

1                   A bill to be entitled  
2           An act relating to motor vehicle manufacturer  
3           licenses; amending s. 320.64, F.S.; revising  
4           provisions for denial, suspension, or revocation of  
5           the license of a manufacturer, factory branch,  
6           distributor, or importer of motor vehicles; revising  
7           provisions for certain audits of service-related  
8           payments or incentive payments to a dealer by an  
9           applicant or licensee and the timeframe for the  
10          performance of such audits; defining the term  
11          "incentive"; revising provisions for denial or  
12          chargeback of claims; revising provisions that  
13          prohibit certain adverse actions against a dealer that  
14          sold or leased a motor vehicle to a customer who  
15          exported the vehicle to a foreign country or who  
16          resold the vehicle; revising conditions for taking  
17          such adverse actions; prohibiting failure to make  
18          certain payments to a motor vehicle dealer for  
19          temporary replacement vehicles under certain  
20          circumstances; prohibiting requiring or coercing a  
21          dealer to purchase goods or services from a vendor  
22          designated by the applicant or licensee unless certain  
23          conditions are met; providing procedures for approval  
24          of a dealer to purchase goods or services from a  
25          vendor not designated by the applicant or licensee;  
26          defining the term "goods or services"; providing

27 retroactive applicability; providing for severability;  
 28 providing an effective date.

29

30 Be It Enacted by the Legislature of the State of Florida:

31

32 Section 1. Subsections (25) and (26) of section 320.64,  
 33 Florida Statutes, are amended, and subsections (39) and (40) are  
 34 added to that section, to read:

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

46 (25) The applicant or licensee has undertaken or engaged  
 47 in an audit of warranty, maintenance, and other service-related  
 48 payments or incentive payments, including payments to a motor  
 49 vehicle dealer under any licensee-issued program, policy, or  
 50 other benefit, which were previously ~~have been~~ paid to a motor  
 51 vehicle dealer in violation of this section or has failed to  
 52 comply with any of its obligations under s. 320.696. An

53 applicant or licensee may reasonably and periodically audit a  
54 motor vehicle dealer to determine the validity of paid claims as  
55 provided in s. 320.696. Audits of warranty, maintenance, and  
56 other service-related payments shall be performed by an  
57 applicant or licensee only during the 12-month ~~1-year~~ period  
58 immediately following the date the claim was paid. ~~Audits~~ Audit  
59 of incentive payments shall ~~only~~ be performed only during the  
60 12-month ~~for an 18-month~~ period immediately following the date  
61 the incentive was paid. As used in this section, the term  
62 "incentive" includes any bonus, incentive, or other monetary or  
63 nonmonetary consideration. After such time periods have elapsed,  
64 all warranty, maintenance, and other service-related payments  
65 and incentive payments shall be deemed final and  
66 incontrovertible for any reason notwithstanding any otherwise  
67 applicable law, and the motor vehicle dealer shall not be  
68 subject to any chargeback ~~charge-back~~ or repayment. An applicant  
69 or licensee may deny a claim or, as a result of a timely  
70 conducted audit, impose a chargeback ~~charge-back~~ against a motor  
71 vehicle dealer for warranty, maintenance, or other service-  
72 related payments or incentive payments only if the applicant or  
73 licensee can show that the warranty, maintenance, or other  
74 service-related claim or incentive claim was false or fraudulent  
75 or that the motor vehicle dealer failed to substantially comply  
76 with the reasonable written and uniformly applied procedures of  
77 the applicant or licensee for such repairs or incentives, but  
78 only for that portion of the claim so shown. Notwithstanding the

79 terms of any franchise agreement, guideline, program, policy, or  
80 procedure, an applicant or licensee may deny or charge back only  
81 that portion of a warranty, maintenance, or other service-  
82 related claim or incentive claim which the applicant or licensee  
83 has proven to be false or fraudulent or for which the dealer  
84 failed to substantially comply with the reasonable written and  
85 uniformly applied procedures of the applicant or licensee for  
86 such repairs or incentives, as set forth in this subsection. An  
87 applicant or licensee may not charge back a motor vehicle dealer  
88 ~~back~~ subsequent to the payment of a warranty, maintenance, or  
89 service-related claim or incentive claim unless, within 30 days  
90 after a timely conducted audit, a representative of the  
91 applicant or licensee first meets in person, by telephone, or by  
92 video teleconference with an officer or employee of the dealer  
93 designated by the motor vehicle dealer. At such meeting the  
94 applicant or licensee must provide a detailed explanation, with  
95 supporting documentation, as to the basis for each of the claims  
96 for which the applicant or licensee proposed a chargeback  
97 ~~charge-back~~ to the dealer and a written statement containing the  
98 basis upon which the motor vehicle dealer was selected for audit  
99 or review. Thereafter, the applicant or licensee must provide  
100 the motor vehicle dealer's representative a reasonable period  
101 after the meeting within which to respond to the proposed  
102 chargebacks ~~charge-backs~~, with such period to be commensurate  
103 with the volume of claims under consideration, but in no case  
104 less than 45 days after the meeting. The applicant or licensee

105 is prohibited from changing or altering the basis for each of  
106 the proposed chargebacks ~~charge-backs~~ as presented to the motor  
107 vehicle dealer's representative following the conclusion of the  
108 audit unless the applicant or licensee receives new information  
109 affecting the basis for one or more chargebacks ~~charge-backs~~ and  
110 that new information is received within 30 days after the  
111 conclusion of the timely conducted audit. If the applicant or  
112 licensee claims the existence of new information, the dealer  
113 must be given the same right to a meeting and right to respond  
114 as when the chargeback ~~charge-back~~ was originally presented.  
115 After all internal dispute resolution processes provided through  
116 the applicant or licensee have been completed, the applicant or  
117 licensee shall give written notice to the motor vehicle dealer  
118 of the final amount of its proposed chargeback ~~charge-back~~. If  
119 the dealer disputes that amount, the dealer may file a protest  
120 with the department within 30 days after receipt of the notice.  
121 If a protest is timely filed, the department shall notify the  
122 applicant or licensee of the filing of the protest, and the  
123 applicant or licensee may not take any action to recover the  
124 amount of the proposed chargeback ~~charge-back~~ until the  
125 department renders a final determination, which is not subject  
126 to further appeal, that the chargeback ~~charge-back~~ is in  
127 compliance with the provisions of this section. In any hearing  
128 pursuant to this subsection, the applicant or licensee has the  
129 burden of proof that its audit and resulting chargeback ~~charge-~~  
130 ~~back~~ are in compliance with this subsection.

131 (26) Notwithstanding the terms of any franchise agreement,  
 132 including any licensee's program, policy, or procedure, the  
 133 applicant or licensee has refused to allocate, sell, or deliver  
 134 motor vehicles; charged back or withheld payments or other  
 135 things of value for which the dealer is otherwise eligible under  
 136 a sales promotion, program, or contest; prevented a motor  
 137 vehicle dealer from participating in any promotion, program, or  
 138 contest; or has taken or threatened to take any adverse action  
 139 against a dealer, including chargebacks ~~charge-backs~~, reducing  
 140 vehicle allocations, or terminating or threatening to terminate  
 141 a franchise because the dealer sold or leased a motor vehicle to  
 142 a customer who exported the vehicle to a foreign country or who  
 143 resold the vehicle, unless the licensee proves that the dealer  
 144 knew or reasonably should have known that the customer intended  
 145 to export or resell the motor vehicle. There is a rebuttable  
 146 presumption that the dealer neither knew nor reasonably should  
 147 have known of its customer's intent to export or resell the  
 148 vehicle if the vehicle is titled or registered in any state in  
 149 this country. A licensee may not take any action against a motor  
 150 vehicle dealer, including reducing its allocations or supply of  
 151 motor vehicles to the dealer, or charging back to a dealer any  
 152 ~~for an~~ incentive payment previously paid, unless the licensee  
 153 first meets in person, by telephone, or video conference with an  
 154 officer or other designated employee of the dealer. At such  
 155 meeting, the licensee must provide a detailed explanation, with  
 156 supporting documentation, as to the basis for its claim that the

157 dealer knew or reasonably should have known of the customer's  
158 intent to export or resell the motor vehicle. Thereafter, the  
159 motor vehicle dealer shall have a reasonable period,  
160 commensurate with the number of motor vehicles at issue, but not  
161 less than 15 days, to respond to the licensee's claims. If,  
162 following the dealer's response and completion of all internal  
163 dispute resolution processes provided through the applicant or  
164 licensee, the dispute remains unresolved, the dealer may file a  
165 protest with the department within 30 days after receipt of a  
166 written notice from the licensee that it still intends to take  
167 adverse action against the dealer with respect to the motor  
168 vehicles still at issue. If a protest is timely filed, the  
169 department shall notify the applicant or licensee of the filing  
170 of the protest, and the applicant or licensee may not take any  
171 action adverse to the dealer until the department renders a  
172 final determination, which is not subject to further appeal,  
173 that the licensee's proposed action is in compliance with the  
174 provisions of this subsection. In any hearing pursuant to this  
175 subsection, the applicant or licensee has the burden of proof on  
176 all issues raised by this subsection. An applicant or licensee  
177 may not take any adverse action against a motor vehicle dealer  
178 because the dealer sold or leased a motor vehicle to a customer  
179 who exported the vehicle to a foreign country or who resold the  
180 vehicle unless the applicant or licensee provides written  
181 notification to the motor vehicle dealer of such resale or  
182 export within 12 months after the date the dealer sold or leased

183 the vehicle to the customer.

184 (39) Notwithstanding any agreement, program, incentive,  
185 bonus, policy, or rule, an applicant or licensee may not fail to  
186 make any payment pursuant to any agreement, program, incentive,  
187 bonus, policy, or rule for any temporary replacement motor  
188 vehicle loaned, rented, or provided by a motor vehicle dealer to  
189 or for its service or repair customers, even if the temporary  
190 replacement motor vehicle has been leased, rented, titled, or  
191 registered to the motor vehicle dealer's rental or leasing  
192 division or an entity that is owned or controlled by the motor  
193 vehicle dealer, provided that the motor vehicle dealer or its  
194 rental or leasing division or entity complies with the written  
195 and uniformly enforced vehicle eligibility, use, and reporting  
196 requirements specified by the applicant or licensee in its  
197 agreement, program, policy, bonus, incentive, or rule relating  
198 to loaner vehicles.

199 (40) Notwithstanding the terms of any franchise agreement,  
200 the applicant or licensee may not require or coerce, or attempt  
201 to require or coerce, a motor vehicle dealer to purchase goods  
202 or services from a vendor selected, identified, or designated by  
203 the applicant or licensee, or one of its parents, subsidiaries,  
204 divisions, or affiliates, by agreement, standard, policy,  
205 program, incentive provision, or otherwise, without making  
206 available to the motor vehicle dealer the option to obtain the  
207 goods or services of substantially similar design and quality  
208 from a vendor chosen by the motor vehicle dealer. If the motor



209 vehicle dealer exercises such option, the dealer must provide  
210 written notice of its desire to use the alternative goods or  
211 services to the applicant or licensee, along with samples or  
212 clear descriptions of the alternative goods or services that the  
213 dealer desires to use. The licensee or applicant shall have the  
214 opportunity to evaluate the alternative goods or services for up  
215 to 30 days to determine whether it will provide a written  
216 approval to the motor vehicle dealer to use said alternative  
217 goods or services. Approval may not be unreasonably withheld by  
218 the applicant or licensee. If the motor vehicle dealer does not  
219 receive a response from the applicant or licensee within 30  
220 days, approval to use the alternative goods or services is  
221 deemed granted. If a dealer using alternative goods or services  
222 complies with this subsection and has received approval from the  
223 licensee or applicant, the dealer is not ineligible for all  
224 benefits described in the agreement, standard, policy, program,  
225 incentive provision, or otherwise solely for having used such  
226 alternative goods or services. As used in this subsection, the  
227 term "goods or services" is limited to such goods and services  
228 used to construct or renovate dealership facilities or furniture  
229 and fixtures at the dealership facilities. The term does not  
230 include:

231 (a) Any intellectual property of the applicant or  
232 licensee, including signage incorporating the applicant's or  
233 licensee's trademark or copyright, or facility or building  
234 materials to the extent that the applicant's or licensee's

235 trademark is displayed thereon;

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

238 (c) Any part to be used in repairs under warranty  
239 obligations of an applicant or licensee;

240 (d) Any good or service paid for entirely by the applicant  
241 or licensee; or

242 (e) Any applicant's or licensee's design or architectural  
243 review service.

244

245 A motor vehicle dealer who can demonstrate that a violation of,  
246 or failure to comply with, any of the preceding provisions by an  
247 applicant or licensee will or can adversely and pecuniarily  
248 affect the complaining dealer, shall be entitled to pursue all  
249 of the remedies, procedures, and rights of recovery available  
250 under ss. 320.695 and 320.697.

251 Section 2. This act applies to all franchise agreements  
252 entered into, renewed, or amended after October 1, 1988, except  
253 to the extent that such application would impair valid  
254 contractual agreements in violation of the State Constitution or  
255 the United States Constitution.

256 Section 3. If any provision of this act or its application  
257 to any person or circumstance is held invalid, the invalidity  
258 does not affect other provisions or applications of this act  
259 which can be given effect without the invalid provision or  
260 application, and to this end the provisions of this act are

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261 | severable.

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