

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Rooney offered the following:

2
3 **Amendment (with title amendment)**

4 Between lines 246 and 247, insert:

5 Section 2. Section 320.646, Florida Statutes, is created
6 to read:

7 320.646 Consumer data protection.—

8 (1) As used in this section, the term:

9 (a) "Consumer data" means "nonpublic personal information"

10 as such term is defined in 15 U.S.C. s. 6809(4) collected by a
11 motor vehicle dealer and which is provided by the motor vehicle
12 dealer directly to a licensee or third party acting on behalf of
13 a licensee. Consumer data does not include the same or similar
14 data which is obtained by a licensee from any other source.

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15 (b) "Data management system" means a computer hardware or
16 software system that is owned, leased, or licensed by a motor
17 vehicle dealer, including a system of web-based applications,
18 computer software, or computer hardware, whether located at the
19 motor vehicle dealership or hosted remotely, and that stores and
20 provides access to consumer data collected or stored by a motor
21 vehicle dealer. The term includes, but is not limited to,
22 dealership management systems and customer relations management
23 systems.

24 (2) Notwithstanding the provisions of any franchise
25 agreement, with respect to consumer data a licensee or a third
26 party acting on behalf of a licensee:

27 (a) Shall comply with all, and not knowingly cause a motor
28 vehicle dealer to violate any, applicable restrictions on reuse
29 or disclosure of the consumer data established by federal or
30 state law and must provide a written statement to the motor
31 vehicle dealer upon request describing the established
32 procedures adopted by the licensee or third party acting on
33 behalf of the licensee which meet or exceed any federal or state
34 requirements to safeguard the consumer data, including, but not
35 limited to, those established in the Gramm-Leach-Bliley Act, 15
36 U.S.C. ss. 6801 et seq.

37 (b) Shall, upon the written request of the motor vehicle
38 dealer, provide a written list of the consumer data obtained
39 from the motor vehicle dealer and all persons to whom any
40 consumer data has been provided by the licensee or a third party

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41 acting on behalf of a licensee during the preceding 6 months.
42 The dealer may make such a request no more than once every 6
43 months. The list must indicate the specific fields of consumer
44 data which were provided to each person. Notwithstanding the
45 foregoing, such a list need not include:

46 1. A person to whom consumer data was provided, or the
47 specific consumer data provided to such person, if the person
48 was, at the time the consumer data was provided, one of the
49 licensee's service providers, subcontractors or consultants
50 acting in the course of such person's performance of services on
51 behalf of or for the benefit of the licensee or motor vehicle
52 dealer, provided that the licensee has entered into an agreement
53 with such person requiring that the person comply with the
54 safeguard requirements of applicable state and federal law,
55 including, but not limited to, those established in the Gramm-
56 Leach-Bliley Act, 15 U.S.C. ss. 6801 et seq.; or

57 2. A person to whom consumer data was provided, or the
58 specific consumer data provided to such person, if the motor
59 vehicle dealer has previously consented in writing to such
60 person receiving the consumer data provided and the motor
61 vehicle dealer has not withdrawn such consent in writing.

62 (c) May not require that a motor vehicle dealer grant the
63 licensee or a third party direct or indirect access to the
64 dealer's data management system to obtain consumer data. A
65 licensee must permit a motor vehicle dealer to furnish consumer
66 data in a widely accepted file format, such as comma delimited,

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67 and through a third-party vendor selected by the motor vehicle
68 dealer. However, a licensee may access or obtain consumer data
69 directly from a motor vehicle dealer's data management system
70 with the express consent of the dealer. The consent must be in
71 the form of a written document that is separate from the
72 parties' franchise agreement, is executed by the motor vehicle
73 dealer, and may be withdrawn by the dealer upon 30 days' written
74 notice to the licensee.

75 (d) Must indemnify the motor vehicle dealer for any third-
76 party claims asserted against or damages incurred by the motor
77 vehicle dealer to the extent caused by access to, use of, or
78 disclosure of consumer data in violation of this section by the
79 licensee, a third party acting on behalf of the licensee, or a
80 third party to whom the licensee has provided consumer data.

81 (3) In any cause of action against a licensee pursuant to
82 s. 320.697 for a violation of paragraph (2) (a), paragraph
83 (2) (b), or paragraph (2) (c), the person bringing the action has
84 the burden of proving that the violation was willful or with
85 sufficient frequency to establish a pattern of wrongdoing with
86 respect to such person's consumer data.

87 Section 3. For the purpose of incorporating section
88 320.646, Florida Statutes, as created by this act, in a
89 reference thereto, section 320.6992, Florida Statutes, is
90 reenacted to read:

91 320.6992 Application.—Sections 320.60-320.70, including
92 amendments to ss. 320.60-320.70, apply to all presently existing

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93 or hereafter established systems of distribution of motor
94 vehicles in this state, except to the extent that such
95 application would impair valid contractual agreements in
96 violation of the State Constitution or Federal Constitution.
97 Sections 320.60-320.70 do not apply to any judicial or
98 administrative proceeding pending as of October 1, 1988. All
99 agreements renewed, amended, or entered into subsequent to
100 October 1, 1988, shall be governed by ss. 320.60-320.70,
101 including any amendments to ss. 320.60-320.70 which have been or
102 may be from time to time adopted, unless the amendment
103 specifically provides otherwise, and except to the extent that
104 such application would impair valid contractual agreements in
105 violation of the State Constitution or Federal Constitution.

106 -----
107
108 **T I T L E A M E N D M E N T**

109 Remove line 26 and insert:
110 defining the term "goods or services"; creating s.
111 320.646, F.S.; defining the terms "consumer data" and
112 "data management system"; requiring that a licensee or
113 a third party comply with certain restrictions on
114 reuse or disclosure of consumer data received from a
115 motor vehicle dealer; requiring that such person
116 provide a written statement to the motor vehicle
117 dealer delineating the established procedures adopted
118 by the person which meet or exceed certain

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119 requirements to safeguard consumer data; requiring
120 that upon request of a motor vehicle dealer a licensee
121 provide a list of the consumer data obtained and all
122 persons to whom any of the data has been disclosed,
123 subject to certain requirements; prohibiting a
124 licensee from requiring a motor vehicle dealer to
125 grant the licensee or third party access to the
126 dealer's data management system; requiring a licensee
127 to permit a motor vehicle dealer to furnish consumer
128 data in a widely accepted file format and through a
129 third-party vendor selected by the motor vehicle
130 dealer; authorizing a licensee to access or obtain
131 consumer data from a motor vehicle dealer's data
132 management system with the dealer's express written
133 consent, subject to certain requirements; requiring
134 the licensee to indemnify the motor vehicle dealer for
135 certain claims or damages; providing that a person
136 bringing a specified cause of action for certain
137 violations must meet certain requirements; reenacting
138 s. 320.6992, F.S., relating to the provisions that
139 apply to established systems of distribution of motor
140 vehicles in this state, to incorporate s. 320.646,
141 F.S., as created by the act, in a reference thereto;
142 providing an

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