

1 A bill to be entitled

2 An act relating to motor vehicle manufacturers,  
3 factory branches, distributors, importers, and  
4 dealers; amending s. 320.64, F.S.; revising provisions  
5 that prohibit applicants and licensees from certain  
6 adverse actions against motor vehicle dealers;  
7 revising provisions relating to dealer facility and  
8 signage requirements; revising provisions that  
9 prohibit and limit audits of certain payments and  
10 denial or reduction of such payments; revising  
11 provisions that restrict adverse action against a  
12 dealer when a vehicle that was delivered to a customer  
13 is resold or exported out of state; prohibiting  
14 failing to make payment for a replacement vehicle  
15 provided by a dealer to a customer; prohibiting  
16 coercing a dealer to use a particular vendor for  
17 certain goods and services; prohibiting requiring a  
18 dealer to make certain payments for advertising or  
19 participate in certain advertising groups; providing  
20 definitions; providing applicability; providing  
21 severability; providing an effective date.

22  
23 Be It Enacted by the Legislature of the State of Florida:

24  
25 Section 1. Paragraph (h) of subsection (10) and  
26 subsections (25) and (26) of section 320.64, Florida Statutes,

27 are amended, and subsections (39), (40), and (41) are added to  
28 that section, to read:

29 320.64 Denial, suspension, or revocation of license;  
30 grounds.—A license of a licensee under s. 320.61 may be denied,  
31 suspended, or revoked within the entire state or at any specific  
32 location or locations within the state at which the applicant or  
33 licensee engages or proposes to engage in business, upon proof  
34 that the section was violated with sufficient frequency to  
35 establish a pattern of wrongdoing, and a licensee or applicant  
36 shall be liable for claims and remedies provided in ss. 320.695  
37 and 320.697 for any violation of any of the following  
38 provisions. A licensee is prohibited from committing the  
39 following acts:

40 (10)

41 (h) If an applicant or licensee offers any bonus,  
42 incentive, rebate, or other program, standard, or policy that is  
43 available to a motor vehicle dealer in this state which is  
44 premised, wholly or in part, on dealer facility improvements,  
45 renovations, expansion, remodeling, alterations, or installation  
46 of signs or other image elements, a motor vehicle dealer who  
47 completes an approved facility in reliance upon such offer is  
48 deemed to be in full compliance with all of the applicant's or  
49 licensee's facility, sign, and image-related requirements for  
50 the duration of a 10-year period following such completion. If  
51 during such 10-year period, an applicant or licensee establishes  
52 a program, standard, or policy that offers a new bonus,

53 incentive, rebate, or other benefit, a motor vehicle dealer that  
54 had completed an approved facility in reliance upon the prior  
55 program, standard, or policy but does not comply with the  
56 facility, sign, or image-related provisions under the new  
57 program, standard, or policy, except as provided in this  
58 paragraph, is not eligible for benefits under the facility,  
59 sign, or image-related provisions of the new program, standard,  
60 or policy but remains entitled to all of the benefits under the  
61 prior program, standard, or policy plus any increase in the  
62 benefits between the old and new programs, standards, or  
63 policies during the remainder of the 10-year period. This  
64 subsection does not obviate, affect, or alter subsection (38).

65 (i) A violation of paragraphs (b) through (h) ~~(g)~~ is not a  
66 violation of s. 320.70 and does not subject any licensee to any  
67 criminal penalty under s. 320.70.

68 (25) The applicant or licensee has undertaken or engaged  
69 in an audit of warranty, maintenance, and other service-related  
70 payments or incentive payments, including payments to a motor  
71 vehicle dealer under any licensee-issued program, policy, or  
72 other benefit, which previously have been paid to a motor  
73 vehicle dealer in violation of this section or has failed to  
74 comply with any of its obligations under s. 320.696. An  
75 applicant or licensee may reasonably and periodically audit a  
76 motor vehicle dealer to determine the validity of paid claims as  
77 provided in s. 320.696. Audits of warranty, maintenance, and  
78 other service-related payments shall be performed by an

79 applicant or licensee only during the 12-month ~~1-year~~ period  
80 immediately following the date the claim was paid. Audits ~~Audit~~  
81 of incentive payments shall ~~only~~ be performed only during the  
82 12-month ~~for an 18-month~~ period immediately following the date  
83 the incentive was paid. As used in this section, the term  
84 "incentive" includes any bonus, incentive, or other monetary or  
85 nonmonetary thing of value. After such time periods have  
86 elapsed, all warranty, maintenance, and other service-related  
87 payments and incentive payments shall be deemed final and  
88 incontrovertible for any reason notwithstanding any otherwise  
89 applicable law, and the motor vehicle dealer shall not be  
90 subject to any charge-back or repayment. An applicant or  
91 licensee may deny a claim or, as a result of a timely conducted  
92 audit, impose a charge-back against a motor vehicle dealer for  
93 warranty, maintenance, or other service-related payments or  
94 incentive payments only if the applicant or licensee can show  
95 that the warranty, maintenance, or other service-related claim  
96 or incentive claim was false or fraudulent or that the motor  
97 vehicle dealer failed to substantially comply with the  
98 reasonable written and uniformly applied procedures of the  
99 applicant or licensee for such repairs or incentives but only  
100 for that portion of the claim so shown. Notwithstanding the  
101 terms of any franchise agreement, guideline, program, policy, or  
102 procedure, an applicant or licensee may only deny or charge back  
103 that portion of a warranty, maintenance, or other service-  
104 related claim or incentive claim which the applicant or licensee

105 has proven to be false or fraudulent or for which the dealer  
106 failed to substantially comply with the reasonable, written, and  
107 uniformly applied procedures of the applicant or licensee for  
108 such repairs or incentives as provided in this subsection. An  
109 applicant or licensee may not charge a motor vehicle dealer back  
110 subsequent to the payment of a warranty, maintenance, or  
111 service-related claim or incentive claim unless, within 30 days  
112 after a timely conducted audit, a representative of the  
113 applicant or licensee first meets in person, by telephone, or by  
114 video teleconference with an officer or employee of the dealer  
115 designated by the motor vehicle dealer. At such meeting the  
116 applicant or licensee must provide a detailed explanation, with  
117 supporting documentation, as to the basis for each of the claims  
118 for which the applicant or licensee proposed a charge-back to  
119 the dealer and a written statement containing the basis upon  
120 which the motor vehicle dealer was selected for audit or review.  
121 Thereafter, the applicant or licensee must provide the motor  
122 vehicle dealer's representative a reasonable period after the  
123 meeting within which to respond to the proposed charge-backs,  
124 with such period to be commensurate with the volume of claims  
125 under consideration, but in no case less than 45 days after the  
126 meeting. The applicant or licensee is prohibited from changing  
127 or altering the basis for each of the proposed charge-backs as  
128 presented to the motor vehicle dealer's representative following  
129 the conclusion of the audit unless the applicant or licensee  
130 receives new information affecting the basis for one or more

131 charge-backs and that new information is received within 30 days  
132 after the conclusion of the timely conducted audit. If the  
133 applicant or licensee claims the existence of new information,  
134 the dealer must be given the same right to a meeting and right  
135 to respond as when the charge-back was originally presented.  
136 After all internal dispute resolution processes provided through  
137 the applicant or licensee have been completed, the applicant or  
138 licensee shall give written notice to the motor vehicle dealer  
139 of the final amount of its proposed charge-back. If the dealer  
140 disputes that amount, the dealer may file a protest with the  
141 department within 30 days after receipt of the notice. If a  
142 protest is timely filed, the department shall notify the  
143 applicant or licensee of the filing of the protest, and the  
144 applicant or licensee may not take any action to recover the  
145 amount of the proposed charge-back until the department renders  
146 a final determination, which is not subject to further appeal,  
147 that the charge-back is in compliance with the provisions of  
148 this section. In any hearing pursuant to this subsection, the  
149 applicant or licensee has the burden of proof that its audit and  
150 resulting charge-back are in compliance with this subsection.

151 (26) Notwithstanding the terms of any franchise agreement,  
152 including any licensee's program, policy, or procedure, the  
153 applicant or licensee has refused to allocate, sell, or deliver  
154 motor vehicles; charged back or withheld payments or other  
155 things of value for which the dealer is otherwise eligible under  
156 a sales promotion, program, or contest; prevented a motor

157 | vehicle dealer from participating in any promotion, program, or  
158 | contest; or has taken or threatened to take any adverse action  
159 | against a dealer, including charge-backs, reducing vehicle  
160 | allocations, or terminating or threatening to terminate a  
161 | franchise because the dealer sold or leased a motor vehicle to a  
162 | customer who exported the vehicle to a foreign country or who  
163 | resold the vehicle, unless the licensee proves that the dealer  
164 | knew or reasonably should have known that the customer intended  
165 | to export or resell the motor vehicle. There is a rebuttable  
166 | presumption that the dealer neither knew nor reasonably should  
167 | have known of its customer's intent to export or resell the  
168 | vehicle if the vehicle is titled or registered in any state in  
169 | this country. A licensee may not take any action against a motor  
170 | vehicle dealer, including reducing its allocations or supply of  
171 | motor vehicles to the dealer, or charging back a dealer for an  
172 | incentive payment previously paid, unless the licensee first  
173 | meets in person, by telephone, or video conference with an  
174 | officer or other designated employee of the dealer. At such  
175 | meeting, the licensee must provide a detailed explanation, with  
176 | supporting documentation, as to the basis for its claim that the  
177 | dealer knew or reasonably should have known of the customer's  
178 | intent to export or resell the motor vehicle. Thereafter, the  
179 | motor vehicle dealer shall have a reasonable period,  
180 | commensurate with the number of motor vehicles at issue, but not  
181 | less than 15 days, to respond to the licensee's claims. If,  
182 | following the dealer's response and completion of all internal

183 | dispute resolution processes provided through the applicant or  
184 | licensee, the dispute remains unresolved, the dealer may file a  
185 | protest with the department within 30 days after receipt of a  
186 | written notice from the licensee that it still intends to take  
187 | adverse action against the dealer with respect to the motor  
188 | vehicles still at issue. If a protest is timely filed, the  
189 | department shall notify the applicant or licensee of the filing  
190 | of the protest, and the applicant or licensee may not take any  
191 | action adverse to the dealer until the department renders a  
192 | final determination, which is not subject to further appeal,  
193 | that the licensee's proposed action is in compliance with the  
194 | provisions of this subsection. In any hearing pursuant to this  
195 | subsection, the applicant or licensee has the burden of proof on  
196 | all issues raised by this subsection. In addition to the  
197 | requirements, protections, and procedures of this subsection, an  
198 | applicant or licensee, by agreement, program, rule, policy,  
199 | standard, or otherwise, may not take adverse action against a  
200 | motor vehicle dealer, including, without limitation, reducing  
201 | allocations, product deliveries, or planning volumes or imposing  
202 | any penalty or charge-back, because a motor vehicle that was  
203 | sold, leased, or delivered to a customer was resold or exported  
204 | more than 120 days after it was delivered to the customer. The  
205 | motor vehicle dealer is not subject to any adverse action if the  
206 | applicant or licensee does not provide written notification to  
207 | the motor vehicle dealer of such resale or export within 12  
208 | months after the date that the motor vehicle dealer delivered



209 the vehicle to the customer. Notwithstanding any franchise  
210 agreement, program, policy, or procedure, a motor vehicle  
211 dealer's franchise agreement may not be terminated, canceled,  
212 discontinued, or nonrenewed by an applicant or licensee on the  
213 basis of any act related to a customer's exporting or reselling  
214 of a motor vehicle unless the applicant or licensee proves by  
215 clear and convincing evidence before a trier of fact that the  
216 motor vehicle dealer knowingly engaged in a pattern of conduct  
217 of selling to known exporters and that the majority owner or, if  
218 there is no majority owner, the person designated as the dealer-  
219 principal or a person similarly designated in the franchise  
220 agreement, at the time the motor vehicle was sold, leased, or  
221 delivered, had actual knowledge that the customer intended to  
222 export or resell the motor vehicle.

223 (39) Notwithstanding any agreement, program, incentive,  
224 bonus, policy, or rule, an applicant or licensee fails to make  
225 any payment pursuant to any agreement, program, incentive,  
226 bonus, policy, or rule for any temporary replacement motor  
227 vehicle loaned, rented, or provided by a motor vehicle dealer to  
228 or for its service or repair customers, even if the temporary  
229 replacement motor vehicle has been leased, rented, titled, or  
230 registered to the motor vehicle dealer's rental or leasing  
231 division or an entity that is owned or controlled by the motor  
232 vehicle dealer.

233 (40) Notwithstanding any franchise agreement, the  
234 applicant or licensee has required or coerced, or attempted to

235 require or coerce, a motor vehicle dealer to purchase goods or  
236 services from a vendor selected, identified, or designated by an  
237 applicant or licensee or one of its parents, subsidiaries,  
238 divisions, or affiliates by agreement, standard, policy,  
239 program, incentive provision, or otherwise without making  
240 available to the motor vehicle dealer the option to obtain the  
241 goods or services of like kind, design, and quality from a  
242 vendor chosen by the motor vehicle dealer. If the motor vehicle  
243 dealer exercises such option, the dealer must provide to the  
244 licensee or applicant written notice of its desire to use the  
245 alternative goods or services along with samples or clear  
246 descriptions of the alternative goods or services that the  
247 dealer desires to use. The licensee or applicant shall have the  
248 opportunity to evaluate the alternative good or service for up  
249 to 30 days and provide its written consent to use such good or  
250 service. Such consent may not be unreasonably withheld by the  
251 applicant or licensee. If the motor vehicle dealer does not  
252 receive a response from the applicant or licensee within the 30-  
253 day period, consent to use the alternative goods or services is  
254 deemed to be granted. If a dealer using such alternative goods  
255 or services complies with this subsection, the dealer shall  
256 qualify and be eligible for all benefits described in such  
257 agreement, standard, policy, program, incentive provision, or  
258 otherwise. For purposes of this subsection, the term "goods and  
259 services" is limited to goods and services used to construct or  
260 renovate dealership facilities or furniture and fixtures at the

261 dealership facilities but does not include:

262 (a) Any intellectual property of the licensee or  
263 applicant, including, without limitation, signage incorporating  
264 the licensee's or applicant's trademark or copyright, any  
265 facility or building materials protected by the licensee's or  
266 applicant's trademark or trade dress rights;

267 (b) Any special tools and training as required by the  
268 licensee or applicant; or

269 (c) Parts to be used in repairs under warranty obligations  
270 of a licensee or applicant.

271 (41)(a) An applicant or licensee, by agreement, policy,  
272 program, standard, or otherwise, may not require a motor vehicle  
273 dealer, directly or indirectly, to advance, or pay or reimburse  
274 the applicant or licensee for, any costs related to the  
275 creation, development, showing, or publication in any media of  
276 any advertisement for a motor vehicle or require a motor vehicle  
277 dealer to participate in, contribute to, affiliate with, or join  
278 a dealer advertising or marketing group, fund, pool,  
279 association, or other entity and may not take or threaten to  
280 take any adverse action against a motor vehicle dealer that  
281 refuses to join or participate in such group, fund, pool,  
282 association, or other entity. For purposes of this subsection,  
283 the term "adverse action" includes, without limitation,  
284 reduction of allocations, charging fees for a licensee's or  
285 dealer's advertising or a marketing group's advertising or  
286 marketing, termination of or threatening to terminate the motor

287 vehicle dealer's franchise, reducing any incentive for which the  
288 motor vehicle dealer is eligible, or any action that fails to  
289 take into account the equities of the motor vehicle dealer.

290 (b) An applicant or licensee may not require a dealer to  
291 participate in, and may not preclude only a portion of its motor  
292 vehicle dealers in a designated market area from establishing, a  
293 voluntary motor vehicle dealer advertising or marketing group,  
294 fund, pool, association, or other entity. Except as provided in  
295 an agreement, when motor vehicle dealers choose to form an  
296 independent advertising or marketing group, an applicant or  
297 licensee is not required to fund such group.

298 (c) This subsection does not prohibit an applicant or  
299 licensee from offering advertising or promotional materials to a  
300 motor vehicle dealer for a fee or charge if the use of such  
301 advertising or promotional materials is voluntary for the motor  
302 vehicle dealer.

303

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

310 Section 2. This act applies to all franchise agreements  
311 entered into, renewed, or amended after October 1, 1988.

312 Section 3. If any provision of this act or its application

CS/HB 921

2015

313 to any person or circumstances is held invalid, the invalidity  
314 does not affect other provisions or applications of this act  
315 which can be given effect without the invalid provision or  
316 application, and to this end the provisions of this act are  
317 severable.

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