

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 an

27 | effective date.

28 |

29 | Be It Enacted by the Legislature of the State of Florida:

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

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

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

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

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

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

130 (26) Notwithstanding the terms of any franchise agreement,

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

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

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

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

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

230 (a) Any materials subject to the applicant's or licensee's
231 copyright, trademark, or trade dress rights;

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

234 (c) Any part to be used in repairs under warranty

235 obligations of an applicant or licensee;

236 (d) Any good or service paid for entirely by the applicant
 237 or licensee; or

238 (e) Any applicant's or licensee's design or architectural
 239 review service.

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

247 Section 2. This act shall take effect upon becoming a law.