

Bill No. SB 1722

Barcode 453234

CHAMBER ACTION

Senate

House

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The Committee on Transportation (Baker) recommended the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

Section 1. Subsection (25) of section 320.64, Florida Statutes, is amended, and subsection (37) is added to that section, 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 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:

Bill No. SB 1722

Barcode 453234

1           (25) The applicant or licensee has undertaken an audit  
2 of warranty payments or incentive payment previously paid to a  
3 motor vehicle dealer in violation of this section or has  
4 failed to comply with s. 320.696. An applicant or licensee may  
5 reasonably and periodically audit a motor vehicle dealer to  
6 determine the validity of paid claims. Audit of warranty  
7 payments shall only be for the 1-year period immediately  
8 following the date the claim was paid. Audit of incentive  
9 payments shall only be for an 18-month period immediately  
10 following the date the incentive was paid. An applicant or  
11 licensee shall not deny a claim or charge a motor vehicle  
12 dealer back subsequent to the payment of the claim unless the  
13 applicant or licensee can show that the claim was false or  
14 fraudulent or that the motor vehicle dealer failed to  
15 substantially comply with the reasonable written and uniformly  
16 applied procedures of the applicant or licensee for such  
17 repairs or incentives. An applicant or licensee may not charge  
18 a motor vehicle dealer back subsequent to the payment of a  
19 claim unless a representative of the applicant or licensee has  
20 met in person, by telephone, or by video teleconference with  
21 an officer or employee of the dealer designated by the motor  
22 vehicle dealer. At such meeting the applicant or licensee must  
23 have provided a detailed explanation, with supporting  
24 documentation, as to the basis for each of the claims for  
25 which the applicant or licensee proposed to charge-back the  
26 dealer and a written statement containing the basis upon which  
27 the motor vehicle dealer was selected for audit or review.  
28 Thereafter the applicant or licensee must have provided the  
29 motor vehicle dealer's representative a reasonable period  
30 after the meeting within which to respond to the proposed  
31 charge-backs, said period to be commensurate with the volume

Bill No. SB 1722

Barcode 453234

1 of claims under consideration, but in no case less than 45  
 2 days after such meeting. The applicant or licensee shall be  
 3 prohibited from changing or altering the basis for each of the  
 4 proposed charge-backs as presented to the motor vehicle  
 5 dealer's representative following the conclusion of the audit,  
 6 unless the applicant or licensee received new information  
 7 affecting the basis for one or more charge-backs. If the  
 8 applicant or licensee has claimed the existence of new  
 9 information, the dealer must have been given the same right to  
 10 a meeting and right to respond as when the charge-back was  
 11 originally presented.

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

23  
 24 A motor vehicle dealer who can demonstrate that a violation  
 25 of, or failure to comply with, any of the preceding provisions  
 26 by an applicant or licensee will or can adversely and  
 27 pecuniarily affect the complaining dealer, shall be entitled  
 28 to pursue all of the remedies, procedures, and rights of  
 29 recovery available under ss. 320.695 and 320.697.

30 Section 2. Subsection (3) of section 320.641, Florida  
 31 Statutes, is amended to read:

Bill No. SB 1722

Barcode 453234

1           320.641 Discontinuations, cancellations, nonrenewals,  
2 modifications, and replacement of franchise agreements.--  
3           (3) Any motor vehicle dealer who receives a notice of  
4 intent to discontinue, cancel, not renew, modify, or replace  
5 may, within the 90-day notice period, file a petition or  
6 complaint for a determination of whether such action is an  
7 unfair or prohibited discontinuation, cancellation,  
8 nonrenewal, modification, or replacement. Agreements and  
9 certificates of appointment shall continue in effect until  
10 final determination of the issues raised in such petition or  
11 complaint by the motor vehicle dealer. A discontinuation,  
12 cancellation, or nonrenewal of a franchise agreement is unfair  
13 if it is not clearly permitted by the franchise agreement; is  
14 not undertaken in good faith; is not undertaken for good  
15 cause; or is based on an alleged breach of the franchise  
16 agreement which is not in fact a material and substantial  
17 breach; or, if the grounds relied upon for termination,  
18 cancellation, or nonrenewal have not been applied in a uniform  
19 and consistent manner by the licensee. If the notice of  
20 discontinuation, cancellation or non-renewal relates to an  
21 alleged failure of the new motor vehicle dealer's sales or  
22 service performance obligations under the franchise agreement,  
23 the new motor vehicle dealer must first be provided with at  
24 least 180 days to correct the alleged failure before a  
25 licensee may send the notice of discontinuation, cancellation  
26 or non-renewal. A modification or replacement is unfair if it  
27 is not clearly permitted by the franchise agreement; is not  
28 undertaken in good faith; or is not undertaken for good cause.  
29 The applicant or licensee shall have the burden of proof that  
30 such action is fair and not prohibited.

31           Section 3. This act shall take effect July 1, 2007.

Bill No. SB 1722

Barcode 453234

1 ===== T I T L E    A M E N D M E N T =====

2 And the title is amended as follows:

3           Delete everything before the enacting clause

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5 and insert:

6                           A bill to be entitled

7           An act relating to motor vehicle dealers;

8           amending s. 320.64, F.S.; revising provisions

9           for grounds for denial, suspension, or

10          revocation of license of a motor vehicle

11          manufacturer, factory branch, distributor, or

12          importer licensed by the Department of Highway

13          Safety and Motor Vehicles to enter into

14          franchise agreements with dealers; prohibiting

15          certain charge-backs of warranty service

16          payments made to a dealer unless certain

17          procedures are followed; revising such

18          procedures; prohibiting applicant or licensee

19          from refusing to allow, limiting, or

20          restricting a motor vehicle dealer acquisition

21          or addition of operations for another line-make

22          of motor vehicles without a showing that the

23          acquisition or addition would impair the

24          dealer's ability to adequately sell or service

25          such applicant's or licensee's motor vehicles;

26          amending s. 320.641, F.S.; revising procedures

27          for a determination that a discontinuation,

28          cancellation, or nonrenewal of a franchise

29          agreement by the applicant or licensee is

30          unfair; providing for a 180-day notice to cure

31          an alleged breach of the agreement; providing

Bill No. SB 1722

Barcode 453234

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an effective date.