



337212

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/26/2015	.	
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The Committee on Transportation (Evers) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Present paragraph (h) of subsection (10) of section 320.64, Florida Statutes, is redesignated as paragraph (i), a new paragraph (h) is added to that subsection, present paragraph (h) of subsection (10) and subsections (25) and (26) of that section are amended, and subsections (39) through (41) are added to that section, to read:



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11           320.64 Denial, suspension, or revocation of license;  
12 grounds.—A license of a licensee under s. 320.61 may be denied,  
13 suspended, or revoked within the entire state or at any specific  
14 location or locations within the state at which the applicant or  
15 licensee engages or proposes to engage in business, upon proof  
16 that the section was violated with sufficient frequency to  
17 establish a pattern of wrongdoing, and a licensee or applicant  
18 shall be liable for claims and remedies provided in ss. 320.695  
19 and 320.697 for any violation of any of the following  
20 provisions. A licensee is prohibited from committing the  
21 following acts:

22           (10)

23           (h) If the applicant or licensee offers any bonus,  
24 incentive, rebate, or other program, standard, or policy that is  
25 available to a motor vehicle dealer in this state and that is  
26 premised, wholly or in part, on dealer facility improvements,  
27 renovations, expansion, remodeling, alterations, or installation  
28 of signs or other image elements, and if the motor vehicle  
29 dealer completes an approved facility in reliance upon such  
30 offer, the motor vehicle dealer shall be deemed to be in full  
31 compliance with all of the applicant's or licensee's  
32 requirements related to facility, sign, and image for the  
33 duration of a 10-year period following such completion. If,  
34 during the 10-year period, the applicant or licensee establishes  
35 a program, standard, or policy that offers a new bonus,  
36 incentive, rebate, or other benefit, and if a motor vehicle  
37 dealer has completed an approved facility in reliance upon the  
38 prior program, standard, or policy but does not comply with the  
39 provisions related to facility, sign, or image under the new



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40 program, standard, or policy, except as hereinafter provided,  
41 the motor vehicle dealer is eligible for benefits under the  
42 provisions related to facility, sign, or image of the new  
43 program, standard, or policy, but shall remain entitled to all  
44 the benefits under the older program, standard, or policy, plus  
45 any increase in the benefits between the old and new programs,  
46 standards, or policies during the remainder of the 10-year  
47 period. Nothing contained in this subsection shall in any way  
48 obviate, affect, or alter the provisions of subsection (38).

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

52 (25) The applicant or licensee has undertaken or engaged in  
53 an audit of warranty, maintenance, and other service-related  
54 payments or incentive payments, including payments to a motor  
55 vehicle dealer under any licensee-issued program, policy, or  
56 other benefit, which previously have been paid to a motor  
57 vehicle dealer in violation of this section or has failed to  
58 comply with any of its obligations under s. 320.696. An  
59 applicant or licensee may reasonably and periodically audit a  
60 motor vehicle dealer to determine the validity of paid claims as  
61 provided in s. 320.696. Audits of warranty, maintenance, and  
62 other service-related payments shall be performed by an  
63 applicant or licensee only during the 12-month ~~1-year~~ period  
64 immediately following the date the claim was paid. Audits ~~Audit~~  
65 of incentive payments shall ~~only~~ be performed only during the  
66 12-month ~~for an 18-month~~ period immediately following the date  
67 the incentive was paid. As used in this section, the term  
68 "incentive" includes any bonus, incentive, or other monetary or



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69 nonmonetary thing of value. After such time periods have  
70 elapsed, all warranty, maintenance, and other service-related  
71 payments and incentive payments shall be deemed final and  
72 incontrovertible for any reason notwithstanding any otherwise  
73 applicable law, and the motor vehicle dealer shall not be  
74 subject to any charge-back or repayment. An applicant or  
75 licensee may deny a claim or, as a result of a timely conducted  
76 audit, impose a charge-back against a motor vehicle dealer for  
77 warranty, maintenance, or other service-related payments or  
78 incentive payments only if the applicant or licensee can show  
79 that the warranty, maintenance, or other service-related claim  
80 or incentive claim was false or fraudulent or that the motor  
81 vehicle dealer failed to substantially comply with the  
82 reasonable written and uniformly applied procedures of the  
83 applicant or licensee for such repairs or incentives, but only  
84 for that portion of the claim so shown. Notwithstanding the  
85 terms of any franchise agreement, guideline, program, policy, or  
86 procedure, an applicant or licensee may deny or charge back only  
87 that portion of a warranty, maintenance, or other service-  
88 related claim or incentive claim which the applicant or licensee  
89 has proven to be false or fraudulent or for which the dealer  
90 failed to substantially comply with the reasonable, written, and  
91 uniformly applied procedures of the applicant or licensee for  
92 such repairs or incentives, as set forth in this subsection. An  
93 applicant or licensee may not charge back a motor vehicle dealer  
94 ~~back~~ subsequent to the payment of a warranty, maintenance, or  
95 service-related claim or incentive claim unless, within 30 days  
96 after a timely conducted audit, a representative of the  
97 applicant or licensee first meets in person, by telephone, or by



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98 video teleconference with an officer or employee of the dealer  
99 designated by the motor vehicle dealer. At such meeting the  
100 applicant or licensee must provide a detailed explanation, with  
101 supporting documentation, as to the basis for each of the claims  
102 for which the applicant or licensee proposed a charge-back to  
103 the dealer and a written statement containing the basis upon  
104 which the motor vehicle dealer was selected for audit or review.  
105 Thereafter, the applicant or licensee must provide the motor  
106 vehicle dealer's representative a reasonable period after the  
107 meeting within which to respond to the proposed charge-backs,  
108 with such period to be commensurate with the volume of claims  
109 under consideration, but in no case less than 45 days after the  
110 meeting. The applicant or licensee is prohibited from changing  
111 or altering the basis for each of the proposed charge-backs as  
112 presented to the motor vehicle dealer's representative following  
113 the conclusion of the audit unless the applicant or licensee  
114 receives new information affecting the basis for one or more  
115 charge-backs and that new information is received within 30 days  
116 after the conclusion of the timely conducted audit. If the  
117 applicant or licensee claims the existence of new information,  
118 the dealer must be given the same right to a meeting and right  
119 to respond as when the charge-back was originally presented.  
120 After all internal dispute resolution processes provided through  
121 the applicant or licensee have been completed, the applicant or  
122 licensee shall give written notice to the motor vehicle dealer  
123 of the final amount of its proposed charge-back. If the dealer  
124 disputes that amount, the dealer may file a protest with the  
125 department within 30 days after receipt of the notice. If a  
126 protest is timely filed, the department shall notify the



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127 applicant or licensee of the filing of the protest, and the  
128 applicant or licensee may not take any action to recover the  
129 amount of the proposed charge-back until the department renders  
130 a final determination, which is not subject to further appeal,  
131 that the charge-back is in compliance with the provisions of  
132 this section. In any hearing pursuant to this subsection, the  
133 applicant or licensee has the burden of proof that its audit and  
134 resulting charge-back are in compliance with this subsection.

135 (26) Notwithstanding the terms of any franchise agreement,  
136 including any licensee's program, policy, or procedure, the  
137 applicant or licensee has refused to allocate, sell, or deliver  
138 motor vehicles; charged back or withheld payments or other  
139 things of value for which the dealer is otherwise eligible under  
140 a sales promotion, program, or contest; prevented a motor  
141 vehicle dealer from participating in any promotion, program, or  
142 contest; or has taken or threatened to take any adverse action  
143 against a dealer, including charge-backs, reducing vehicle  
144 allocations, or terminating or threatening to terminate a  
145 franchise because the dealer sold or leased a motor vehicle to a  
146 customer who exported the vehicle to a foreign country or who  
147 resold the vehicle, unless the licensee proves that the dealer  
148 knew or reasonably should have known that the customer intended  
149 to export or resell the motor vehicle. There is a rebuttable  
150 presumption that the dealer neither knew nor reasonably should  
151 have known of its customer's intent to export or resell the  
152 vehicle if the vehicle is titled or registered in any state in  
153 this country. A licensee may not take any action against a motor  
154 vehicle dealer, including reducing its allocations or supply of  
155 motor vehicles to the dealer, or charging back a dealer for an



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156 incentive payment previously paid, unless the licensee first  
157 meets in person, by telephone, or video conference with an  
158 officer or other designated employee of the dealer. At such  
159 meeting, the licensee must provide a detailed explanation, with  
160 supporting documentation, as to the basis for its claim that the  
161 dealer knew or reasonably should have known of the customer's  
162 intent to export or resell the motor vehicle. Thereafter, the  
163 motor vehicle dealer shall have a reasonable period,  
164 commensurate with the number of motor vehicles at issue, but not  
165 less than 15 days, to respond to the licensee's claims. If,  
166 following the dealer's response and completion of all internal  
167 dispute resolution processes provided through the applicant or  
168 licensee, the dispute remains unresolved, the dealer may file a  
169 protest with the department within 30 days after receipt of a  
170 written notice from the licensee that it still intends to take  
171 adverse action against the dealer with respect to the motor  
172 vehicles still at issue. If a protest is timely filed, the  
173 department shall notify the applicant or licensee of the filing  
174 of the protest, and the applicant or licensee may not take any  
175 action adverse to the dealer until the department renders a  
176 final determination, which is not subject to further appeal,  
177 that the licensee's proposed action is in compliance with the  
178 provisions of this subsection. In any hearing pursuant to this  
179 subsection, the applicant or licensee has the burden of proof on  
180 all issues raised by this subsection. In addition to the  
181 requirements, protections, and procedures set forth in this  
182 subsection, an applicant or licensee, by agreement, program,  
183 rule, policy, standard, or otherwise, may not take adverse  
184 action against a motor vehicle dealer, including, but not



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185 limited to, reducing allocations, product deliveries, or  
186 planning volumes, or imposing any penalty or charge-back,  
187 because a motor vehicle that was sold, leased, or delivered to a  
188 customer was resold or exported more than 120 days after it was  
189 delivered to the customer. If the applicant or licensee does not  
190 provide written notification to the motor vehicle dealer of such  
191 resale or export within 12 months after the date of the motor  
192 vehicle dealer's delivery of the vehicle to the customer, the  
193 motor vehicle dealer may not be subject to any adverse action.  
194 Notwithstanding the provisions of any franchise agreement,  
195 program, policy, or procedure, a motor vehicle dealer's  
196 franchise agreement may not be terminated, canceled,  
197 discontinued, or nonrenewed by an applicant or licensee on the  
198 basis of any act related to a customer's exporting or reselling  
199 of a motor vehicle, unless the applicant or licensee proves by  
200 clear and convincing evidence before a trier of fact that the  
201 motor vehicle dealer knowingly engaged in a pattern of conduct  
202 of selling to known exporters and that the majority owner, or if  
203 there is no majority owner, the person designated as the dealer-  
204 principal in the franchise agreement, had actual knowledge, at  
205 the time the motor vehicle was sold, leased, or delivered, that  
206 the customer intended to export or resell the motor vehicle.  
207 However, nothing herein shall prohibit a licensee from  
208 terminating or nonrenewing a motor vehicle dealer's franchise  
209 agreement for a pattern of conduct that includes fraud, or  
210 intentionally making false statements or documentation in  
211 connection with retail sales of motor vehicles that are  
212 exported.

213 (39) Notwithstanding the terms of any agreement, program,





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214 incentive, bonus, policy, or rule, the applicant or licensee  
215 fails to make any payment pursuant to any of the foregoing for  
216 any temporary replacement motor vehicle loaned, rented, or  
217 provided by a motor vehicle dealer to or for its service or  
218 repair customers, even if the temporary replacement motor  
219 vehicle has been leased, rented, titled, or registered to the  
220 motor vehicle dealer's rental or leasing division or an entity  
221 that is owned or controlled by the motor vehicle dealer,  
222 provided that the motor vehicle dealer or its rental or leasing  
223 division or entity complies with the written and uniformly  
224 enforced vehicle eligibility and use requirements specified by  
225 the applicant or licensee in its agreement, program, policy,  
226 bonus, incentive or rule relating to loaner vehicles.

227 (40) Notwithstanding the terms of any franchise agreement,  
228 the applicant or licensee has required or coerced, or attempted  
229 to require or coerce, a motor vehicle dealer to purchase goods  
230 or services from a vendor selected, identified, or designated by  
231 the applicant or licensee, or one of its parents, subsidiaries,  
232 divisions, or affiliates, by agreement, standard, policy,  
233 program, incentive provision, or otherwise, without making  
234 available to the motor vehicle dealer the option to obtain the  
235 goods or services of like kind, design, and quality from a  
236 vendor chosen by the motor vehicle dealer. If the motor vehicle  
237 dealer exercises such option, the dealer must provide written  
238 notice of its desire to use the alternative goods or services to  
239 the applicant or licensee, along with samples or clear  
240 descriptions of the alternative goods or services that the  
241 dealer desires to use. The licensee or applicant shall have the  
242 opportunity to evaluate the alternative good or service for up



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243 to 30 days and to provide its written consent to use said good  
244 or service; such consent may not be unreasonably withheld by the  
245 applicant or licensee. If the motor vehicle dealer does not  
246 receive a response from the applicant or licensee within 30  
247 days, consent to use the alternative goods or services shall be  
248 deemed granted. If a dealer using alternative goods or services  
249 complies with the terms of this subsection, the dealer shall  
250 qualify and be eligible for all benefits described in the  
251 agreement, standard, policy, program, incentive provision, or  
252 otherwise. As used in this subsection, the term "goods or  
253 services" are limited to such goods and services used to  
254 construct or renovate dealership facilities, or furniture and  
255 fixtures at the dealership facilities. The term does not  
256 include:

257 (a) Any intellectual property of the applicant or licensee  
258 relating to signage incorporating the applicant's or licensee's  
259 trademark or copyright, any facility or building materials  
260 bearing the applicant's or licensee's trademark;

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

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

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

267 (e) Any applicant's or licensee's design or architectural  
268 review service.

269 (41) (a) The applicant or licensee, by agreement, policy,  
270 program, standard, or otherwise, requires a motor vehicle  
271 dealer, directly or indirectly, to advance or pay for, or to



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272 reimburse the applicant or licensee for, any costs related to  
273 the creation, development, showing, or publication in any media  
274 of any advertisement for a motor vehicle; requires a motor  
275 vehicle dealer to participate in, contribute to, affiliate with,  
276 or join a dealer advertising or marketing group, fund, pool,  
277 association, or other entity; or takes or threatens to take any  
278 adverse action against a motor vehicle dealer that refuses to  
279 join or participate in such group, fund, pool, association, or  
280 other entity. As used in this subsection, the term "adverse  
281 action" includes, but is not limited to, reduction of  
282 allocations, charging fees for a licensee's or dealer's  
283 advertising or a marketing group's advertising or marketing,  
284 termination of or threatening to terminate the motor vehicle  
285 dealer's franchise, reducing any incentive for which the motor  
286 vehicle dealer is eligible.

287 (b) An applicant or licensee requires a dealer to  
288 participate in, or precludes a number of its motor vehicle  
289 dealers in a designated market area from establishing, a  
290 voluntary motor vehicle dealer advertising or marketing group,  
291 fund, pool, association, or other entity. Except as provided in  
292 an agreement, if a motor vehicle dealers chooses to form an  
293 independent advertising or marketing group, the applicant or  
294 licensee is not required to fund such group.

295 (c) This subsection may not prohibit an applicant or  
296 licensee from offering advertising or promotional materials to a  
297 motor vehicle dealer for a fee or charge, as long as the use of  
298 such advertising or promotional materials is voluntary for the  
299 motor vehicle dealer.

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

307 Section 2. This act applies to all franchise agreements  
308 entered into, renewed, or amended after October 1, 1988, except  
309 and to the extent that such application impairs valid  
310 contractual agreements in violation of the Florida Constitution  
311 or the United States Constitution.

312 Section 3. This act shall take effect upon becoming a law.

313  
314 ===== T I T L E A M E N D M E N T =====

315 And the title is amended as follows:

316 Delete everything before the enacting clause  
317 and insert:

318 A bill to be entitled  
319 An act relating to motor vehicle manufacturer  
320 licenses; amending s. 320.64, F.S.; providing that a  
321 motor vehicle dealer who receives approval of a  
322 facility from an applicant or licensee within a  
323 specified timeframe is deemed to be in full compliance  
324 with facility-related requirements; providing that  
325 such motor vehicle dealer are entitled to certain  
326 benefits under certain circumstances; providing  
327 applicability; conforming a cross-reference; revising  
328 provisions related to an applicant or licensee who has  
329 undertaken or engaged in an audit of service-related



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330 payments or incentive payments; limiting the timeframe  
331 for the performance of such audits; defining the term  
332 "incentive"; providing that an applicant or licensee  
333 may deny or charge back only the portion of a service-  
334 related claim or incentive claim which the applicant  
335 or licensee has proven to be false or fraudulent or  
336 for which the dealer failed to substantially comply  
337 with certain procedures; prohibiting an applicant or  
338 licensee from taking adverse action against a motor  
339 vehicle dealer under certain circumstances;  
340 prohibiting an applicant or licensee from failing to  
341 make any payment due a motor vehicle dealer that  
342 substantially complies with the terms of a certain  
343 contract between the two parties regarding  
344 reimbursement for temporary replacement vehicles under  
345 certain circumstances; authorizing a motor vehicle  
346 dealer to purchase goods or services from a vendor  
347 chosen by the motor vehicle dealer, subject to certain  
348 requirements; defining the term "goods or services";  
349 prohibiting an applicant or licensee from requiring a  
350 motor vehicle dealer to pay for certain advertising or  
351 marketing, or to participate in or affiliate with a  
352 dealer advertising or marketing entity; providing that  
353 an applicant or licensee may not take or threaten to  
354 take any adverse action against a motor vehicle dealer  
355 who refuses to join or participate in such entity;  
356 defining the term "adverse action"; providing that an  
357 applicant or licensee may not require a dealer to  
358 participate in, or may not preclude only a number of



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359        its motor vehicle dealers in a designated market area  
360        from establishing, a voluntary motor vehicle dealer  
361        advertising or marketing entity; providing that an  
362        applicant or licensee is required to fund such an  
363        entity under certain circumstances; providing for  
364        retroactive applicability; providing an effective  
365        date.