

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WITHDRAWN	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: Judiciary Committee
 2 Representative Trujillo offered the following:

4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6 Section 1. Subsections (25) and (26) of section 320.64,
 7 Florida Statutes, are amended, and subsections (39) and (41) are
 8 added to that section, to read:

9 320.64 Denial, suspension, or revocation of license;
 10 grounds.—A license of a licensee under s. 320.61 may be denied,
 11 suspended, or revoked within the entire state or at any specific
 12 location or locations within the state at which the applicant or
 13 licensee engages or proposes to engage in business, upon proof
 14 that the section was violated with sufficient frequency to
 15 establish a pattern of wrongdoing, and a licensee or applicant
 16 shall be liable for claims and remedies provided in ss. 320.695
 17 and 320.697 for any violation of any of the following

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18 provisions. A licensee is prohibited from committing the
19 following acts:

20 (25) The applicant or licensee has undertaken or engaged
21 in an audit of warranty, maintenance, and other service-related
22 payments or incentive payments, including payments to a motor
23 vehicle dealer under any licensee-issued program, policy, or
24 other benefit, which previously have been paid to a motor
25 vehicle dealer in violation of this section or has failed to
26 comply with any of its obligations under s. 320.696. An
27 applicant or licensee may reasonably and periodically audit a
28 motor vehicle dealer to determine the validity of paid claims as
29 provided in s. 320.696. Audits of warranty, maintenance, and
30 other service-related payments shall be performed by an
31 applicant or licensee only during the 12-month ~~1-year~~ period
32 immediately following the date the claim was paid. Audits ~~Audit~~
33 of incentive payments shall ~~only~~ be performed only during the
34 12-month ~~for an 18-month~~ period immediately following the date
35 the incentive was paid. However, such limitations shall not be
36 effective if an applicant or licensee has reason to believe that
37 a claim submitted by a dealer is intentionally false or
38 fraudulent. As used in this section, the term "incentive"
39 includes any bonus, incentive, or other monetary or nonmonetary
40 thing of value. After such time periods have elapsed, all
41 warranty, maintenance, and other service-related payments and
42 incentive payments shall be deemed final and incontrovertible
43 for any reason notwithstanding any otherwise applicable law, and

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44 the motor vehicle dealer shall not be subject to any charge-back
45 or repayment. An applicant or licensee may deny a claim or, as a
46 result of a timely conducted audit, impose a charge-back against
47 a motor vehicle dealer for warranty, maintenance, or other
48 service-related payments or incentive payments only if the
49 applicant or licensee can show that the warranty, maintenance,
50 or other service-related claim or incentive claim was false or
51 fraudulent or that the motor vehicle dealer failed to
52 substantially comply with the reasonable written and uniformly
53 applied procedures of the applicant or licensee for such repairs
54 or incentives, but only for that portion of the claim so shown.
55 Notwithstanding the terms of any franchise agreement, guideline,
56 program, policy, or procedure, an applicant or licensee may only
57 deny or charge back that portion of a warranty, maintenance, or
58 other service-related claim or incentive claim which the
59 applicant or licensee has proven to be false or fraudulent or
60 for which the dealer failed to substantially comply with the
61 reasonable, written, and uniformly applied procedures of the
62 applicant or licensee for such repairs or incentives, as set
63 forth in this subsection. An applicant or licensee may not
64 charge back a motor vehicle dealer ~~back~~ subsequent to the
65 payment of a warranty, maintenance, or service-related claim or
66 incentive claim unless, within 30 days after a timely conducted
67 audit, a representative of the applicant or licensee first meets
68 in person, by telephone, or by video teleconference with an
69 officer or employee of the dealer designated by the motor

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70 vehicle dealer. At such meeting the applicant or licensee must
71 provide a detailed explanation, with supporting documentation,
72 as to the basis for each of the claims for which the applicant
73 or licensee proposed a charge-back to the dealer and a written
74 statement containing the basis upon which the motor vehicle
75 dealer was selected for audit or review. Thereafter, the
76 applicant or licensee must provide the motor vehicle dealer's
77 representative a reasonable period after the meeting within
78 which to respond to the proposed charge-backs, with such period
79 to be commensurate with the volume of claims under
80 consideration, but in no case less than 45 days after the
81 meeting. The applicant or licensee is prohibited from changing
82 or altering the basis for each of the proposed charge-backs as
83 presented to the motor vehicle dealer's representative following
84 the conclusion of the audit unless the applicant or licensee
85 receives new information affecting the basis for one or more
86 charge-backs and that new information is received within 30 days
87 after the conclusion of the timely conducted audit. If the
88 applicant or licensee claims the existence of new information,
89 the dealer must be given the same right to a meeting and right
90 to respond as when the charge-back was originally presented.
91 After all internal dispute resolution processes provided through
92 the applicant or licensee have been completed, the applicant or
93 licensee shall give written notice to the motor vehicle dealer
94 of the final amount of its proposed charge-back. If the dealer
95 disputes that amount, the dealer may file a protest with the

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96 department within 30 days after receipt of the notice. If a
97 protest is timely filed, the department shall notify the
98 applicant or licensee of the filing of the protest, and the
99 applicant or licensee may not take any action to recover the
100 amount of the proposed charge-back until the department renders
101 a final determination, which is not subject to further appeal,
102 that the charge-back is in compliance with the provisions of
103 this section. In any hearing pursuant to this subsection, the
104 applicant or licensee has the burden of proof that its audit and
105 resulting charge-back are in compliance with this subsection.

106 (26) Notwithstanding the terms of any franchise agreement,
107 including any licensee's program, policy, or procedure, the
108 applicant or licensee has refused to allocate, sell, or deliver
109 motor vehicles; charged back or withheld payments or other
110 things of value for which the dealer is otherwise eligible under
111 a sales promotion, program, or contest; prevented a motor
112 vehicle dealer from participating in any promotion, program, or
113 contest; or has taken or threatened to take any adverse action
114 against a dealer, including charge-backs, reducing vehicle
115 allocations, or terminating or threatening to terminate a
116 franchise because the dealer sold or leased a motor vehicle to a
117 customer who exported the vehicle to a foreign country or who
118 resold the vehicle, unless the licensee proves that the dealer
119 knew or reasonably should have known that the customer intended
120 to export or resell the motor vehicle. There is a rebuttable
121 presumption that the dealer neither knew nor reasonably should

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122 have known of its customer's intent to export or resell the
123 vehicle if the vehicle is titled or registered in any state in
124 this country. A licensee may not take any action against a motor
125 vehicle dealer, including reducing its allocations or supply of
126 motor vehicles to the dealer, or charging back a dealer for an
127 incentive payment previously paid, unless the licensee first
128 meets in person, by telephone, or video conference with an
129 officer or other designated employee of the dealer. At such
130 meeting, the licensee must provide a detailed explanation, with
131 supporting documentation, as to the basis for its claim that the
132 dealer knew or reasonably should have known of the customer's
133 intent to export or resell the motor vehicle. Thereafter, the
134 motor vehicle dealer shall have a reasonable period,
135 commensurate with the number of motor vehicles at issue, but not
136 less than 15 days, to respond to the licensee's claims. If,
137 following the dealer's response and completion of all internal
138 dispute resolution processes provided through the applicant or
139 licensee, the dispute remains unresolved, the dealer may file a
140 protest with the department within 30 days after receipt of a
141 written notice from the licensee that it still intends to take
142 adverse action against the dealer with respect to the motor
143 vehicles still at issue. If a protest is timely filed, the
144 department shall notify the applicant or licensee of the filing
145 of the protest, and the applicant or licensee may not take any
146 action adverse to the dealer until the department renders a
147 final determination, which is not subject to further appeal,

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148 that the licensee's proposed action is in compliance with the
149 provisions of this subsection. In any hearing pursuant to this
150 subsection, the applicant or licensee has the burden of proof on
151 all issues raised by this subsection. An applicant or licensee
152 may not take any adverse action against a motor vehicle dealer
153 because the dealer sold or leased a motor vehicle to a customer
154 who exported the vehicle to a foreign country or who resold the
155 vehicle unless the applicant or licensee provides written
156 notification to the motor vehicle dealer of such resale or
157 export within 12 months after the date the dealer sold or leased
158 the vehicle to the customer.

159 (39) Notwithstanding the terms of any agreement, program,
160 incentive, bonus, policy, or rule, an applicant or licensee
161 fails to make any payment pursuant to any of the foregoing for
162 any temporary replacement motor vehicle loaned, rented, or
163 provided by a motor vehicle dealer to or for its service or
164 repair customers, even if the temporary replacement motor
165 vehicle has been leased, rented, titled or registered to the
166 motor vehicle dealer's rental or leasing division or an entity
167 that is owned or controlled by the motor vehicle dealer,
168 provided that the motor vehicle dealer or its rental or leasing
169 division or entity, complies with the written and uniformly
170 enforced vehicle eligibility, use, and reporting requirements
171 specified by the applicant or licensee in its agreement,
172 program, policy, bonus, incentive or rule relating to loaner
173 vehicles.

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174 (41) (a) An applicant or licensee may not, by policy,
175 program, or standard, require a motor vehicle dealer, directly
176 or indirectly, to advance or pay for, or to reimburse the
177 applicant or licensee for, any costs related to the creation,
178 development, showing, or publication in any media of any
179 advertisement for a motor vehicle, or require a motor vehicle
180 dealer to participate in, contribute to, affiliate with, or join
181 a dealer advertising or marketing group, fund, pool,
182 association, or other entity.

183 (b) An applicant or licensee may not require a dealer to
184 participate in, and may not preclude only a portion of its motor
185 vehicle dealers in a designated market area from establishing, a
186 voluntary motor vehicle dealer advertising or marketing group,
187 fund, pool, association, or other entity. Except as provided in
188 an agreement, when motor vehicle dealers choose to form an
189 independent advertising or marketing group, an applicant or
190 licensee is not required to fund such group. Provided however,
191 nothing in this subsection prevents an applicant or a licensee
192 from requiring that a dealer or a dealer advertising or
193 marketing group execute a licensing agreement for the use of the
194 applicant or licensee's protected marks or brand images in any
195 media or advertisement.

196 (c) This subsection does not prohibit an applicant or
197 licensee from offering advertising or promotional materials to a
198 motor vehicle dealer for a fee or charge if the use of such
199 advertising or promotional materials is voluntary for the motor

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200 vehicle dealer.

201
202 A motor vehicle dealer who can demonstrate that a violation of,
203 or failure to comply with, any of the preceding provisions by an
204 applicant or licensee will or can adversely and pecuniarily
205 affect the complaining dealer, shall be entitled to pursue all
206 of the remedies, procedures, and rights of recovery available
207 under ss. 320.695 and 320.697.

208 Section 2. If any provision of this act or its application
209 to any person or circumstances is held invalid, the invalidity
210 does not affect other provisions or applications of this act
211 which can be given effect without the invalid provision or
212 application, and to this end the provisions of this act are
213 severable.

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

215
216 -----

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

218 Remove everything before the enacting clause and insert:
219 An act relating to motor vehicle manufacturers, factory
220 branches, distributors, importers, and dealers; amending s.
221 320.64, F.S.; revising provisions that prohibit and limit audits
222 of certain payments and denial or reduction of such payments;
223 revising provisions that restrict adverse action against a
224 dealer when a vehicle that was delivered to a customer is resold
225 or exported out of state; prohibiting failing to make payment

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226 | for a replacement vehicle provided by a dealer to a customer;
227 | prohibiting requiring a dealer to make certain payments for
228 | advertising; providing severability; providing an effective
229 | date.