



485814

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/06/2015	.	
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Appropriations Subcommittee on Transportation, Tourism, and Economic Development (Diaz de la Portilla) 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), (40), and



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10 (41) are added to that section, to read:

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 an 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, a motor vehicle dealer who  
29 completes an approved facility in reliance upon such offer shall  
30 be deemed to be in full compliance with all of the applicant's  
31 or licensee's requirements related to facility, sign, and image  
32 for the duration of a 10-year period following such completion.  
33 If, during the 10-year period, the applicant or licensee  
34 establishes a program, standard, or policy that offers a new  
35 bonus, incentive, rebate, or other benefit, a motor vehicle  
36 dealer that completed an approved facility in reliance upon the  
37 prior program, standard, or policy but does not comply with the  
38 provisions related to facility, sign, or image under the new



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39 program, standard, or policy, except as hereinafter provided,  
40 may not be eligible for benefits under the provisions related to  
41 facility, sign, or image of the new program, standard, or  
42 policy, but shall remain entitled to all the benefits under the  
43 older program, standard, or policy, plus any increase in the  
44 benefits between the old and new programs, standards, or  
45 policies during the remainder of the 10-year period. Nothing  
46 contained in this subsection shall in any way obviate, affect,  
47 or alter the provisions of subsection (38).

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

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



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



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



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

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



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



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184 notification to the motor vehicle dealer of such resale or  
185 export within 12 months after the date the dealer sold or leased  
186 the vehicle to the customer.

187 (39) Notwithstanding the terms of any agreement, program,  
188 incentive, bonus, policy, or rule, an applicant or licensee  
189 fails to make any payment pursuant to any of the foregoing for  
190 any temporary replacement motor vehicle loaned, rented, or  
191 provided by a motor vehicle dealer to or for its service or  
192 repair customers, even if the temporary replacement motor  
193 vehicle has been leased, rented, titled, or registered to the  
194 motor vehicle dealer's rental or leasing division or an entity  
195 that is owned or controlled by the motor vehicle dealer,  
196 provided that the motor vehicle dealer or its rental or leasing  
197 division or entity complies with the written and uniformly  
198 enforced vehicle eligibility, use, and reporting requirements  
199 specified by the applicant or licensee in its agreement,  
200 program, policy, bonus, incentive or rule relating to loaner  
201 vehicles.

202 (40) Notwithstanding the terms of any franchise agreement,  
203 the applicant or licensee has required or coerced, or attempted  
204 to require or coerce, a motor vehicle dealer to purchase goods  
205 or services from a vendor selected, identified, or designated by  
206 the applicant or licensee, or one of its parents, subsidiaries,  
207 divisions, or affiliates, by agreement, standard, policy,  
208 program, incentive provision, or otherwise, without making  
209 available to the motor vehicle dealer the option to obtain the  
210 goods or services of substantially similar design and quality  
211 from a vendor chosen by the motor vehicle dealer. If the motor  
212 vehicle dealer exercises such option, the dealer must provide





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213 written notice of its desire to use the alternative goods or  
214 services to the applicant or licensee, along with samples or  
215 clear descriptions of the alternative goods or services that the  
216 dealer desires to use. The licensee or applicant shall have the  
217 opportunity to evaluate the alternative goods or services for up  
218 to 30 days to determine whether it will provide a written  
219 approval to the motor vehicle dealer to use said alternative  
220 goods or services. Approval may not be unreasonably withheld by  
221 the applicant or licensee. If the motor vehicle dealer does not  
222 receive a response from the applicant or licensee within 30  
223 days, approval to use the alternative goods or services shall be  
224 deemed granted. If a dealer using alternative goods or services  
225 complies with the terms of this subsection and has received  
226 approval from the licensee or applicant, the dealer shall not be  
227 ineligible for all benefits described in the agreement,  
228 standard, policy, program, incentive provision, or otherwise  
229 solely for having used such alternative goods or services. As  
230 used in this subsection, the term "goods or services" is limited  
231 to such goods and services used to construct or renovate  
232 dealership facilities, or furniture and fixtures at the  
233 dealership facilities. The term does not include:

234 (a) Any intellectual property of the applicant or licensee,  
235 including signage incorporating the applicant's or licensee's  
236 trademark or copyright, or facility or building materials, to  
237 the extent that the applicant's or licensee's trademark is  
238 displayed thereon;

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

241 (c) Any part to be used in repairs under warranty



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242 obligations of an applicant or licensee;

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

245 (e) Any applicant's or licensee's design or architectural  
246 review service.

247 (41) (a) The applicant or licensee, by agreement, policy,  
248 program, standard, or otherwise, requires a motor vehicle  
249 dealer, directly or indirectly, to advance or pay for, or to  
250 reimburse the applicant or licensee for, any costs related to  
251 the creation, development, showing, placement, or publication in  
252 any media of any advertisement for a motor vehicle; requires a  
253 motor vehicle dealer to participate in, contribute to, affiliate  
254 with, or join a dealer advertising or marketing group, fund,  
255 pool, association, or other entity; or takes or threatens to  
256 take any adverse action against a motor vehicle dealer that  
257 refuses to join or participate in such group, fund, pool,  
258 association, or other entity. As used in this subsection, the  
259 term "adverse action" includes, but is not limited to, reducing  
260 allocations, charging fees for a licensee's or dealer's  
261 advertising or a marketing group's advertising or marketing,  
262 terminating or threatening to terminate the motor vehicle  
263 dealer's franchise agreement, reducing any incentive for which  
264 the motor vehicle dealer is eligible, or engaging in any action  
265 that fails to take into account the equities of the motor  
266 vehicle dealer.

267 (b) An applicant or licensee requires a dealer to  
268 participate in, or precludes a number of its motor vehicle  
269 dealers in a designated market area from establishing, a  
270 voluntary motor vehicle dealer advertising or marketing group,



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271 fund, pool, association, or other entity. Except as provided in  
272 an agreement, if a motor vehicle dealer chooses to form an  
273 independent advertising or marketing group, the applicant or  
274 licensee is not required to fund such group.

275 (c) This subsection may not prohibit an applicant or  
276 licensee from offering advertising or promotional materials to a  
277 motor vehicle dealer for a fee or charge, as long as the use of  
278 such advertising or promotional materials is voluntary for the  
279 motor vehicle dealer.

280  
281 A motor vehicle dealer who can demonstrate that a violation of,  
282 or failure to comply with, any of the preceding provisions by an  
283 applicant or licensee will or can adversely and pecuniarily  
284 affect the complaining dealer, shall be entitled to pursue all  
285 of the remedies, procedures, and rights of recovery available  
286 under ss. 320.695 and 320.697.

287 Section 2. This act applies to all franchise agreements  
288 entered into, renewed, or amended after October 1, 1988, except  
289 and to the extent that such application impairs valid  
290 contractual agreements in violation of the State Constitution or  
291 the United States Constitution.

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

293  
294 ===== T I T L E A M E N D M E N T =====

295 And the title is amended as follows:

296 Delete everything before the enacting clause  
297 and insert:

298 A bill to be entitled  
299 An act relating to motor vehicle manufacturer



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300 licenses; amending s. 320.64, F.S.; providing that a  
301 motor vehicle dealer who received approval of a  
302 facility from an applicant or licensee within a  
303 specified timeframe is deemed to be in full compliance  
304 with facility-related requirements; providing that  
305 such motor vehicle dealer are entitled to certain  
306 benefits under certain circumstances; providing  
307 applicability; conforming a cross-reference; revising  
308 provisions related to an applicant or licensee who has  
309 undertaken or engaged in an audit of service-related  
310 payments or incentive payments; limiting the timeframe  
311 for the performance of such audits; defining the term  
312 "incentive"; authorizing an applicant or licensee to  
313 deny or charge back only the portion of a service-  
314 related claim or incentive claim which the applicant  
315 or licensee has proven to be false or fraudulent or  
316 for which the dealer failed to substantially comply  
317 with certain procedures; prohibiting an applicant or  
318 licensee from taking adverse action against a motor  
319 vehicle dealer under certain circumstances;  
320 prohibiting an applicant or licensee from failing to  
321 make any payment due a motor vehicle dealer that  
322 substantially complies with the terms of a certain  
323 contract between the two parties regarding  
324 reimbursement for temporary replacement vehicles under  
325 certain circumstances; authorizing a motor vehicle  
326 dealer to purchase goods or services from a vendor  
327 chosen by the motor vehicle dealer, subject to certain  
328 requirements; defining the term "goods or services";



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329 prohibiting an applicant or licensee from requiring a  
330 motor vehicle dealer to pay for certain advertising or  
331 marketing, or to participate in or affiliate with a  
332 dealer advertising or marketing entity; prohibiting an  
333 applicant or licensee from taking or threatening to  
334 take any adverse action against a motor vehicle dealer  
335 who refuses to join or participate in such entity;  
336 defining the term "adverse action"; providing that an  
337 applicant or licensee may not require a dealer to  
338 participate in, or may not preclude only a number of  
339 its motor vehicle dealers in a designated market area  
340 from establishing, a voluntary motor vehicle dealer  
341 advertising or marketing entity; providing that an  
342 applicant or licensee is not required to fund such an  
343 entity under certain circumstances; providing for  
344 retroactive applicability under certain circumstances;  
345 providing an effective date.