

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Business & Professions
 2 Subcommittee
 3 Representative Trujillo offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

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

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18 that the section was violated with sufficient frequency to
19 establish a pattern of wrongdoing, and a licensee or applicant
20 shall be liable for claims and remedies provided in ss. 320.695
21 and 320.697 for any violation of any of the following
22 provisions. A licensee is prohibited from committing the
23 following acts:

24 (10)

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

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44 but shall remain entitled to all the benefits under the older
45 program, standard or policy plus any increase in the benefits
46 between the old and new programs, standards or policies during
47 the remainder of the 10-year period. Nothing contained in this
48 subsection shall in any way obviate, affect, or alter the
49 provisions of Section 320.64(38).

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

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

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

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

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122 the applicant or licensee have been completed, the applicant or
123 licensee shall give written notice to the motor vehicle dealer
124 of the final amount of its proposed charge-back. If the dealer
125 disputes that amount, the dealer may file a protest with the
126 department within 30 days after receipt of the notice. If a
127 protest is timely filed, the department shall notify the
128 applicant or licensee of the filing of the protest, and the
129 applicant or licensee may not take any action to recover the
130 amount of the proposed charge-back until the department renders
131 a final determination, which is not subject to further appeal,
132 that the charge-back is in compliance with the provisions of
133 this section. In any hearing pursuant to this subsection, the
134 applicant or licensee has the burden of proof that its audit and
135 resulting charge-back are in compliance with this subsection.

136 (26) Notwithstanding the terms of any franchise agreement,
137 including any licensee's program, policy, or procedure, the
138 applicant or licensee has refused to allocate, sell, or deliver
139 motor vehicles; charged back or withheld payments or other
140 things of value for which the dealer is otherwise eligible under
141 a sales promotion, program, or contest; prevented a motor
142 vehicle dealer from participating in any promotion, program, or
143 contest; or has taken or threatened to take any adverse action
144 against a dealer, including charge-backs, reducing vehicle
145 allocations, or terminating or threatening to terminate a
146 franchise because the dealer sold or leased a motor vehicle to a
147 customer who exported the vehicle to a foreign country or who

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148 resold the vehicle, unless the licensee proves that the dealer
149 knew or reasonably should have known that the customer intended
150 to export or resell the motor vehicle. There is a rebuttable
151 presumption that the dealer neither knew nor reasonably should
152 have known of its customer's intent to export or resell the
153 vehicle if the vehicle is titled or registered in any state in
154 this country. A licensee may not take any action against a motor
155 vehicle dealer, including reducing its allocations or supply of
156 motor vehicles to the dealer, or charging back a dealer for an
157 incentive payment previously paid, unless the licensee first
158 meets in person, by telephone, or video conference with an
159 officer or other designated employee of the dealer. At such
160 meeting, the licensee must provide a detailed explanation, with
161 supporting documentation, as to the basis for its claim that the
162 dealer knew or reasonably should have known of the customer's
163 intent to export or resell the motor vehicle. Thereafter, the
164 motor vehicle dealer shall have a reasonable period,
165 commensurate with the number of motor vehicles at issue, but not
166 less than 15 days, to respond to the licensee's claims. If,
167 following the dealer's response and completion of all internal
168 dispute resolution processes provided through the applicant or
169 licensee, the dispute remains unresolved, the dealer may file a
170 protest with the department within 30 days after receipt of a
171 written notice from the licensee that it still intends to take
172 adverse action against the dealer with respect to the motor
173 vehicles still at issue. If a protest is timely filed, the

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174 department shall notify the applicant or licensee of the filing
175 of the protest, and the applicant or licensee may not take any
176 action adverse to the dealer until the department renders a
177 final determination, which is not subject to further appeal,
178 that the licensee's proposed action is in compliance with the
179 provisions of this subsection. In any hearing pursuant to this
180 subsection, the applicant or licensee has the burden of proof on
181 all issues raised by this subsection. In addition to the
182 requirements, protections, and procedures set forth in this
183 subsection, an applicant or licensee, by agreement, program,
184 rule, policy, standard or otherwise, may not take adverse action
185 against a motor vehicle dealer, including, without limitation,
186 reducing allocations, product deliveries, or planning volumes,
187 or imposing any penalty or charge-back, because a motor vehicle
188 that was sold, leased, or delivered to a customer was resold or
189 exported more than 120 days after it was delivered to the
190 customer. If the applicant or licensee does not provide written
191 notification to the motor vehicle dealer of such resale or
192 export within 12 months of the date of the motor vehicle
193 dealer's delivery of the vehicle to the customer, the motor
194 vehicle dealer shall not be subject to any adverse action.
195 Notwithstanding the provisions of any franchise agreement,
196 program, policy, or procedure, a motor vehicle dealer's
197 franchise agreement may not be terminated, canceled,
198 discontinued, or nonrenewed by an applicant or licensee on the
199 basis of any act related to a customer's exporting or reselling

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200 of a motor vehicle, unless the applicant or licensee proves by
201 clear and convincing evidence before a trier of fact that the
202 motor vehicle dealer knowingly engaged in a pattern of conduct
203 of selling to known exporters and that the majority owner, or if
204 there is no majority owner, the person designated as the dealer-
205 principal or a person similarly designated in the franchise
206 agreement, at the time the motor vehicle was sold, leased or
207 delivered, had actual knowledge that the customer intended to
208 export or resell the motor vehicle.

209 (39) Notwithstanding the terms of any agreement, program,
210 incentive, bonus, policy, or rule, an applicant or licensee
211 fails to make any payment pursuant to any of the foregoing for
212 any temporary replacement motor vehicle loaned, rented, or
213 provided by a motor vehicle dealer to or for its service or
214 repair customers, even if the temporary replacement motor
215 vehicle has been leased, rented, titled or registered to the
216 motor vehicle dealer's rental or leasing division or an entity
217 that is owned or controlled by the motor vehicle dealer.

218 (40) Notwithstanding the terms of any franchise agreement,
219 the applicant or licensee has required or coerced, or attempted
220 to require or coerce, a motor vehicle dealer to purchase goods
221 or services from a vendor selected, identified, or designated by
222 an applicant or licensee, or one of its parents, subsidiaries,
223 divisions, or affiliates, by agreement, standard, policy,
224 program, incentive provision, or otherwise, without making
225 available to the motor vehicle dealer the option to obtain the

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226 goods or services of like kind, design, and quality from a
227 vendor chosen by the motor vehicle dealer. If the motor vehicle
228 dealer exercises such option, the dealer must provide written
229 notice of its desire to use the alternative goods or services to
230 the licensee or applicant, along with samples and/or clear
231 descriptions of the alternative goods or services that the
232 dealer desires to use. The licensee or applicant shall have the
233 opportunity to evaluate the alternative good or service for up
234 to 30 days, and provide its written consent to use said good or
235 service; such consent may not be unreasonably withheld by the
236 applicant or licensee. If the motor vehicle dealer does not
237 receive a response from the applicant or licensee within the 30
238 days, consent to use the alternative goods or services shall be
239 deemed granted. Provided that the dealer complies with the terms
240 of this subsection, a dealer using such alternative goods or
241 services shall qualify and be eligible for all benefits
242 described in such agreement, standard, policy, program,
243 incentive provision, or otherwise. For purposes of this
244 subsection, the term "goods and services" are limited to such
245 goods and services used to construct or renovate dealership
246 facilities, or furniture and fixtures at the dealership
247 facilities, but shall not include: (i) any intellectual
248 property of the licensee or applicant, including without
249 limitation, to signage incorporating the licensee's or
250 applicant's trademark or copyright, any facility or building
251 materials protected by the licensee's or applicant's trademark

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252 or trade dress rights, (ii) any special tools and training as
253 required by the licensee or applicant, or (iii) parts to be used
254 in repairs under warranty obligations of a licensee or
255 applicant.

256 (41) (a) An applicant or licensee may not, by agreement,
257 policy, program, standard, or otherwise, require a motor vehicle
258 dealer, directly or indirectly, to advance or pay for, or to
259 reimburse the applicant or licensee for, any costs related to
260 the creation, development, showing, or publication in any media
261 of any advertisement for a motor vehicle, or require a motor
262 vehicle dealer to participate in, contribute to, affiliate with,
263 or join a dealer advertising or marketing group, fund, pool,
264 association, or other entity and may not take or threaten to
265 take any adverse action against a motor vehicle dealer that
266 refuses to join or participate in such group, fund, pool,
267 association, or other entity. For purposes of this subsection,
268 the term "adverse action" includes, without limitation,
269 reduction of allocations, charging fees for a licensee's or
270 dealer's advertising or a marketing group's advertising or
271 marketing, termination of or threatening to terminate the motor
272 vehicle dealer's franchise, reducing any incentive for which the
273 motor vehicle dealer is eligible, or any action that fails to
274 take into account the equities of the motor vehicle dealer.

275 (b) An applicant or licensee may not require a dealer to
276 participate in, and may not preclude only a portion of its motor
277 vehicle dealers in a designated market area from establishing, a

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278 voluntary motor vehicle dealer advertising or marketing group,
279 fund, pool, association, or other entity. Except as provided in
280 an agreement, when motor vehicle dealers choose to form an
281 independent advertising or marketing group, an applicant or
282 licensee shall not be required to fund such group.

283 (c) Nothing in this subsection shall prohibit an applicant
284 or licensee from offering advertising or promotional materials
285 to a motor vehicle dealer for a fee or charge, so long as the
286 use of such advertising or promotional materials is voluntary
287 for the motor vehicle dealer.

288

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

295 Section 2. This act shall apply to all franchise
296 agreements entered into, renewed, or amended subsequent to
297 October 1, 1988.

298 Section 3. If any provision of this act or its application
299 to any person or circumstances is held invalid, the invalidity
300 does not affect other provisions or applications of this act
301 that can be given effect without the invalid provision or
302 application, and to this end the provisions of this act are
303 severable.

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304 Section 4. This act shall take effect upon becoming a law.
305

306 -----

307 **T I T L E A M E N D M E N T**

308 Remove everything before the enacting clause and insert:

309 A bill to be entitled

310 An act relating to motor vehicle manufacturer licenses; amending
311 s. 320.64, F.S.; providing that a motor vehicle dealer who
312 received approval of a facility from an applicant or licensee
313 within a specified timeframe is deemed to be in full compliance
314 with facility-related requirements; revising provisions relating
315 to when an applicant or licensee has undertaken or engaged in an
316 audit of service-related payments or incentive payments;
317 limiting the timeframe for the performance of such audits;
318 providing that an applicant or licensee may only deny or charge
319 back that portion of a service-related claim or incentive claim
320 which the applicant or licensee has proven to be false or
321 fraudulent or for which the dealer failed to substantially
322 comply with certain procedures; prohibiting an applicant or
323 licensee from taking adverse action against a motor vehicle
324 dealer because a motor vehicle sold, leased, or delivered to a
325 customer was resold or exported after a specified period after
326 delivery to the customer, subject to certain requirements and
327 restrictions; prohibiting an applicant or licensee from failing
328 to make any payment due a motor vehicle dealer that
329 substantially complies with the terms of a certain contract

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330 between the two parties regarding reimbursement for temporary
331 replacement vehicles under certain circumstances; allowing a
332 motor vehicle dealer to purchase goods or services from a local
333 vendor under certain circumstances; defining the term "goods and
334 services"; prohibiting the applicant or licensee from failing to
335 provide a motor vehicle dealer a written statement disclosing
336 the identity of its approved vendor under certain circumstances
337 and subject to certain requirements; prohibiting an applicant or
338 licensee from requiring a motor vehicle dealer to pay for
339 certain advertising or marketing, or to participate in or
340 affiliate with a dealer advertising or marketing entity;
341 providing that an applicant or licensee may not take or threaten
342 to take any adverse action against a motor vehicle dealer who
343 refuses to join or participate in such entity; defining the term
344 "adverse action"; providing that an applicant or licensee may
345 not require a dealer to participate in, and may not preclude
346 only some of its motor vehicle dealers in a designated market
347 area from establishing, a voluntary motor vehicle dealer
348 advertising or marketing entity; amending s. 320.641, F.S.;
349 specifying the circumstances under which a complainant motor
350 vehicle dealer prevails in a certain cause of action; providing
351 for application of this act to all existing franchise
352 agreements; providing a severability clause; providing an
353 effective date.