant or licensee establishes a program, standard, or policy or in any manner offers a bonus, incentive, rebate, or other benefit to a motor vehicle dealer which is based, in whole or in part, on the construction of new sales or service facilities or the remodeling, improvement, renovation, expansion, replacement, or other alteration of the motor vehicle dealer's existing sales or service facilities, including installation of signs or other image elements, a motor vehicle dealer who completes such construction, alteration, or installation in reliance upon such program, standard, policy, bonus, incentive, rebate, or other benefit is deemed to be in full compliance with the applicant's or licensee's requirements related to the new, remodeled, improved, renovated, expanded, replaced, or altered facilities, signs, and image elements for 10 years after such completion.

2. If, during such 10-year period, the applicant or licensee revises an existing, or establishes a new, program, standard, policy, bonus, incentive, rebate, or other benefit described in subparagraph 1., a motor vehicle dealer who completed a facility in reliance upon a prior program, standard, policy, bonus, incentive, rebate, or other benefit and elects not to comply with the applicant's or licensee's requirements for facilities, signs, or image elements under the revised or new program, standard, policy, bonus, incentive, rebate, or other benefit will not be eligible for any benefit under the revised or new program but shall remain entitled to all benefits under the prior program, plus any increase in benefits between



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127 the prior and revised or new programs, during the remainder of
128 the 10-year period.

129
130 This paragraph does not obviate, affect, alter, or diminish the
131 provisions of subsection (38).

132 (11) The applicant or licensee has coerced a motor vehicle
133 dealer to provide installment financing for the motor vehicle
134 dealer's purchasers with a specified financial institution.

135 (12) The applicant or licensee has advertised, printed,
136 displayed, published, distributed, broadcast, or televised, or
137 caused or permitted to be advertised, printed, displayed,
138 published, distributed, broadcast, or televised, in any manner
139 whatsoever, any statement or representation with regard to the
140 sale or financing of motor vehicles which is false, deceptive,
141 or misleading.

142 (13) The applicant or licensee has sold, exchanged, or
143 rented a motorcycle which produces in excess of 5 brake
144 horsepower, knowing the use thereof to be by, or intended for,
145 the holder of a restricted Florida driver license.

146 (14) The applicant or licensee has engaged in previous
147 conduct which would have been a ground for revocation or
148 suspension of a license if the applicant or licensee had been
149 licensed.

150 (15) The applicant or licensee, directly or indirectly,
151 through the actions of any parent of the licensee, subsidiary of
152 the licensee, or common entity causes a termination,
153 cancellation, or nonrenewal of a franchise agreement by a
154 present or previous distributor or importer unless, by the
155 effective date of such action, the applicant or licensee offers



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the motor vehicle dealer whose franchise agreement is terminated, canceled, or not renewed a franchise agreement containing substantially the same provisions contained in the previous franchise agreement or files an affidavit with the department acknowledging its undertaking to assume and fulfill the rights, duties, and obligations of its predecessor distributor or importer under the terminated, canceled, or nonrenewed franchise agreement and the same is reinstated.

(16) Notwithstanding the terms of any franchise agreement, the applicant or licensee prevents or refuses to accept the succession to any interest in a franchise agreement by any legal heir or devisee under the will of a motor vehicle dealer or under the laws of descent and distribution of this state; provided, the applicant or licensee is not required to accept a succession where such heir or devisee does not meet licensee's written, reasonable, and uniformly applied minimal standard qualifications for dealer applicants or which, after notice and administrative hearing pursuant to chapter 120, is demonstrated to be detrimental to the public interest or to the representation of the applicant or licensee. Nothing contained herein, however, shall prevent a motor vehicle dealer, during his or her lifetime, from designating any person as his or her successor in interest by written instrument filed with and accepted by the applicant or licensee. A licensee who rejects the successor transferee under this subsection shall have the burden of establishing in any proceeding where such rejection is in issue that the rejection of the successor transferee complies with this subsection.

(17) The applicant or licensee has included in any



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franchise agreement with a motor vehicle dealer terms or provisions that are contrary to, prohibited by, or otherwise inconsistent with the provisions contained in ss. 320.60-320.70, or has failed to include in such franchise agreement a provision conforming to the requirements of s. 320.63(3).

(18) The applicant or licensee has established a system of motor vehicle allocation or distribution or has implemented a system of allocation or distribution of motor vehicles to one or more of its franchised motor vehicle dealers which reduces or alters allocations or supplies of new motor vehicles to the dealer to achieve, directly or indirectly, a purpose that is prohibited by ss. 320.60-320.70, or which otherwise is unfair, inequitable, unreasonably discriminatory, or not supportable by reason and good cause after considering the equities of the affected motor vehicles dealer or dealers. An applicant or licensee shall maintain for 3 years records that describe its methods or formula of allocation and distribution of its motor vehicles and records of its actual allocation and distribution of motor vehicles to its motor vehicle dealers in this state. As used in this subsection, "unfair" includes, without limitation, the refusal or failure to offer to any dealer an equitable supply of new vehicles under its franchise, by model, mix, or colors as the licensee offers or allocates to its other same line-make dealers in the state.

(19) The applicant or licensee, without good and fair cause, has delayed, refused, or failed to provide a supply of motor vehicles by series in reasonable quantities, including the models publicly advertised by the applicant or licensee as being available, or has delayed, refused, or failed to deliver motor



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vehicle parts and accessories within a reasonable time after receipt of an order by a franchised dealer. However, this subsection is not violated if such failure is caused by acts or causes beyond the control of the applicant or licensee.

(20) The applicant or licensee has required, or threatened to require, a motor vehicle dealer to prospectively assent to a release, assignment, novation, waiver, or estoppel, which instrument or document operates, or is intended by the applicant or licensee to operate, to relieve any person from any liability or obligation under the provisions of ss. 320.60-320.70.

(21) The applicant or licensee has threatened or coerced a motor vehicle dealer toward conduct or action whereby the dealer would waive or forego its right to protest the establishment or relocation of a motor vehicle dealer in the community or territory serviced by the threatened or coerced dealer.

(22) The applicant or licensee has refused to deliver, in reasonable quantities and within a reasonable time, to any duly licensed motor vehicle dealer who has an agreement with such applicant or licensee for the retail sale of new motor vehicles and parts for motor vehicles sold or distributed by the applicant or licensee, any such motor vehicles or parts as are covered by such agreement. Such refusal includes the failure to offer to its same line-make franchised motor vehicle dealers all models manufactured for that line-make, or requiring a dealer to pay any extra fee, require a dealer to execute a separate franchise agreement, purchase unreasonable advertising displays or other materials, or relocate, expand, improve, remodel, renovate, recondition, or alter the dealer's existing facilities, or provide exclusive facilities as a prerequisite to



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receiving a model or series of vehicles. However, the failure to deliver any motor vehicle or part will not be considered a violation of this section if the failure is due to an act of God, work stoppage, or delay due to a strike or labor difficulty, a freight embargo, product shortage, or other cause over which the applicant or licensee has no control. An applicant or licensee may impose reasonable requirements on the motor vehicle dealer, other than the items listed above, including, but not limited to, the purchase of special tools required to properly service a motor vehicle and the undertaking of sales person or service person training related to the motor vehicle.

(23) The applicant or licensee has competed or is competing with respect to any activity covered by the franchise agreement with a motor vehicle dealer of the same line-make located in this state with whom the applicant or licensee has entered into a franchise agreement, except as permitted in s. 320.645.

(24) The applicant or licensee has sold a motor vehicle to any retail consumer in the state except through a motor vehicle dealer holding a franchise agreement for the line-make that includes the motor vehicle. This section does not apply to sales by the applicant or licensee of motor vehicles to its current employees, employees of companies affiliated by common ownership, charitable not-for-profit-organizations, and the federal government.

(25) The applicant or licensee has undertaken or engaged in an audit of warranty, maintenance, and other service-related payments or incentive payments, including payments to a motor vehicle dealer under any licensee-issued program, policy, or



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other benefit, which were previously paid to a motor vehicle dealer in violation of this section or has failed to comply with any of its obligations under s. 320.696. An applicant or licensee may reasonably and periodically audit a motor vehicle dealer to determine the validity of paid claims as provided in s. 320.696. Audits of warranty, maintenance, and other service-related payments shall be performed by an applicant or licensee only during the 12-month period immediately following the date the claim was paid. Audits of incentive payments shall be performed only during the 12-month period immediately following the date the incentive was paid. As used in this section, the term "incentive" includes any bonus, incentive, or other monetary or nonmonetary consideration. After such time periods have elapsed, all warranty, maintenance, and other service-related payments and incentive payments shall be deemed final and incontrovertible for any reason notwithstanding any otherwise applicable law, and the motor vehicle dealer shall not be subject to any chargeback or repayment. An applicant or licensee may deny a claim or, as a result of a timely conducted audit, impose a chargeback against a motor vehicle dealer for warranty, maintenance, or other service-related payments or incentive payments only if the applicant or licensee can show that the warranty, maintenance, or other service-related claim or incentive claim was false or fraudulent or that the motor vehicle dealer failed to substantially comply with the reasonable written and uniformly applied procedures of the applicant or licensee for such repairs or incentives, but only for that portion of the claim so shown. Notwithstanding the terms of any franchise agreement, guideline, program, policy, or



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procedure, an applicant or licensee may deny or charge back only that portion of a warranty, maintenance, or other service-related claim or incentive claim which the applicant or licensee has proven to be false or fraudulent or for which the dealer failed to substantially comply with the reasonable written and uniformly applied procedures of the applicant or licensee for such repairs or incentives, as set forth in this subsection. An applicant or licensee may not charge back a motor vehicle dealer subsequent to the payment of a warranty, maintenance, or service-related claim or incentive claim unless, within 30 days after a timely conducted audit, a representative of the applicant or licensee first meets in person, by telephone, or by video teleconference with an officer or employee of the dealer designated by the motor vehicle dealer. At such meeting the applicant or licensee must provide a detailed explanation, with supporting documentation, as to the basis for each of the claims for which the applicant or licensee proposed a chargeback to the dealer and a written statement containing the basis upon which the motor vehicle dealer was selected for audit or review. Thereafter, the applicant or licensee must provide the motor vehicle dealer's representative a reasonable period after the meeting within which to respond to the proposed chargebacks, with such period to be commensurate with the volume of claims under consideration, but in no case less than 45 days after the meeting. The applicant or licensee is prohibited from changing or altering the basis for each of the proposed chargebacks as presented to the motor vehicle dealer's representative following the conclusion of the audit unless the applicant or licensee receives new information affecting the basis for one or more



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chargebacks and that new information is received within 30 days after the conclusion of the timely conducted audit. If the applicant or licensee claims the existence of new information, the dealer must be given the same right to a meeting and right to respond as when the chargeback was originally presented. After all internal dispute resolution processes provided through the applicant or licensee have been completed, the applicant or licensee shall give written notice to the motor vehicle dealer of the final amount of its proposed chargeback. If the dealer disputes that amount, the dealer may file a protest with the department within 30 days after receipt of the notice. If a protest is timely filed, the department shall notify the applicant or licensee of the filing of the protest, and the applicant or licensee may not take any action to recover the amount of the proposed chargeback until the department renders a final determination, which is not subject to further appeal, that the chargeback is in compliance with the provisions of this section. In any hearing pursuant to this subsection, the applicant or licensee has the burden of proof that its audit and resulting chargeback are in compliance with this subsection.

(26) Notwithstanding the terms of any franchise agreement, including any licensee's program, policy, or procedure, the applicant or licensee has refused to allocate, sell, or deliver motor vehicles; charged back or withheld payments or other things of value for which the dealer is otherwise eligible under a sales promotion, program, or contest; prevented a motor vehicle dealer from participating in any promotion, program, or contest; or has taken or threatened to take any adverse action against a dealer, including chargebacks, reducing vehicle



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allocations, or terminating or threatening to terminate a franchise because the dealer sold or leased a motor vehicle to a customer who exported the vehicle to a foreign country or who resold the vehicle, unless the licensee proves that the dealer knew or reasonably should have known that the customer intended to export or resell the motor vehicle. There is a rebuttable presumption that the dealer neither knew nor reasonably should have known of its customer's intent to export or resell the vehicle if the vehicle is titled or registered in any state in this country. A licensee may not take any action against a motor vehicle dealer, including reducing its allocations or supply of motor vehicles to the dealer or charging back to a dealer any incentive payment previously paid, unless the licensee first meets in person, by telephone, or video conference with an officer or other designated employee of the dealer. At such meeting, the licensee must provide a detailed explanation, with supporting documentation, as to the basis for its claim that the dealer knew or reasonably should have known of the customer's intent to export or resell the motor vehicle. Thereafter, the motor vehicle dealer shall have a reasonable period, commensurate with the number of motor vehicles at issue, but not less than 15 days, to respond to the licensee's claims. If, following the dealer's response and completion of all internal dispute resolution processes provided through the applicant or licensee, the dispute remains unresolved, the dealer may file a protest with the department within 30 days after receipt of a written notice from the licensee that it still intends to take adverse action against the dealer with respect to the motor vehicles still at issue. If a protest is timely filed, the



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department shall notify the applicant or licensee of the filing of the protest, and the applicant or licensee may not take any action adverse to the dealer until the department renders a final determination, which is not subject to further appeal, that the licensee's proposed action is in compliance with the provisions of this subsection. In any hearing pursuant to this subsection, the applicant or licensee has the burden of proof on all issues raised by this subsection. An applicant or licensee may not take any adverse action against a motor vehicle dealer because the dealer sold or leased a motor vehicle to a customer who exported the vehicle to a foreign country or who resold the vehicle unless the applicant or licensee provides written notification to the motor vehicle dealer of such resale or export within 12 months after the date the dealer sold or leased the vehicle to the customer.

(27) Notwithstanding the terms of any franchise agreement, the applicant or licensee has failed or refused to indemnify and hold harmless any motor vehicle dealer against any judgment for damages, or settlements agreed to by the applicant or licensee, including, without limitation, court costs and reasonable attorney ~~attorneys~~ fees, arising out of complaints, claims, or lawsuits, including, without limitation, strict liability, negligence, misrepresentation, express or implied warranty, or revocation or rescission of acceptance of the sale of a motor vehicle, to the extent the judgment or settlement relates to the alleged negligent manufacture, design, or assembly of motor vehicles, parts, or accessories. Nothing herein shall obviate the licensee's obligations pursuant to chapter 681.

(28) The applicant or licensee has published, disclosed, or



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otherwise made available in any form information provided by a motor vehicle dealer with respect to sales prices of motor vehicles or profit per motor vehicle sold. Other confidential financial information provided by motor vehicle dealers shall not be published, disclosed, or otherwise made publicly available except in composite form. However, this information may be disclosed with the written consent of the dealer or in response to a subpoena or order of the department, a court or a lawful tribunal, or introduced into evidence in such a proceeding, after timely notice to an affected dealer.

(29) The applicant or licensee has failed to reimburse a motor vehicle dealer in full for the reasonable cost of providing a loaner vehicle to any customer who is having a vehicle serviced at the motor vehicle dealer, if a loaner is required by the applicant or licensee, or a loaner is expressly part of an applicant or licensee's customer satisfaction index or computation.

(30) The applicant or licensee has conducted or threatened to conduct any audit of a motor vehicle dealer in order to coerce or attempt to coerce the dealer to forego any rights granted to the dealer under ss. 320.60-320.70 or under the agreement between the licensee and the motor vehicle dealer. Nothing in this section shall prohibit an applicant or licensee from reasonably and periodically auditing a dealer to determine the validity of paid claims, as permitted under this chapter, if the licensee complies with the provisions of ss. 320.60-320.70 applicable to such audits.

(31) From and after the effective date of enactment of this provision, the applicant or licensee has offered to any motor



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vehicle dealer a franchise agreement that:

(a) Requires that a motor vehicle dealer bring an administrative or legal action in a venue outside of this state;

(b) Requires that any arbitration, mediation, or other legal proceeding be conducted outside of this state; or

(c) Requires that a law of a state other than Florida be applied to any legal proceeding between a motor vehicle dealer and a licensee.

(32) Notwithstanding the terms of any franchise agreement, the applicant or licensee has rejected or withheld approval of any proposed transfer in violation of s. 320.643 or a proposed change of executive management in violation of s. 320.644.

(33) The applicant or licensee has attempted to sell or lease, or has sold or leased, used motor vehicles at retail of a line-make that is the subject of any franchise agreement with a motor vehicle dealer in this state, other than trucks with a net weight of more than 8,000 pounds.

(34) The applicant or licensee, after the effective date of this subsection, has included in any franchise agreement with a motor vehicle dealer a mandatory obligation or requirement of the motor vehicle dealer to purchase, sell, or lease, or offer for purchase, sale, or lease, any quantity of used motor vehicles.

(35) The applicant or licensee has refused to assign allocation earned by a motor vehicle dealer, or has refused to sell motor vehicles to a motor vehicle dealer, because the motor vehicle dealer has failed or refused to purchase, sell, lease, or certify a certain quantity of used motor vehicles prescribed by the licensee.



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(36) (a) Notwithstanding the terms of any franchise agreement, in addition to any other statutory or contractual rights of recovery after the voluntary or involuntary termination, cancellation, or nonrenewal of a franchise, failing to pay the motor vehicle dealer, as provided in paragraph (d), the following amounts:

1. The net cost paid by the dealer for each new car or truck in the dealer's inventory with mileage of 2,000 miles or less, or a motorcycle with mileage of 100 miles or less, exclusive of mileage placed on the vehicle before it was delivered to the dealer.

2. The current price charged for each new, unused, undamaged, or unsold part or accessory that:

a. Is in the current parts catalogue and is still in the original, resalable merchandising package and in an unbroken lot, except that sheet metal may be in a comparable substitute for the original package; and

b. Was purchased by the dealer directly from the manufacturer or distributor or from an outgoing authorized dealer as a part of the dealer's initial inventory.

3. The fair market value of each undamaged sign owned by the dealer which bears a trademark or trade name used or claimed by the applicant or licensee or its representative which was purchased from or at the request of the applicant or licensee or its representative.

4. The fair market value of all special tools, data processing equipment, and automotive service equipment owned by the dealer which:

a. Were recommended in writing by the applicant or licensee



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or its representative and designated as special tools and equipment;

b. Were purchased from or at the request of the applicant or licensee or its representative; and

c. Are in usable and good condition except for reasonable wear and tear.

5. The cost of transporting, handling, packing, storing, and loading any property subject to repurchase under this section.

(b) If the termination, cancellation, or nonrenewal of the dealer's franchise is the result of the bankruptcy or reorganization of a licensee or its common entity, or the result of a licensee's plan, scheme, or policy, whether or not publicly declared, which is intended to or has the effect of decreasing the number of, or eliminating, the licensee's franchised motor vehicle dealers of a line-make in this state, or the result of a termination, elimination, or cessation of manufacture or reorganization of a licensee or its common entity, or the result of a termination, elimination, or cessation of manufacture or distribution of a line-make, in addition to the above payments to the dealer, the licensee or its common entity, shall be liable to and shall pay the motor vehicle dealer for an amount at least equal to the fair market value of the franchise for the line-make, which shall be the greater of the value determined as of the day the licensee announces the action that results in the termination, cancellation, or nonrenewal, or the value determined on the day that is 12 months before that date. Fair market value of the franchise for the line-make includes only the goodwill value of the dealer's franchise for that line-make



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in the dealer's community or territory.

(c) This subsection does not apply to a termination, cancellation, or nonrenewal that is implemented as a result of the sale of the assets or corporate stock or other ownership interests of the dealer.

(d) The dealer shall return the property listed in this subsection to the licensee within 90 days after the effective date of the termination, cancellation, or nonrenewal. The licensee shall supply the dealer with reasonable instructions regarding the method by which the dealer must return the property. Absent shipping instructions and prepayment of shipping costs from the licensee or its common entity, the dealer shall tender the inventory and other items to be returned at the dealer's facility. The compensation for the property shall be paid by the licensee or its common entity simultaneously with the tender of inventory and other items, provided that, if the dealer does not have clear title to the inventory and other items and is not in a position to convey that title to the licensee, payment for the property being returned may be made jointly to the dealer and the holder of any security interest.

(37) Notwithstanding the terms of any franchise agreement, the applicant or licensee has refused to allow or has limited or restricted a motor vehicle dealer from acquiring or adding a sales or service operation for another line-make of motor vehicles at the same or expanded facility at which the motor vehicle dealer currently operates a dealership unless the applicant or licensee can demonstrate that such refusal, limitation, or restriction is justified by consideration of



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reasonable facility and financial requirements and the dealer's performance for the existing line-make.

(38) The applicant or licensee has failed or refused to offer a bonus, incentive, or other benefit program, in whole or in part, to a dealer or dealers in this state which it offers to all of its other same line-make dealers nationally or to all of its other same line-make dealers in the licensee's designated zone, region, or other licensee-designated area of which this state is a part, unless the failure or refusal to offer the program in this state is reasonably supported by substantially different economic or marketing considerations than are applicable to the licensee's same line-make dealers in this state. For purposes of this chapter, a licensee may not establish this state alone as a designated zone, region, or area or any other designation for a specified territory. A licensee may offer a bonus, rebate, incentive, or other benefit program to its dealers in this state which is calculated or paid on a per vehicle basis and is related in part to a dealer's facility or the expansion, improvement, remodeling, alteration, or renovation of a dealer's facility. Any dealer who does not comply with the facility criteria or eligibility requirements of such program is entitled to receive a reasonable percentage of the bonus, incentive, rebate, or other benefit offered by the licensee under that program by complying with the criteria or eligibility requirements unrelated to the dealer's facility under that program. For purposes of the previous sentence, the percentage unrelated to the facility criteria or requirements is presumed to be "reasonable" if it is not less than 80 percent of the total of the per vehicle bonus, incentive, rebate, or other



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benefits offered under the program.

(39) Notwithstanding any agreement, program, incentive, bonus, policy, or rule, an applicant or licensee may not fail to make any payment pursuant to any agreement, program, incentive, bonus, policy, or rule for any temporary replacement motor vehicle loaned, rented, or provided by a motor vehicle dealer to or for its service or repair customers, even if the temporary replacement motor vehicle has been leased, rented, titled, or registered to the motor vehicle dealer's rental or leasing division or an entity that is owned or controlled by the motor vehicle dealer, provided that the motor vehicle dealer or its rental or leasing division or entity complies with the written and uniformly enforced vehicle eligibility, use, and reporting requirements specified by the applicant or licensee in its agreement, program, policy, bonus, incentive, or rule relating to loaner vehicles.

(40) Notwithstanding the terms of any franchise agreement, the applicant or licensee may not require or coerce, or attempt to require or coerce, a motor vehicle dealer to purchase goods or services from a vendor selected, identified, or designated by the applicant or licensee, or one of its parents, subsidiaries, divisions, or affiliates, by agreement, standard, policy, program, incentive provision, or otherwise, without making available to the motor vehicle dealer the option to obtain the goods or services of substantially similar design and quality from a vendor chosen by the motor vehicle dealer. If the motor vehicle dealer exercises such option, the dealer must provide written notice of its desire to use the alternative goods or services to the applicant or licensee, along with samples or



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clear descriptions of the alternative goods or services that the dealer desires to use. The licensee or applicant shall have the opportunity to evaluate the alternative goods or services for up to 30 days to determine whether it will provide a written approval to the motor vehicle dealer to use said alternative goods or services. Approval may not be unreasonably withheld by the applicant or licensee. If the motor vehicle dealer does not receive a response from the applicant or licensee within 30 days, approval to use the alternative goods or services is deemed granted. If a dealer using alternative goods or services complies with this subsection and has received approval from the licensee or applicant, the dealer is not ineligible for all benefits described in the agreement, standard, policy, program, incentive provision, or otherwise solely for having used such alternative goods or services. As used in this subsection, the term "goods or services" is limited to such goods and services used to construct or renovate dealership facilities or furniture and fixtures at the dealership facilities. The term does not include:

(a) Any materials subject to the applicant's or licensee's intellectual property rights, including copyright, trademark, or trade dress rights;

(b) Any special tool and training as required by the applicant or licensee;

(c) Any part to be used in repairs under warranty obligations of an applicant or licensee;

(d) Any good or service paid for entirely by the applicant or licensee; or

(e) Any applicant's or licensee's design or architectural



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review service.

(41) (a) The applicant or licensee has established, implemented, or enforced criteria for measuring the sales or service performance of any of its franchised motor vehicle dealers in this state which have a material or adverse effect on any motor vehicle dealer and which:

1. Are unfair, unreasonable, arbitrary, or inequitable; or
2. Do not include all relevant and material local and regional criteria, data, and facts. Relevant and material criteria, data, or facts include, but are not limited to, those of motor vehicle dealerships of comparable size in comparable markets. If such performance measurement criteria are based, in whole or in part, on a survey, such survey must be based on a statistically significant and valid random sample.

(b) An applicant, licensee, or common entity, or an affiliate thereof, which enforces against any motor vehicle dealer any such performance measurement criteria shall, upon the request of the motor vehicle dealer, describe in writing to the motor vehicle dealer, in detail, how the performance measurement criteria were designed, calculated, established, and uniformly applied.

A motor vehicle dealer who can demonstrate that a violation of, or failure to comply with, any of the preceding provisions by an applicant or licensee will or may ~~can~~ adversely and pecuniarily affect the complaining dealer, shall be entitled to pursue all of the remedies, procedures, and rights of recovery available under ss. 320.695 and 320.697.

Section 2. For the purpose of incorporating the amendment



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made by this act to section 320.64, Florida Statutes, in references thereto, section 320.6992, Florida Statutes, is reenacted to read:

320.6992 Application.—Sections 320.60-320.70, including amendments to ss. 320.60-320.70, apply to all presently existing or hereafter established systems of distribution of motor vehicles in this state, except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution. Sections 320.60-320.70 do not apply to any judicial or administrative proceeding pending as of October 1, 1988. All agreements renewed, amended, or entered into subsequent to October 1, 1988, shall be governed by ss. 320.60-320.70, including any amendments to ss. 320.60-320.70 which have been or may be from time to time adopted, unless the amendment specifically provides otherwise, and except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution.

Section 3. Sections 320.60, 320.605, 320.61, 320.615, 320.62, 320.63, 320.6403, 320.6405, 320.641, 320.6412, 320.6415, 320.642, 320.643, 320.644, 320.645, 320.646, 320.664, 320.67, 320.68, 320.69, 320.695, 320.696, 320.697, 320.6975, 320.698, 320.699, 320.69915, and 320.70, Florida Statutes, are reenacted for the purpose of incorporating the amendment made by this act to s. 320.64, Florida Statutes.

Section 4. This act shall take effect upon becoming a law.

===== T I T L E A M E N D M E N T =====
And the title is amended as follows:



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Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to motor vehicle applicants,
licensees, and dealers; amending s. 320.64, F.S.;
providing that a motor vehicle dealer who constructs
or alters sales or service facilities in reliance upon
a program or incentive offered by an applicant or
licensee is deemed to be in compliance with certain
requirements for a specified period; specifying
eligibility for benefits under a revised or new
program, standard, policy, bonus, incentive, rebate,
or other benefit; providing construction; authorizing
denial, suspension, or revocation of the license of an
applicant or licensee who establishes certain
performance measurement criteria that have a material
or adverse effect on motor vehicle dealers; requiring
an applicant, licensee, or common entity, or an
affiliate thereof, under certain circumstances and
upon the request of the motor vehicle dealer, to
describe in writing to the motor vehicle dealer how
certain performance measurement criteria were
designed, calculated, established, and uniformly
applied; reenacting s. 320.6992, F.S., relating to
provisions that apply to all systems of distribution
of motor vehicles in this state, to incorporate the
amendment made to s. 320.64, F.S., in references
thereto; reenacting ss. 320.60, 320.605, 320.61,
320.615, 320.62, 320.63, 320.6403, 320.6405, 320.641,



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736 320.6412, 320.6415, 320.642, 320.643, 320.644,
737 320.645, 320.646, 320.664, 320.67, 320.68, 320.69,
738 320.695, 320.696, 320.697, 320.6975, 320.698, 320.699,
739 320.69915, and 320.70, F.S., to incorporate the
740 amendment made to s. 320.64, F.S.; providing an
741 effective date.

By Senator Garcia

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1 A bill to be entitled
 2 An act relating to motor vehicle dealers; amending s.
 3 320.64, F.S.; providing an exception to the
 4 requirement that a specified provision does not affect
 5 certain contracts between a licensee and any of its
 6 dealers; providing that a motor vehicle dealer who
 7 completes certain approved construction or changes to
 8 or installation on the dealer's facility in reliance
 9 upon a certain program, standard, or policy, or bonus,
 10 incentive, rebate, or other benefit is deemed to be in
 11 full compliance with all of an applicant's or
 12 licensee's requirements related to the facility, sign,
 13 and image for a specified period; providing that a
 14 motor vehicle dealer that completed a facility in
 15 reliance upon a prior program, standard, or policy,
 16 bonus, incentive, rebate or other benefit, but elects
 17 not to comply with the provisions related to facility,
 18 sign, or image under a changed or new program,
 19 standard, policy, or other offer is not eligible for
 20 the new benefits but shall remain entitled to all
 21 prior benefits plus any increase in the benefits
 22 between the prior and the new or amended program,
 23 standard, policy, or offers for the remainder of the
 24 specified period; providing for construction;
 25 prohibiting the applicant or licensee from failing to
 26 act in good faith toward or deal fairly with one of
 27 its franchised motor vehicle dealers in an agreement;
 28 specifying when an applicant or licensee may have
 29 failed to act in good faith or deal fairly with a

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30 motor vehicle dealer; requiring the Department of
 31 Highway Safety and Motor Vehicles or a court to
 32 consider, in certain actions, specified factors in
 33 determining whether an applicant or licensee has
 34 failed to act in good faith toward, or deal fairly
 35 with, a motor vehicle dealer under certain
 36 circumstances; providing that an affirmative
 37 determination to one or more of such factors is
 38 sufficient to sustain a finding of failure to act in
 39 good faith or deal fairly with a motor vehicle dealer;
 40 prohibiting an applicant or licensee from
 41 establishing, implementing, or enforcing criteria for
 42 measuring the sales or service performance of any of
 43 its franchised motor vehicle dealers in this state
 44 under certain circumstances; providing that relevant
 45 and material national or state criteria or data may be
 46 considered; prohibiting comparison to such data to
 47 outweigh applicable local and regional factors and
 48 data; defining the term "relevant and material";
 49 requiring a survey to be based upon a statistically
 50 significant and valid random sample if certain
 51 measurement is based, in whole or in part, upon such
 52 survey; requiring an applicant, licensee, common
 53 entity, or affiliate thereof that seeks to establish,
 54 implement, or enforce against any dealer a performance
 55 measurement to describe in writing to the motor
 56 vehicle dealer, upon the dealer's request, how the
 57 measurement criteria about the dealer's sales and
 58 service performance was designed, calculated,

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59 established, and applied; providing that any dealer
 60 against whom any such performance measurement criteria
 61 is sought to be used for any purpose adverse to the
 62 dealer has the right to file a complaint in court
 63 alleging that such performance criteria does not
 64 comply with specified provisions; providing for
 65 damages, attorney fees, and injunctive relief under
 66 certain circumstances; requiring the applicant or
 67 licensee to bear the ultimate burden of proof that the
 68 dealer performance measurement criteria complies with
 69 specified provisions and has been implemented and
 70 enforced uniformly by the applicant or licensee among
 71 its dealers in this state; adding certain remedies,
 72 procedures, and rights of recovery a motor vehicle
 73 dealer is entitled to pursue under certain
 74 circumstances; creating s. 320.648, F.S.; prohibiting
 75 an applicant or licensee from taking specified actions
 76 for the purpose of avoiding competitive disadvantages
 77 of a motor vehicle dealer and eliminating
 78 discrimination against a motor vehicle dealer under
 79 certain circumstances; providing applicability;
 80 providing for construction; amending s. 320.699, F.S.;
 81 authorizing a motor vehicle dealer or certain persons
 82 to seek a declaration and adjudication of rights under
 83 certain circumstances with respect to certain actions
 84 of an applicant or licensee by filing a complaint in
 85 court for injunctive relief and damages; requiring,
 86 after a certain prima facie showing, the burden of
 87 proof of all issues to be upon the applicant or

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88 licensee to prove that a certain violation did not or
 89 will not occur; authorizing a court to issue
 90 injunctive relief and award costs and reasonable
 91 attorney fees to the complainant if relief is granted;
 92 providing an effective date.
 93

94 Be It Enacted by the Legislature of the State of Florida:

95
 96 Section 1. Section 320.64, Florida Statutes, is amended to
 97 read:

98 320.64 Denial, suspension, or revocation of license;
 99 grounds.—A license of a licensee under s. 320.61 may be denied,
 100 suspended, or revoked within the entire state or at any specific
 101 location or locations within the state at which the applicant or
 102 licensee engages or proposes to engage in business, upon proof
 103 that the section was violated with sufficient frequency to
 104 establish a pattern of wrongdoing, and a licensee or applicant
 105 shall be liable for claims and remedies provided in ss. 320.695
 106 and 320.697 for any violation of any of the following
 107 provisions. A licensee is prohibited from committing the
 108 following acts:

109 (1) The applicant or licensee is determined to be unable to
 110 carry out contractual obligations with its motor vehicle
 111 dealers.

112 (2) The applicant or licensee has knowingly made a material
 113 misstatement in its application for a license.

114 (3) The applicant or licensee willfully has failed to
 115 comply with significant provisions of ss. 320.60-320.70 or with
 116 any lawful rule or regulation adopted or promulgated by the

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117 department.

118 (4) The applicant or licensee has indulged in any illegal
119 act relating to his or her business.

120 (5) The applicant or licensee has coerced or attempted to
121 coerce any motor vehicle dealer into accepting delivery of any
122 motor vehicle or vehicles or parts or accessories therefor or
123 any other commodities which have not been ordered by the dealer.

124 (6) The applicant or licensee has coerced or attempted to
125 coerce any motor vehicle dealer to enter into any agreement with
126 the licensee.

127 (7) The applicant or licensee has threatened to
128 discontinue, cancel, or not to renew a franchise agreement of a
129 licensed motor vehicle dealer, where the threatened
130 discontinuation, cancellation, or nonrenewal, if implemented,
131 would be in violation of any of the provisions of s. 320.641.

132 (8) The applicant or licensee discontinued, canceled, or
133 failed to renew, a franchise agreement of a licensed motor
134 vehicle dealer in violation of any of the provisions of s.
135 320.641.

136 (9) The applicant or licensee has threatened to modify or
137 replace, or has modified or replaced, a franchise agreement with
138 a succeeding franchise agreement which would adversely alter the
139 rights or obligations of a motor vehicle dealer under an
140 existing franchise agreement or which substantially impairs the
141 sales, service obligations, or investment of the motor vehicle
142 dealer.

143 (10)(a) The applicant or licensee has attempted to enter,
144 or has entered, into a franchise agreement with a motor vehicle
145 dealer who does not, at the time of the franchise agreement,

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146 have proper facilities to provide the services to his or her
147 purchasers of new motor vehicles which are covered by the new
148 motor vehicle warranty issued by the applicant or licensee.

149 (b) Notwithstanding any provision of a franchise, a
150 licensee may not require a motor vehicle dealer, by agreement,
151 program, policy, standard, or otherwise, to make substantial
152 changes, alterations, or remodeling to, or to replace a motor
153 vehicle dealer's sales or service facilities unless the
154 licensee's requirements are reasonable and justifiable in light
155 of the current and reasonably foreseeable projections of
156 economic conditions, financial expectations, and the motor
157 vehicle dealer's market for the licensee's motor vehicles.

158 (c) A licensee may, however, consistent with the licensee's
159 allocation obligations at law and to its other same line-make
160 motor vehicle dealers, provide to a motor vehicle dealer a
161 commitment to supply additional vehicles or provide a loan or
162 grant of money as an inducement for the motor vehicle dealer to
163 expand, improve, remodel, alter, or renovate its facilities if
164 the provisions of the commitment are contained in a writing
165 voluntarily agreed to by the dealer and are made available, on
166 substantially similar terms, to any of the licensee's other same
167 line-make dealers in this state who voluntarily agree to make a
168 substantially similar facility expansion, improvement,
169 remodeling, alteration, or renovation.

170 (d) Except as provided in paragraph (c), subsection (36),
171 or as otherwise provided by law, this subsection does not
172 require a licensee to provide financial support for, or
173 contribution to, the purchase or sale of the assets of or equity
174 in a motor vehicle dealer or a relocation of a motor vehicle

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dealer because such support has been provided to other purchases, sales, or relocations.

(e) A licensee or its common entity may not take or threaten to take any action that is unfair or adverse to a dealer who does not enter into an agreement with the licensee pursuant to paragraph (c).

(f) Except as provided in s. 320.6992, this subsection does not affect any contract between a licensee and any of its dealers regarding relocation, expansion, improvement, remodeling, renovation, or alteration which exists on the effective date of this act.

(g) A licensee may set and uniformly apply reasonable standards for a motor vehicle dealer's sales and service facilities which are related to upkeep, repair, and cleanliness.

(h) A violation of paragraphs (b) through (g) is not a violation of s. 320.70 and does not subject any licensee to any criminal penalty under s. 320.70.

(i) If an applicant or licensee establishes a program, standard, or policy or in any manner offers a bonus, incentive, rebate, or other benefit to a motor vehicle dealer in this state which is premised, wholly or in part, on dealer facility construction, improvements, renovations, expansions, remodeling, or alterations or installation of signs or other image elements, a motor vehicle dealer who completes any such approved construction or change to or installation on the dealer's facility in reliance upon such program, standard, or policy, or bonus, incentive, rebate, or other benefit is deemed to be in full compliance with all of the applicant's or licensee's requirements related to the facility, sign, and image for a

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period of 10 years following such completion. If, during the 10-year period, the applicant or licensee changes or offers a new program, standard, or policy, or bonus, incentive, rebate, or other benefit related to relocation or remodeling, improvements, alterations, renovations, or replacement of the existing completed sales or service facilities, a motor vehicle dealer that completed a facility in reliance upon a prior program, standard, or policy, bonus, incentive, rebate, or other benefit, but elects not to comply with the provisions related to facility, sign, or image under the changed or new program, standard, policy, or other offer is not eligible for the new benefits but shall remain entitled to all prior benefits plus any increase in the benefits between the prior and the new or amended program, standard, policy, or offers for the remainder of the 10-year period. This paragraph does not obviate, affect, or alter any provision of subsection (38).

(11) The applicant or licensee has coerced a motor vehicle dealer to provide installment financing for the motor vehicle dealer's purchasers with a specified financial institution.

(12) The applicant or licensee has advertised, printed, displayed, published, distributed, broadcast, or televised, or caused or permitted to be advertised, printed, displayed, published, distributed, broadcast, or televised, in any manner whatsoever, any statement or representation with regard to the sale or financing of motor vehicles which is false, deceptive, or misleading.

(13) The applicant or licensee has sold, exchanged, or rented a motorcycle that ~~which~~ produces in excess of 5 brake horsepower, knowing the use thereof to be by, or intended for,

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the holder of a restricted Florida driver license.

(14) The applicant or licensee has engaged in previous conduct ~~that which~~ would have been a ground for revocation or suspension of a license if the applicant or licensee had been licensed.

(15) The applicant or licensee, directly or indirectly, through the actions of any parent of the licensee, subsidiary of the licensee, or common entity causes a termination, cancellation, or nonrenewal of a franchise agreement by a present or previous distributor or importer unless, by the effective date of such action, the applicant or licensee offers the motor vehicle dealer whose franchise agreement is terminated, canceled, or not renewed a franchise agreement containing substantially the same provisions contained in the previous franchise agreement or files an affidavit with the department acknowledging its undertaking to assume and fulfill the rights, duties, and obligations of its predecessor distributor or importer under the terminated, canceled, or nonrenewed franchise agreement and the same is reinstated.

(16) Notwithstanding the terms of any franchise agreement, the applicant or licensee prevents or refuses to accept the succession to any interest in a franchise agreement by any legal heir or devisee under the will of a motor vehicle dealer or under the laws of descent and distribution of this state; provided, the applicant or licensee is not required to accept a succession where such heir or devisee does not meet licensee's written, reasonable, and uniformly applied minimal standard qualifications for dealer applicants or which, after notice and administrative hearing pursuant to chapter 120, is demonstrated

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to be detrimental to the public interest or to the representation of the applicant or licensee. Nothing contained herein, however, shall prevent a motor vehicle dealer, during his or her lifetime, from designating any person as his or her successor in interest by written instrument filed with and accepted by the applicant or licensee. A licensee who rejects the successor transferee under this subsection shall have the burden of establishing in any proceeding where such rejection is in issue that the rejection of the successor transferee complies with this subsection.

(17) The applicant or licensee has included in any franchise agreement with a motor vehicle dealer terms or provisions that are contrary to, prohibited by, or otherwise inconsistent with the provisions contained in ss. 320.60-320.70, or has failed to include in such franchise agreement a provision conforming to the requirements of s. 320.63(3).

(18) The applicant or licensee has established a system of motor vehicle allocation or distribution or has implemented a system of allocation or distribution of motor vehicles to one or more of its franchised motor vehicle dealers which reduces or alters allocations or supplies of new motor vehicles to the dealer to achieve, directly or indirectly, a purpose that is prohibited by ss. 320.60-320.70, or which otherwise is unfair, inequitable, unreasonably discriminatory, or not supportable by reason and good cause after considering the equities of the affected motor vehicles dealer or dealers. An applicant or licensee shall maintain for 3 years records that describe its methods or formula of allocation and distribution of its motor vehicles and records of its actual allocation and distribution

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of motor vehicles to its motor vehicle dealers in this state. As used in this subsection, "unfair" includes, without limitation, the refusal or failure to offer to any dealer an equitable supply of new vehicles under its franchise, by model, mix, or colors as the licensee offers or allocates to its other same line-make dealers in the state.

(19) The applicant or licensee, without good and fair cause, has delayed, refused, or failed to provide a supply of motor vehicles by series in reasonable quantities, including the models publicly advertised by the applicant or licensee as being available, or has delayed, refused, or failed to deliver motor vehicle parts and accessories within a reasonable time after receipt of an order by a franchised dealer. However, this subsection is not violated if such failure is caused by acts or causes beyond the control of the applicant or licensee.

(20) The applicant or licensee has required, or threatened to require, a motor vehicle dealer to prospectively assent to a release, assignment, novation, waiver, or estoppel, which instrument or document operates, or is intended by the applicant or licensee to operate, to relieve any person from any liability or obligation under the provisions of ss. 320.60-320.70.

(21) The applicant or licensee has threatened or coerced a motor vehicle dealer toward conduct or action whereby the dealer would waive or forego its right to protest the establishment or relocation of a motor vehicle dealer in the community or territory serviced by the threatened or coerced dealer.

(22) The applicant or licensee has refused to deliver, in reasonable quantities and within a reasonable time, to any duly licensed motor vehicle dealer who has an agreement with such

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applicant or licensee for the retail sale of new motor vehicles and parts for motor vehicles sold or distributed by the applicant or licensee, any such motor vehicles or parts as are covered by such agreement. Such refusal includes the failure to offer to its same line-make franchised motor vehicle dealers all models manufactured for that line-make, or requiring a dealer to pay any extra fee, require a dealer to execute a separate franchise agreement, purchase unreasonable advertising displays or other materials, or relocate, expand, improve, remodel, renovate, recondition, or alter the dealer's existing facilities, or provide exclusive facilities as a prerequisite to receiving a model or series of vehicles. However, the failure to deliver any motor vehicle or part will not be considered a violation of this section if the failure is due to an act of God, work stoppage, or delay due to a strike or labor difficulty, a freight embargo, product shortage, or other cause over which the applicant or licensee has no control. An applicant or licensee may impose reasonable requirements on the motor vehicle dealer, other than the items listed above, including, but not limited to, the purchase of special tools required to properly service a motor vehicle and the undertaking of sales person or service person training related to the motor vehicle.

(23) The applicant or licensee has competed or is competing with respect to any activity covered by the franchise agreement with a motor vehicle dealer of the same line-make located in this state with whom the applicant or licensee has entered into a franchise agreement, except as permitted in s. 320.645.

(24) The applicant or licensee has sold a motor vehicle to

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any retail consumer in the state except through a motor vehicle dealer holding a franchise agreement for the line-make that includes the motor vehicle. This section does not apply to sales by the applicant or licensee of motor vehicles to its current employees, employees of companies affiliated by common ownership, charitable not-for-profit-organizations, and the federal government.

(25) The applicant or licensee has undertaken or engaged in an audit of warranty, maintenance, and other service-related payments or incentive payments, including payments to a motor vehicle dealer under any licensee-issued program, policy, or other benefit, which were previously paid to a motor vehicle dealer in violation of this section or has failed to comply with any of its obligations under s. 320.696. An applicant or licensee may reasonably and periodically audit a motor vehicle dealer to determine the validity of paid claims as provided in s. 320.696. Audits of warranty, maintenance, and other service-related payments shall be performed by an applicant or licensee only during the 12-month period immediately following the date the claim was paid. Audits of incentive payments shall be performed only during the 12-month period immediately following the date the incentive was paid. As used in this section, the term "incentive" includes any bonus, incentive, or other monetary or nonmonetary consideration. After such time periods have elapsed, all warranty, maintenance, and other service-related payments and incentive payments shall be deemed final and incontrovertible for any reason notwithstanding any otherwise applicable law, and the motor vehicle dealer shall not be subject to any chargeback or repayment. An applicant or

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licensee may deny a claim or, as a result of a timely conducted audit, impose a chargeback against a motor vehicle dealer for warranty, maintenance, or other service-related payments or incentive payments only if the applicant or licensee can show that the warranty, maintenance, or other service-related claim or incentive claim was false or fraudulent or that the motor vehicle dealer failed to substantially comply with the reasonable written and uniformly applied procedures of the applicant or licensee for such repairs or incentives, but only for that portion of the claim so shown. Notwithstanding the terms of any franchise agreement, guideline, program, policy, or procedure, an applicant or licensee may deny or charge back only that portion of a warranty, maintenance, or other service-related claim or incentive claim which the applicant or licensee has proven to be false or fraudulent or for which the dealer failed to substantially comply with the reasonable written and uniformly applied procedures of the applicant or licensee for such repairs or incentives, as set forth in this subsection. An applicant or licensee may not charge back a motor vehicle dealer subsequent to the payment of a warranty, maintenance, or service-related claim or incentive claim unless, within 30 days after a timely conducted audit, a representative of the applicant or licensee first meets in person, by telephone, or by video teleconference with an officer or employee of the dealer designated by the motor vehicle dealer. At such meeting the applicant or licensee must provide a detailed explanation, with supporting documentation, as to the basis for each of the claims for which the applicant or licensee proposed a chargeback to the dealer and a written statement containing the basis upon which

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407 the motor vehicle dealer was selected for audit or review.
 408 Thereafter, the applicant or licensee must provide the motor
 409 vehicle dealer's representative a reasonable period after the
 410 meeting within which to respond to the proposed chargebacks,
 411 with such period to be commensurate with the volume of claims
 412 under consideration, but in no case less than 45 days after the
 413 meeting. The applicant or licensee is prohibited from changing
 414 or altering the basis for each of the proposed chargebacks as
 415 presented to the motor vehicle dealer's representative following
 416 the conclusion of the audit unless the applicant or licensee
 417 receives new information affecting the basis for one or more
 418 chargebacks and that new information is received within 30 days
 419 after the conclusion of the timely conducted audit. If the
 420 applicant or licensee claims the existence of new information,
 421 the dealer must be given the same right to a meeting and right
 422 to respond as when the chargeback was originally presented.
 423 After all internal dispute resolution processes provided through
 424 the applicant or licensee have been completed, the applicant or
 425 licensee shall give written notice to the motor vehicle dealer
 426 of the final amount of its proposed chargeback. If the dealer
 427 disputes that amount, the dealer may file a protest with the
 428 department within 30 days after receipt of the notice. If a
 429 protest is timely filed, the department shall notify the
 430 applicant or licensee of the filing of the protest, and the
 431 applicant or licensee may not take any action to recover the
 432 amount of the proposed chargeback until the department renders a
 433 final determination, which is not subject to further appeal,
 434 that the chargeback is in compliance with the provisions of this
 435 section. In any hearing pursuant to this subsection, the

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436 applicant or licensee has the burden of proof that its audit and
 437 resulting chargeback are in compliance with this subsection.
 438 (26) Notwithstanding the terms of any franchise agreement,
 439 including any licensee's program, policy, or procedure, the
 440 applicant or licensee has refused to allocate, sell, or deliver
 441 motor vehicles; charged back or withheld payments or other
 442 things of value for which the dealer is otherwise eligible under
 443 a sales promotion, program, or contest; prevented a motor
 444 vehicle dealer from participating in any promotion, program, or
 445 contest; or has taken or threatened to take any adverse action
 446 against a dealer, including chargebacks, reducing vehicle
 447 allocations, or terminating or threatening to terminate a
 448 franchise because the dealer sold or leased a motor vehicle to a
 449 customer who exported the vehicle to a foreign country or who
 450 resold the vehicle, unless the licensee proves that the dealer
 451 knew or reasonably should have known that the customer intended
 452 to export or resell the motor vehicle. There is a rebuttable
 453 presumption that the dealer neither knew nor reasonably should
 454 have known of its customer's intent to export or resell the
 455 vehicle if the vehicle is titled or registered in any state in
 456 this country. A licensee may not take any action against a motor
 457 vehicle dealer, including reducing its allocations or supply of
 458 motor vehicles to the dealer or charging back to a dealer any
 459 incentive payment previously paid, unless the licensee first
 460 meets in person, by telephone, or video conference with an
 461 officer or other designated employee of the dealer. At such
 462 meeting, the licensee must provide a detailed explanation, with
 463 supporting documentation, as to the basis for its claim that the
 464 dealer knew or reasonably should have known of the customer's

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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465 intent to export or resell the motor vehicle. Thereafter, the
 466 motor vehicle dealer shall have a reasonable period,
 467 commensurate with the number of motor vehicles at issue, but not
 468 less than 15 days, to respond to the licensee's claims. If,
 469 following the dealer's response and completion of all internal
 470 dispute resolution processes provided through the applicant or
 471 licensee, the dispute remains unresolved, the dealer may file a
 472 protest with the department within 30 days after receipt of a
 473 written notice from the licensee that it still intends to take
 474 adverse action against the dealer with respect to the motor
 475 vehicles still at issue. If a protest is timely filed, the
 476 department shall notify the applicant or licensee of the filing
 477 of the protest, and the applicant or licensee may not take any
 478 action adverse to the dealer until the department renders a
 479 final determination, which is not subject to further appeal,
 480 that the licensee's proposed action is in compliance with the
 481 provisions of this subsection. In any hearing pursuant to this
 482 subsection, the applicant or licensee has the burden of proof on
 483 all issues raised by this subsection. An applicant or licensee
 484 may not take any adverse action against a motor vehicle dealer
 485 because the dealer sold or leased a motor vehicle to a customer
 486 who exported the vehicle to a foreign country or who resold the
 487 vehicle unless the applicant or licensee provides written
 488 notification to the motor vehicle dealer of such resale or
 489 export within 12 months after the date the dealer sold or leased
 490 the vehicle to the customer.

491 (27) Notwithstanding the terms of any franchise agreement,
 492 the applicant or licensee has failed or refused to indemnify and
 493 hold harmless any motor vehicle dealer against any judgment for

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494 damages, or settlements agreed to by the applicant or licensee,
 495 including, without limitation, court costs and reasonable
 496 ~~attorney~~ attorneys fees, arising out of complaints, claims, or
 497 lawsuits, including, without limitation, strict liability,
 498 negligence, misrepresentation, express or implied warranty, or
 499 revocation or rescission of acceptance of the sale of a motor
 500 vehicle, to the extent the judgment or settlement relates to the
 501 alleged negligent manufacture, design, or assembly of motor
 502 vehicles, parts, or accessories. Nothing herein shall obviate
 503 the licensee's obligations pursuant to chapter 681.

504 (28) The applicant or licensee has published, disclosed, or
 505 otherwise made available in any form information provided by a
 506 motor vehicle dealer with respect to sales prices of motor
 507 vehicles or profit per motor vehicle sold. Other confidential
 508 financial information provided by motor vehicle dealers shall
 509 not be published, disclosed, or otherwise made publicly
 510 available except in composite form. However, this information
 511 may be disclosed with the written consent of the dealer or in
 512 response to a subpoena or order of the department, a court or a
 513 lawful tribunal, or introduced into evidence in such a
 514 proceeding, after timely notice to an affected dealer.

515 (29) The applicant or licensee has failed to reimburse a
 516 motor vehicle dealer in full for the reasonable cost of
 517 providing a loaner vehicle to any customer who is having a
 518 vehicle serviced at the motor vehicle dealer, if a loaner is
 519 required by the applicant or licensee, or a loaner is expressly
 520 part of an applicant or licensee's customer satisfaction index
 521 or computation.

522 (30) The applicant or licensee has conducted or threatened

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to conduct any audit of a motor vehicle dealer in order to coerce or attempt to coerce the dealer to forego any rights granted to the dealer under ss. 320.60-320.70 or under the agreement between the licensee and the motor vehicle dealer. Nothing in this section shall prohibit an applicant or licensee from reasonably and periodically auditing a dealer to determine the validity of paid claims, as permitted under this chapter, if the licensee complies with the provisions of ss. 320.60-320.70 applicable to such audits.

(31) From and after the effective date of enactment of this provision, the applicant or licensee has offered to any motor vehicle dealer a franchise agreement that:

(a) Requires that a motor vehicle dealer bring an administrative or legal action in a venue outside of this state;

(b) Requires that any arbitration, mediation, or other legal proceeding be conducted outside of this state; or

(c) Requires that a law of a state other than Florida be applied to any legal proceeding between a motor vehicle dealer and a licensee.

(32) Notwithstanding the terms of any franchise agreement, the applicant or licensee has rejected or withheld approval of any proposed transfer in violation of s. 320.643 or a proposed change of executive management in violation of s. 320.644.

(33) The applicant or licensee has attempted to sell or lease, or has sold or leased, used motor vehicles at retail of a line-make that is the subject of any franchise agreement with a motor vehicle dealer in this state, other than trucks with a net weight of more than 8,000 pounds.

(34) The applicant or licensee, after the effective date of

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this subsection, has included in any franchise agreement with a motor vehicle dealer a mandatory obligation or requirement of the motor vehicle dealer to purchase, sell, or lease, or offer for purchase, sale, or lease, any quantity of used motor vehicles.

(35) The applicant or licensee has refused to assign allocation earned by a motor vehicle dealer, or has refused to sell motor vehicles to a motor vehicle dealer, because the motor vehicle dealer has failed or refused to purchase, sell, lease, or certify a certain quantity of used motor vehicles prescribed by the licensee.

(36) (a) Notwithstanding the terms of any franchise agreement, in addition to any other statutory or contractual rights of recovery after the voluntary or involuntary termination, cancellation, or nonrenewal of a franchise, failing to pay the motor vehicle dealer, as provided in paragraph (d), the following amounts:

1. The net cost paid by the dealer for each new car or truck in the dealer's inventory with mileage of 2,000 miles or less, or a motorcycle with mileage of 100 miles or less, exclusive of mileage placed on the vehicle before it was delivered to the dealer.

2. The current price charged for each new, unused, undamaged, or unsold part or accessory that:

a. Is in the current parts catalogue and is still in the original, resalable merchandising package and in an unbroken lot, except that sheet metal may be in a comparable substitute for the original package; and

b. Was purchased by the dealer directly from the

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581 manufacturer or distributor or from an outgoing authorized
 582 dealer as a part of the dealer's initial inventory.

583 3. The fair market value of each undamaged sign owned by
 584 the dealer which bears a trademark or trade name used or claimed
 585 by the applicant or licensee or its representative which was
 586 purchased from or at the request of the applicant or licensee or
 587 its representative.

588 4. The fair market value of all special tools, data
 589 processing equipment, and automotive service equipment owned by
 590 the dealer which:

591 a. Were recommended in writing by the applicant or licensee
 592 or its representative and designated as special tools and
 593 equipment;

594 b. Were purchased from or at the request of the applicant
 595 or licensee or its representative; and

596 c. Are in usable and good condition except for reasonable
 597 wear and tear.

598 5. The cost of transporting, handling, packing, storing,
 599 and loading any property subject to repurchase under this
 600 section.

601 (b) If the termination, cancellation, or nonrenewal of the
 602 dealer's franchise is the result of the bankruptcy or
 603 reorganization of a licensee or its common entity, or the result
 604 of a licensee's plan, scheme, or policy, whether or not publicly
 605 declared, which is intended to or has the effect of decreasing
 606 the number of, or eliminating, the licensee's franchised motor
 607 vehicle dealers of a line-make in this state, or the result of a
 608 termination, elimination, or cessation of manufacture or
 609 reorganization of a licensee or its common entity, or the result

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610 of a termination, elimination, or cessation of manufacture or
 611 distribution of a line-make, in addition to the above payments
 612 to the dealer, the licensee or its common entity, shall be
 613 liable to and shall pay the motor vehicle dealer for an amount
 614 at least equal to the fair market value of the franchise for the
 615 line-make, which shall be the greater of the value determined as
 616 of the day the licensee announces the action that results in the
 617 termination, cancellation, or nonrenewal, or the value
 618 determined on the day that is 12 months before that date. Fair
 619 market value of the franchise for the line-make includes only
 620 the goodwill value of the dealer's franchise for that line-make
 621 in the dealer's community or territory.

622 (c) This subsection does not apply to a termination,
 623 cancellation, or nonrenewal that is implemented as a result of
 624 the sale of the assets or corporate stock or other ownership
 625 interests of the dealer.

626 (d) The dealer shall return the property listed in this
 627 subsection to the licensee within 90 days after the effective
 628 date of the termination, cancellation, or nonrenewal. The
 629 licensee shall supply the dealer with reasonable instructions
 630 regarding the method by which the dealer must return the
 631 property. Absent shipping instructions and prepayment of
 632 shipping costs from the licensee or its common entity, the
 633 dealer shall tender the inventory and other items to be returned
 634 at the dealer's facility. The compensation for the property
 635 shall be paid by the licensee or its common entity
 636 simultaneously with the tender of inventory and other items,
 637 provided that, if the dealer does not have clear title to the
 638 inventory and other items and is not in a position to convey

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that title to the licensee, payment for the property being returned may be made jointly to the dealer and the holder of any security interest.

(37) Notwithstanding the terms of any franchise agreement, the applicant or licensee has refused to allow or has limited or restricted a motor vehicle dealer from acquiring or adding a sales or service operation for another line-make of motor vehicles at the same or expanded facility at which the motor vehicle dealer currently operates a dealership unless the applicant or licensee can demonstrate that such refusal, limitation, or restriction is justified by consideration of reasonable facility and financial requirements and the dealer's performance for the existing line-make.

(38) The applicant or licensee has failed or refused to offer a bonus, incentive, or other benefit program, in whole or in part, to a dealer or dealers in this state which it offers to all of its other same line-make dealers nationally or to all of its other same line-make dealers in the licensee's designated zone, region, or other licensee-designated area of which this state is a part, unless the failure or refusal to offer the program in this state is reasonably supported by substantially different economic or marketing considerations than are applicable to the licensee's same line-make dealers in this state. For purposes of this chapter, a licensee may not establish this state alone as a designated zone, region, or area or any other designation for a specified territory. A licensee may offer a bonus, rebate, incentive, or other benefit program to its dealers in this state which is calculated or paid on a per vehicle basis and is related in part to a dealer's facility

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or the expansion, improvement, remodeling, alteration, or renovation of a dealer's facility. Any dealer who does not comply with the facility criteria or eligibility requirements of such program is entitled to receive a reasonable percentage of the bonus, incentive, rebate, or other benefit offered by the licensee under that program by complying with the criteria or eligibility requirements unrelated to the dealer's facility under that program. For purposes of the previous sentence, the percentage unrelated to the facility criteria or requirements is presumed to be "reasonable" if it is not less than 80 percent of the total of the per vehicle bonus, incentive, rebate, or other benefits offered under the program.

(39) Notwithstanding any agreement, program, incentive, bonus, policy, or rule, an applicant or licensee may not fail to make any payment pursuant to any agreement, program, incentive, bonus, policy, or rule for any temporary replacement motor vehicle loaned, rented, or provided by a motor vehicle dealer to or for its service or repair customers, even if the temporary replacement motor vehicle has been leased, rented, titled, or registered to the motor vehicle dealer's rental or leasing division or an entity that is owned or controlled by the motor vehicle dealer, provided that the motor vehicle dealer or its rental or leasing division or entity complies with the written and uniformly enforced vehicle eligibility, use, and reporting requirements specified by the applicant or licensee in its agreement, program, policy, bonus, incentive, or rule relating to loaner vehicles.

(40) Notwithstanding the terms of any franchise agreement, the applicant or licensee may not require or coerce, or attempt

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697 to require or coerce, a motor vehicle dealer to purchase goods
 698 or services from a vendor selected, identified, or designated by
 699 the applicant or licensee, or one of its parents, subsidiaries,
 700 divisions, or affiliates, by agreement, standard, policy,
 701 program, incentive provision, or otherwise, without making
 702 available to the motor vehicle dealer the option to obtain the
 703 goods or services of substantially similar design and quality
 704 from a vendor chosen by the motor vehicle dealer. If the motor
 705 vehicle dealer exercises such option, the dealer must provide
 706 written notice of its desire to use the alternative goods or
 707 services to the applicant or licensee, along with samples or
 708 clear descriptions of the alternative goods or services that the
 709 dealer desires to use. The licensee or applicant shall have the
 710 opportunity to evaluate the alternative goods or services for up
 711 to 30 days to determine whether it will provide a written
 712 approval to the motor vehicle dealer to use said alternative
 713 goods or services. Approval may not be unreasonably withheld by
 714 the applicant or licensee. If the motor vehicle dealer does not
 715 receive a response from the applicant or licensee within 30
 716 days, approval to use the alternative goods or services is
 717 deemed granted. If a dealer using alternative goods or services
 718 complies with this subsection and has received approval from the
 719 licensee or applicant, the dealer is not ineligible for all
 720 benefits described in the agreement, standard, policy, program,
 721 incentive provision, or otherwise solely for having used such
 722 alternative goods or services. As used in this subsection, the
 723 term "goods or services" is limited to such goods and services
 724 used to construct or renovate dealership facilities or furniture
 725 and fixtures at the dealership facilities. The term does not

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726 include:
 727 (a) Any materials subject to the applicant's or licensee's
 728 intellectual property rights, including copyright, trademark, or
 729 trade dress rights;
 730 (b) Any special tool and training as required by the
 731 applicant or licensee;
 732 (c) Any part to be used in repairs under warranty
 733 obligations of an applicant or licensee;
 734 (d) Any good or service paid for entirely by the applicant
 735 or licensee; or
 736 (e) Any applicant's or licensee's design or architectural
 737 review service.
 738 (41) (a) The applicant or licensee has failed to act in good
 739 faith toward or to deal fairly with one of its franchised motor
 740 vehicle dealers regarding the terms or provisions of an
 741 agreement. For purposes of this subsection, an applicant or
 742 licensee may have failed to act in good faith toward or deal
 743 fairly with a motor vehicle dealer even in the absence of any
 744 act or threat of coercion or intimidation made by the applicant
 745 or licensee toward the motor vehicle dealer or even in the
 746 absence of an allegation by the motor vehicle dealer that an
 747 express term or provision of a franchise agreement has been
 748 breached or violated by the applicant or licensee. In any action
 749 brought under this subsection, the department or a court of
 750 competent jurisdiction shall consider all of the following
 751 factors, among others, in determining whether an applicant or
 752 licensee has failed to act in good faith toward or deal fairly
 753 with a motor vehicle dealer regarding the terms or provisions of
 754 any agreement or in any of its dealings with a motor vehicle

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dealer or in compliance with this subsection:

1. Whether the applicant or licensee has fairly taken into account the motor vehicle dealer's investment in its facilities, its sales or service or parts promotions, its staffing, and its general operations.

2. Whether the applicant or licensee has altered the rights of the motor vehicle dealer or the dealer's independence in operating the dealership.

3. Whether the applicant or licensee has altered the sales or service obligations of the motor vehicle dealer or adversely impaired the investment or the financial return of the motor vehicle dealer in any part of the motor vehicle dealer's sales, service, or parts operations.

4. Whether the applicant or licensee has fairly taken into account the equities and interests of the motor vehicle dealer.

(b) An affirmative determination regarding one or more of the factors under paragraph (a) is sufficient to sustain a finding of failure to act in good faith toward or deal fairly with a motor vehicle dealer.

(42)(a) An applicant or licensee may not establish, implement, or enforce criteria for measuring the sales or service performance of any of its franchised motor vehicle dealers in this state which may have a negative material or adverse effect on any dealer; which is unfair, unreasonable, arbitrary, or inequitable; or which does not include all applicable local and regional criteria, data, and facts. Relevant and material national or state criteria or data may be considered, but comparison to such data may not outweigh the local and regional factors and data. The term "relevant and

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material" includes, but is not limited to, comparable size dealerships in comparable markets with comparable buyer profiles. If such measurement is based, in whole or in part, upon a survey, the survey must be based upon a statistically significant and valid random sample. Upon the request of any dealer, applicant, licensee, common entity, or affiliate thereof that seeks to establish, implement, or enforce against any dealer any such performance measurement must promptly describe in writing to the motor vehicle dealer, in detail, how the measurement criteria for the dealer's sales and service performance was designed, calculated, established, and applied.

(b) Any dealer, against whom any such performance measurement criteria are sought to be used for any purpose adverse to the dealer, has the right to file a complaint in any court of competent jurisdiction alleging that such performance criteria does not comply with this subsection and, if successful, shall be entitled to damages pursuant to s. 320.697, plus attorney fees and injunctive relief. The court is authorized to issue temporary, preliminary, and permanent injunctive relief without regard to the existence of an adequate remedy at law or irreparable harm and without requiring a bond of any complainant.

(c) In any proceeding under this subsection, the applicant or licensee shall bear the ultimate burden of proof that the dealer performance measurement criteria complies with this subsection and has been implemented and enforced uniformly by the applicant or licensee among its dealers in this state.

A motor vehicle dealer who can demonstrate that a violation of,

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or failure to comply with, ~~this section any of the preceding provisions~~ by an applicant or licensee will or can adversely and pecuniarily affect the complaining dealer, shall be entitled to pursue all of the remedies, procedures, and rights of recovery available under ss. 320.695, ~~and~~ 320.697, and 320.699.

Section 2. Section 320.648, Florida Statutes, is created to read:

320.648 Discriminatory practices; prohibitions.-

(1) For the purpose of avoiding competitive disadvantages of a motor vehicle dealer in this state by reason of differences in dealer cost of any motor vehicle and for the purpose of eliminating discrimination by an applicant or licensee against any motor vehicle dealer in this state, an applicant or licensee is prohibited from:

(a) Selling or offering to sell a new motor vehicle to a motor vehicle dealer at a lower actual, effective cost, including the cost of the vehicle transportation, than the actual, effective cost that the same model similarly equipped is offered to or is available to another same line-make motor dealer in this state during a similar period.

(b) Discriminating between its same-line make dealers in this state by the use of a promotional, incentive, or bonus plan, program, device, benefit, or otherwise, whether received by the motor vehicle dealer at the time of sale of the new motor vehicle to the dealer or later, which results in a lower cost, including the cost of the vehicle transportation, than the actual, effective cost that the same model similarly equipped is offered or is available to another same line-make model motor vehicle dealer in this state during a similar period.

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(2) Subsection (1) does not prohibit a licensee's or applicant's offer of a promotion, bonus, or incentive which in effect does not discriminate against, and is functionally available to, all competing dealers of the same line-make in this state on substantially comparable terms, provided that it contains fair and reasonably achievable sales or service objectives.

(3) Subsection (1) does not obviate, affect, alter, or diminish s. 320.64(38).

Section 3. Section 320.699, Florida Statutes, is amended to read:

~~320.699 Administrative~~ Hearings and adjudications; procedure.-

(1) A motor vehicle dealer, or person with entitlements to or in a motor vehicle dealer, who is directly and adversely affected by the action or conduct of an applicant or licensee which is alleged to be in violation of any provision of ss. 320.60-320.70, may seek a declaration and adjudication of its rights with respect to the alleged action or conduct of the applicant or licensee by:

(a) Filing with the department a request for a proceeding and an administrative hearing which conforms substantially with the requirements of ss. 120.569 and 120.57; ~~or~~

(b) Filing with the department a written objection or notice of protest pursuant to s. 320.642; or

(c) As an alternative, filing a complaint in any court of competent jurisdiction to seek temporary, preliminary, or permanent injunctive relief and civil damages pursuant to s. 320.697. Upon a prima facie showing by a complainant that such

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871 violation has occurred, or may occur, the burden of proof of all
872 issues must then be upon the applicant or licensee to prove that
873 such violation did not or will not occur. In any such
874 proceeding, a court may issue injunctive relief without regard
875 to the existence of an adequate remedy at law or irreparable
876 harm and without requiring any bond and may award costs and
877 reasonable attorney fees to the complainant if relief is
878 granted.

879 (2) If a written objection or notice of protest is filed
880 with the department under paragraph (1)(b), a hearing shall be
881 held not sooner than 180 days nor later than 240 days from the
882 date of filing of the first objection or notice of protest,
883 unless the time is extended by the administrative law judge for
884 good cause shown. This subsection shall govern the schedule of
885 hearings in lieu of any other provision of law with respect to
886 administrative hearings conducted by the Department of Highway
887 Safety and Motor Vehicles or the Division of Administrative
888 Hearings, including performance standards of state agencies,
889 which may be included in current and future appropriations acts.

890 Section 4. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/4/2017

Meeting Date

SB 1678

Bill Number (if applicable)

678360

Amendment Barcode (if applicable)

Topic

Name DAVID LEIBOWITZ

Job Title SECRETARY + GENERAL COUNSEL

Address 2060 BISCAYNE BLVD.

Street

Phone 305-576-1889

MIAMI

City

FL

State

33137

Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing BRAMAN AUTOMOTIVE GROUP

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/4/17

Meeting Date

1678

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Gary Hunter

Job Title Attorney

Address 119 S. Monroe St., Suite 300
Street

Phone 222-7500

Tallahassee FL 32301
City State Zip

Email garyh@hgslaw.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Alliance of Automobile Mfgs.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

9:30 401S

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/4/17

Meeting Date

SB 1678

Bill Number (if applicable)

Topic Motor Vehicle Dealers

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N Adams St

Phone 224-7173

Street

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1678

Meeting Date

Bill Number (if applicable)

Topic Franchise provisions

Amendment Barcode (if applicable)

Name Ted Smith

Job Title President

Address 400 N. MERIDIAN ST

Phone 445 0435

Street

City

Tallah

State

FL

Zip

32301

Email teds@flade.org

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FL Auto Dealers Assoc

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/11/17

Meeting Date

SB1678-

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Ron Book

Job Title

Address 104 W. Toffenburg

Street

Phone

City

State

Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Auto Nation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Agriculture, *Vice Chair*
Appropriations Subcommittee on Health and
Human Services
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Governmental Oversight and Accountability
Transportation

JOINT COMMITTEE:

Joint Administrative Procedures Committee,
Alternating Chair

SENATOR KEVIN J. RADER
29th District

March 29, 2017

The Honorable George Gainer
302 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1300

Dear Chairman Gainer:

In accordance with Senate Rule 1.21, I am writing to you to be excused from the Transportation Committee meeting that will be held on April 4, 2017 at 9:30 am due to family matters that need my immediate attention. I sincerely apologize for any inconvenience this may cause.

Thank you for your consideration. Please feel free to contact me at 561-866-4020 if you have any questions.

Sincerely

A handwritten signature in cursive script that reads "Kevin Rader".

Kevin Rader
State Senator
District 29

cc: Phillip Miller, Staff Director

REPLY TO:

- ☐ 5301 N. Federal Hwy, Suite 135, Boca Raton, Florida 33487
- ☐ 222 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore



THE FLORIDA SENATE
SENATOR JOE NEGRON
President

MEMORANDUM

TO: All Senators
Ms. Debbie Brown, Secretary of the Senate
All Senate Committee and Subcommittee Staff Directors

FROM: Joe Negron, President

SUBJECT: Senator Hukill

DATE: March 20, 2017

I am delighted to share an update regarding Senator Hukill's treatment and recovery. This weekend, I was very pleased to hear the news that Senator Hukill's treatment was successful and her doctors have determined that she is cancer-free.

As a precautionary measure, Senator Hukill's physicians have advised that she undergo one final round of treatment over the next few weeks. They continue to recommend that she avoid travel during this course of treatment. As such, Senator Hukill is excused for the remainder of the 2017 Regular Session. She will continue to manage her district offices, staff, bills, and committee responsibilities remotely during this time.

Senator Hukill asked that I convey her sincere thanks for the ongoing support of the Senate family during her treatment. While we certainly miss Senator Hukill in Tallahassee, we are delighted that she is on the road to a full recovery and look forward to the day when she can return to Tallahassee.

CourtSmart Tag Report

Room: SB 401

Case No.:

Type:

Caption: Senate Committee on Transportation

Judge:

Started: 4/4/2017 10:13:56 AM

Ends: 4/4/2017 10:34:56 AM

Length: 00:21:01

10:13:55 AM Meeting called to order by Chair Gainer
10:14:04 AM Roll call by Administrative Assistant, Marilyn Hudson
10:14:07 AM Quorum present
10:14:23 AM Pledge of Allegiance
10:14:48 AM Comments by Chair Gainer
10:15:11 AM Introduction of CS/SB 832 by Chair Gainer
10:15:21 AM Explanation of CS/SB 832 by Senator Young
10:16:51 AM Comments by Chair Gainer
10:17:10 AM Lance Pierce, Assistant Director of State Legislative Affairs, Florida Farm Bureau waives in support
10:17:14 AM David Daniel, Lobbyist, UAS Association of Florida waives in support
10:17:21 AM Brewster Bavis, Senior Vice President, Associated Industries of Florida waives in support
10:17:28 AM Todd Summer, Lobbyist, UAVSIC waives in support
10:17:32 AM Trey Goldman, Legislative Counsel, Florida Realtors waives in support
10:17:43 AM Megan Samples, Lobbyist, Florida League of Cities waives against
10:17:49 AM Eric Poole, Assistant Legislative Director, Florida Association of Counties waives against
10:17:55 AM Closure waived on CS/SB 832 by Senator Young
10:18:23 AM Roll call on CS/SB 832 by Administrative Assistant, Marilyn Hudson
10:18:33 AM CS/SB 832 reported favorably
10:19:03 AM Recording Paused
10:19:55 AM Recording Resumed
10:20:06 AM Introduction of SB 1678 by Chair Gainer
10:20:10 AM Explanation of SB 1678 by Senator Garcia
10:20:35 AM Comments by Chair Gainer
10:20:43 AM Introduction of Amendment Barcode No. 678360 by Chair Gainer
10:20:46 AM Explanation of Amendment Barcode No. 678360 by Senator Garcia
10:21:58 AM Comments by Chair Gainer
10:22:12 AM David Leibowitz, Secretary and General Counsel, Braman Automotive Group
10:22:40 AM Comments by Chair Gainer
10:22:56 AM Closure waived on Amendment Barcode No. 678360 by Senator Garcia
10:23:02 AM Amendment Barcode No. 678360 adopted
10:23:06 AM Comments by Chair Gainer
10:23:16 AM Gary Hunter, Attorney, Alliance of Automobile Manufacturers
10:26:42 AM Comments by Chair Gainer
10:26:48 AM Question by Senator Rouson
10:27:04 AM Gary Hunter responds
10:27:25 AM Question by Senator Rouson
10:27:38 AM Brewster Bevis, Senior Vice President, Associated Industries of Florida
10:28:29 AM Ted Smith, President, Florida Auto Dealers Association waives in support
10:28:36 AM Ron Book, Lobbyist, Auto Nation waives in support
10:29:00 AM Comments by Senator Galvano
10:29:19 AM Debate by Senator Rouson
10:30:12 AM Closure waived on SB 1678 by Senator Galvano
10:31:16 AM Roll call on CS/SB 1678 by Administrative Assistant, Marilyn Hudson
10:31:29 AM CS/SB 1678 reported favorably
10:31:36 AM Introduction of CS/SB 282 by Chair Gainer
10:31:49 AM Explanation of CS/SB 282 by Senator Artilles
10:32:28 AM Comments by Chair Gainer
10:32:47 AM Jose Diaz, Lobbyist, Professional Wrecker Operators of Florida waives in support
10:32:52 AM Rebecca De La Rosa, Legislative Director, Palm Beach County waives against
10:33:05 AM Debate by Senator Baxley
10:33:38 AM Closure waived on CS/SB 282 by Senator Artilles
10:33:45 AM Roll call on CS/SB 282 by Administrative Assistant, Marilyn Hudson

10:33:58 AM CS/SB 282 reported favorably
10:34:09 AM Comments by Chair Gainer
10:34:14 AM Comments by Senator Galvano
10:34:28 AM Comments by Chair Gainer
10:34:40 AM Senator Rouson moves to adjourn
10:34:45 AM Meeting adjourned