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Proposed Committee Substitute by the Committee on Rules  
(Appropriations Subcommittee on Transportation, Tourism, and  
Economic Development)

1                                   A bill to be entitled  
2           An act relating to motor vehicle manufacturer  
3           licenses; amending s. 320.64, F.S.; providing that a  
4           motor vehicle dealer who received approval of a  
5           facility from an applicant or licensee within a  
6           specified timeframe is deemed to be in full compliance  
7           with facility-related requirements; providing that  
8           such motor vehicle dealer is entitled to certain  
9           benefits under certain circumstances; providing  
10          applicability; conforming a cross-reference; revising  
11          provisions related to an applicant or licensee who has  
12          undertaken or engaged in an audit of service-related  
13          payments or incentive payments; reducing the timeframe  
14          for the performance of such audits; defining the term  
15          "incentive"; authorizing an applicant or licensee to  
16          deny or charge back only the portion of a service-  
17          related claim or incentive claim which the applicant  
18          or licensee has proven to be false or fraudulent or  
19          for which the dealer failed to substantially comply  
20          with certain procedures; prohibiting an applicant or  
21          licensee from taking adverse action against a motor  
22          vehicle dealer under certain circumstances;  
23          prohibiting an applicant or licensee from failing to  
24          make any payment due a motor vehicle dealer that  
25          substantially complies with the terms of a certain  
26          contract between the two parties regarding



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27 reimbursement for temporary replacement vehicles under  
28 certain circumstances; authorizing a motor vehicle  
29 dealer to purchase goods or services from a vendor  
30 chosen by the motor vehicle dealer, subject to certain  
31 requirements; defining the term "goods or services";  
32 prohibiting an applicant or licensee from requiring a  
33 motor vehicle dealer to pay for certain advertising or  
34 marketing, or to participate in or affiliate with a  
35 dealer advertising or marketing entity; prohibiting an  
36 applicant or licensee from taking or threatening to  
37 take any adverse action against a motor vehicle dealer  
38 who refuses to join or participate in such entity;  
39 defining the term "adverse action"; providing that an  
40 applicant or licensee may not require a dealer to  
41 participate in, or may not preclude only a number of  
42 its motor vehicle dealers in a designated market area  
43 from establishing, a voluntary motor vehicle dealer  
44 advertising or marketing entity; providing that an  
45 applicant or licensee is not required to fund such an  
46 entity under certain circumstances; providing for  
47 retroactive applicability under certain circumstances;  
48 providing an effective date.

49  
50 Be It Enacted by the Legislature of the State of Florida:

51  
52 Section 1. Present paragraph (h) of subsection (10) of  
53 section 320.64, Florida Statutes, is redesignated as paragraph  
54 (i), a new paragraph (h) is added to that subsection, present  
55 paragraph (h) of subsection (10) and subsections (25) and (26)



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56 of that section are amended, and subsections (39), (40), and  
57 (41) are added to that section, to read:

58 320.64 Denial, suspension, or revocation of license;  
59 grounds.—A license of a licensee under s. 320.61 may be denied,  
60 suspended, or revoked within the entire state or at any specific  
61 location or locations within the state at which the applicant or  
62 licensee engages or proposes to engage in business, upon proof  
63 that the section was violated with sufficient frequency to  
64 establish a pattern of wrongdoing, and a licensee or applicant  
65 shall be liable for claims and remedies provided in ss. 320.695  
66 and 320.697 for any violation of any of the following  
67 provisions. A licensee is prohibited from committing the  
68 following acts:

69 (10)

70 (h) If an applicant or licensee offers any bonus,  
71 incentive, rebate, or other program, standard, or policy that is  
72 available to a motor vehicle dealer in this state and that is  
73 premised, wholly or in part, on dealer facility improvements,  
74 renovations, expansions, remodeling, alterations, or  
75 installations of signs or other image elements, a motor vehicle  
76 dealer who completes an approved facility in reliance upon such  
77 offer shall be deemed to be in full compliance with all of the  
78 applicant's or licensee's requirements related to facility,  
79 sign, and image for the duration of a 10-year period following  
80 such completion. If, during the 10-year period, the applicant or  
81 licensee establishes a program, standard, or policy that offers  
82 a new bonus, incentive, rebate, or other benefit, a motor  
83 vehicle dealer that completed an approved facility in reliance  
84 upon the prior program, standard, or policy but does not comply



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85 with the provisions related to facility, sign, or image under  
86 the new program, standard, or policy, except as hereinafter  
87 provided, may not be eligible for benefits under the provisions  
88 related to facility, sign, or image of the new program,  
89 standard, or policy, but shall remain entitled to all the  
90 benefits under the older program, standard, or policy, plus any  
91 increase in the benefits between the old and new programs,  
92 standards, or policies during the remainder of the 10-year  
93 period. Nothing contained in this subsection shall in any way  
94 obviate, affect, or alter the provisions of subsection (38).

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

98 (25) The applicant or licensee has undertaken or engaged in  
99 an audit of warranty, maintenance, and other service-related  
100 payments or incentive payments, including payments to a motor  
101 vehicle dealer under any licensee-issued program, policy, or  
102 other benefit, which previously have been paid to a motor  
103 vehicle dealer in violation of this section or has failed to  
104 comply with any of its obligations under s. 320.696. An  
105 applicant or licensee may reasonably and periodically audit a  
106 motor vehicle dealer to determine the validity of paid claims as  
107 provided in s. 320.696. Audits of warranty, maintenance, and  
108 other service-related payments shall be performed by an  
109 applicant or licensee only during the 12-month ~~1-year~~ period  
110 immediately following the date the claim was paid. Audits ~~Audit~~  
111 of incentive payments shall ~~only~~ be performed only during the  
112 12-month ~~for an 18-month~~ period immediately following the date  
113 the incentive was paid. As used in this section, the term



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114 "incentive" includes any bonus, incentive, or other monetary or  
115 nonmonetary thing of value. After such time periods have  
116 elapsed, all warranty, maintenance, and other service-related  
117 payments and incentive payments shall be deemed final and  
118 incontrovertible for any reason notwithstanding any otherwise  
119 applicable law, and the motor vehicle dealer shall not be  
120 subject to any charge-back or repayment. An applicant or  
121 licensee may deny a claim or, as a result of a timely conducted  
122 audit, impose a charge-back against a motor vehicle dealer for  
123 warranty, maintenance, or other service-related payments or  
124 incentive payments only if the applicant or licensee can show  
125 that the warranty, maintenance, or other service-related claim  
126 or incentive claim was false or fraudulent or that the motor  
127 vehicle dealer failed to substantially comply with the  
128 reasonable written and uniformly applied procedures of the  
129 applicant or licensee for such repairs or incentives, but only  
130 for that portion of the claim so shown. Notwithstanding the  
131 terms of any franchise agreement, guideline, program, policy, or  
132 procedure, an applicant or licensee may deny or charge back only  
133 that portion of a warranty, maintenance, or other service-  
134 related claim or incentive claim which the applicant or licensee  
135 has proven to be false or fraudulent or for which the dealer  
136 failed to substantially comply with the reasonable written and  
137 uniformly applied procedures of the applicant or licensee for  
138 such repairs or incentives, as set forth in this subsection. An  
139 applicant or licensee may not charge back a motor vehicle dealer  
140 back subsequent to the payment of a warranty, maintenance, or  
141 service-related claim or incentive claim unless, within 30 days  
142 after a timely conducted audit, a representative of the



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143 applicant or licensee first meets in person, by telephone, or by  
144 video teleconference with an officer or employee of the dealer  
145 designated by the motor vehicle dealer. At such meeting the  
146 applicant or licensee must provide a detailed explanation, with  
147 supporting documentation, as to the basis for each of the claims  
148 for which the applicant or licensee proposed a charge-back to  
149 the dealer and a written statement containing the basis upon  
150 which the motor vehicle dealer was selected for audit or review.  
151 Thereafter, the applicant or licensee must provide the motor  
152 vehicle dealer's representative a reasonable period after the  
153 meeting within which to respond to the proposed charge-backs,  
154 with such period to be commensurate with the volume of claims  
155 under consideration, but in no case less than 45 days after the  
156 meeting. The applicant or licensee is prohibited from changing  
157 or altering the basis for each of the proposed charge-backs as  
158 presented to the motor vehicle dealer's representative following  
159 the conclusion of the audit unless the applicant or licensee  
160 receives new information affecting the basis for one or more  
161 charge-backs and that new information is received within 30 days  
162 after the conclusion of the timely conducted audit. If the  
163 applicant or licensee claims the existence of new information,  
164 the dealer must be given the same right to a meeting and right  
165 to respond as when the charge-back was originally presented.  
166 After all internal dispute resolution processes provided through  
167 the applicant or licensee have been completed, the applicant or  
168 licensee shall give written notice to the motor vehicle dealer  
169 of the final amount of its proposed charge-back. If the dealer  
170 disputes that amount, the dealer may file a protest with the  
171 department within 30 days after receipt of the notice. If a



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172 protest is timely filed, the department shall notify the  
173 applicant or licensee of the filing of the protest, and the  
174 applicant or licensee may not take any action to recover the  
175 amount of the proposed charge-back until the department renders  
176 a final determination, which is not subject to further appeal,  
177 that the charge-back is in compliance with the provisions of  
178 this section. In any hearing pursuant to this subsection, the  
179 applicant or licensee has the burden of proof that its audit and  
180 resulting charge-back are in compliance with this subsection.

181 (26) Notwithstanding the terms of any franchise agreement,  
182 including any licensee's program, policy, or procedure, the  
183 applicant or licensee has refused to allocate, sell, or deliver  
184 motor vehicles; charged back or withheld payments or other  
185 things of value for which the dealer is otherwise eligible under  
186 a sales promotion, program, or contest; prevented a motor  
187 vehicle dealer from participating in any promotion, program, or  
188 contest; or has taken or threatened to take any adverse action  
189 against a dealer, including charge-backs, reducing vehicle  
190 allocations, or terminating or threatening to terminate a  
191 franchise because the dealer sold or leased a motor vehicle to a  
192 customer who exported the vehicle to a foreign country or who  
193 resold the vehicle, unless the licensee proves that the dealer  
194 knew or reasonably should have known that the customer intended  
195 to export or resell the motor vehicle. There is a rebuttable  
196 presumption that the dealer neither knew nor reasonably should  
197 have known of its customer's intent to export or resell the  
198 vehicle if the vehicle is titled or registered in any state in  
199 this country. A licensee may not take any action against a motor  
200 vehicle dealer, including reducing its allocations or supply of



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201 motor vehicles to the dealer, or charging back a dealer for an  
202 incentive payment previously paid, unless the licensee first  
203 meets in person, by telephone, or video conference with an  
204 officer or other designated employee of the dealer. At such  
205 meeting, the licensee must provide a detailed explanation, with  
206 supporting documentation, as to the basis for its claim that the  
207 dealer knew or reasonably should have known of the customer's  
208 intent to export or resell the motor vehicle. Thereafter, the  
209 motor vehicle dealer shall have a reasonable period,  
210 commensurate with the number of motor vehicles at issue, but not  
211 less than 15 days, to respond to the licensee's claims. If,  
212 following the dealer's response and completion of all internal  
213 dispute resolution processes provided through the applicant or  
214 licensee, the dispute remains unresolved, the dealer may file a  
215 protest with the department within 30 days after receipt of a  
216 written notice from the licensee that it still intends to take  
217 adverse action against the dealer with respect to the motor  
218 vehicles still at issue. If a protest is timely filed, the  
219 department shall notify the applicant or licensee of the filing  
220 of the protest, and the applicant or licensee may not take any  
221 action adverse to the dealer until the department renders a  
222 final determination, which is not subject to further appeal,  
223 that the licensee's proposed action is in compliance with the  
224 provisions of this subsection. In any hearing pursuant to this  
225 subsection, the applicant or licensee has the burden of proof on  
226 all issues raised by this subsection. An applicant or licensee  
227 may not take any adverse action against a motor vehicle dealer  
228 because the dealer sold or leased a motor vehicle to a customer  
229 who exported the vehicle to a foreign country or who resold the





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230 vehicle unless the applicant or licensee provides written  
231 notification to the motor vehicle dealer of such resale or  
232 export within 12 months after the date the dealer sold or leased  
233 the vehicle to the customer.

234 (39) Notwithstanding the terms of any agreement, program,  
235 incentive, bonus, policy, or rule, an applicant or licensee  
236 fails to make any payment pursuant to any of the foregoing for  
237 any temporary replacement motor vehicle loaned, rented, or  
238 provided by a motor vehicle dealer to or for its service or  
239 repair customers, even if the temporary replacement motor  
240 vehicle has been leased, rented, titled, or registered to the  
241 motor vehicle dealer's rental or leasing division or an entity  
242 that is owned or controlled by the motor vehicle dealer,  
243 provided that the motor vehicle dealer or its rental or leasing  
244 division or entity complies with the written and uniformly  
245 enforced vehicle eligibility, use, and reporting requirements  
246 specified by the applicant or licensee in its agreement,  
247 program, policy, bonus, incentive, or rule relating to loaner  
248 vehicles.

249 (40) Notwithstanding the terms of any franchise agreement,  
250 the applicant or licensee has required or coerced, or attempted  
251 to require or coerce, a motor vehicle dealer to purchase goods  
252 or services from a vendor selected, identified, or designated by  
253 the applicant or licensee, or one of its parents, subsidiaries,  
254 divisions, or affiliates, by agreement, standard, policy,  
255 program, incentive provision, or otherwise, without making  
256 available to the motor vehicle dealer the option to obtain the  
257 goods or services of substantially similar design and quality  
258 from a vendor chosen by the motor vehicle dealer. If the motor



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259 vehicle dealer exercises such option, the dealer must provide  
260 written notice of its desire to use the alternative goods or  
261 services to the applicant or licensee, along with samples or  
262 clear descriptions of the alternative goods or services that the  
263 dealer desires to use. The licensee or applicant shall have the  
264 opportunity to evaluate the alternative goods or services for up  
265 to 30 days to determine whether it will provide a written  
266 approval to the motor vehicle dealer to use said alternative  
267 goods or services. Approval may not be unreasonably withheld by  
268 the applicant or licensee. If the motor vehicle dealer does not  
269 receive a response from the applicant or licensee within 30  
270 days, approval to use the alternative goods or services shall be  
271 deemed granted. If a dealer using alternative goods or services  
272 complies with the terms of this subsection and has received  
273 approval from the licensee or applicant, the dealer shall not be  
274 ineligible for all benefits described in the agreement,  
275 standard, policy, program, incentive provision, or otherwise  
276 solely for having used such alternative goods or services. As  
277 used in this subsection, the term "goods or services" is limited  
278 to such goods and services used to construct or renovate  
279 dealership facilities, or furniture and fixtures at the  
280 dealership facilities. The term does not include:

281 (a) Any intellectual property of the applicant or licensee,  
282 including signage incorporating the applicant's or licensee's  
283 trademark or copyright, or facility or building materials to the  
284 extent that the applicant's or licensee's trademark is displayed  
285 thereon;

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



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288       (c) Any part to be used in repairs under warranty  
289 obligations of an applicant or licensee;  
290       (d) Any good or service paid for entirely by the applicant  
291 or licensee; or  
292       (e) Any applicant's or licensee's design or architectural  
293 review service.  
294       (41) (a) The applicant or licensee, by agreement, policy,  
295 program, standard, or otherwise, requires a motor vehicle  
296 dealer, directly or indirectly, to advance or pay for, or to  
297 reimburse the applicant or licensee for, any costs related to  
298 the creation, development, showing, placement, or publication in  
299 any media of any advertisement for a motor vehicle; requires a  
300 motor vehicle dealer to participate in, contribute to, affiliate  
301 with, or join a dealer advertising or marketing group, fund,  
302 pool, association, or other entity; or takes or threatens to  
303 take any adverse action against a motor vehicle dealer that  
304 refuses to join or participate in such group, fund, pool,  
305 association, or other entity. As used in this subsection, the  
306 term "adverse action" includes, but is not limited to, reducing  
307 allocations, charging fees for a licensee's or dealer's  
308 advertising or a marketing group's advertising or marketing,  
309 terminating or threatening to terminate the motor vehicle  
310 dealer's franchise agreement, reducing any incentive for which  
311 the motor vehicle dealer is eligible, or engaging in any action  
312 that fails to take into account the equities of the motor  
313 vehicle dealer.  
314       (b) The applicant or licensee requires a dealer to  
315 participate in, or precludes a number of its motor vehicle  
316 dealers in a designated market area from establishing, a



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317 voluntary motor vehicle dealer advertising or marketing group,  
318 fund, pool, association, or other entity. Except as provided in  
319 an agreement, if a motor vehicle dealer chooses to form an  
320 independent advertising or marketing group, the applicant or  
321 licensee is not required to fund such group.

322 (c) This subsection may not prohibit an applicant or  
323 licensee from offering advertising or promotional materials to a  
324 motor vehicle dealer for a fee or charge, as long as the use of  
325 such advertising or promotional materials is voluntary for the  
326 motor vehicle dealer.

327  
328 A motor vehicle dealer who can demonstrate that a violation of,  
329 or failure to comply with, any of the preceding provisions by an  
330 applicant or licensee will or can adversely and pecuniarily  
331 affect the complaining dealer, shall be entitled to pursue all  
332 of the remedies, procedures, and rights of recovery available  
333 under ss. 320.695 and 320.697.

334 Section 2. This act applies to all franchise agreements  
335 entered into, renewed, or amended after October 1, 1988, except  
336 to the extent that such application would impair valid  
337 contractual agreements, in violation of the State Constitution  
338 or the United States Constitution.

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