



105058

LEGISLATIVE ACTION

Senate

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House

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Floor: WD/2R

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03/02/2016 10:52 AM

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Senator Richter moved the following:

Senate Amendment (with title amendment)

Before line 38

insert:

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

320.64 Denial, suspension, or revocation of license; grounds.—A license of a licensee under s. 320.61 may be denied, suspended, or revoked within the entire state or at any specific location or locations within the state at which the applicant or



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12 licensee engages or proposes to engage in business, upon proof
13 that the section was violated with sufficient frequency to
14 establish a pattern of wrongdoing, and a licensee or applicant
15 shall be liable for claims and remedies provided in ss. 320.695
16 and 320.697 for any violation of any of the following
17 provisions. A licensee is prohibited from committing the
18 following acts:

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



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



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70 ~~charge-back~~ to the dealer and a written statement containing the
71 basis upon which the motor vehicle dealer was selected for audit
72 or review. Thereafter, the applicant or licensee must provide
73 the motor vehicle dealer's representative a reasonable period
74 after the meeting within which to respond to the proposed
75 chargebacks ~~charge-backs~~, with such period to be commensurate
76 with the volume of claims under consideration, but in no case
77 less than 45 days after the meeting. The applicant or licensee
78 is prohibited from changing or altering the basis for each of
79 the proposed chargebacks ~~charge-backs~~ as presented to the motor
80 vehicle dealer's representative following the conclusion of the
81 audit unless the applicant or licensee receives new information
82 affecting the basis for one or more chargebacks ~~charge-backs~~ and
83 that new information is received within 30 days after the
84 conclusion of the timely conducted audit. If the applicant or
85 licensee claims the existence of new information, the dealer
86 must be given the same right to a meeting and right to respond
87 as when the chargeback ~~charge-back~~ was originally presented.
88 After all internal dispute resolution processes provided through
89 the applicant or licensee have been completed, the applicant or
90 licensee shall give written notice to the motor vehicle dealer
91 of the final amount of its proposed chargeback ~~charge-back~~. If
92 the dealer disputes that amount, the dealer may file a protest
93 with the department within 30 days after receipt of the notice.
94 If a protest is timely filed, the department shall notify the
95 applicant or licensee of the filing of the protest, and the
96 applicant or licensee may not take any action to recover the
97 amount of the proposed chargeback ~~charge-back~~ until the
98 department renders a final determination, which is not subject



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99 to further appeal, that the chargeback ~~charge-back~~ is in
100 compliance with the provisions of this section. In any hearing
101 pursuant to this subsection, the applicant or licensee has the
102 burden of proof that its audit and resulting chargeback ~~charge-~~
103 ~~back~~ are in compliance with this subsection.

104 (26) Notwithstanding the terms of any franchise agreement,
105 including any licensee's program, policy, or procedure, the
106 applicant or licensee has refused to allocate, sell, or deliver
107 motor vehicles; charged back or withheld payments or other
108 things of value for which the dealer is otherwise eligible under
109 a sales promotion, program, or contest; prevented a motor
110 vehicle dealer from participating in any promotion, program, or
111 contest; or has taken or threatened to take any adverse action
112 against a dealer, including chargebacks ~~charge-backs~~, reducing
113 vehicle allocations, or terminating or threatening to terminate
114 a franchise because the dealer sold or leased a motor vehicle to
115 a customer who exported the vehicle to a foreign country or who
116 resold the vehicle, unless the licensee proves that the dealer
117 knew or reasonably should have known that the customer intended
118 to export or resell the motor vehicle. There is a rebuttable
119 presumption that the dealer neither knew nor reasonably should
120 have known of its customer's intent to export or resell the
121 vehicle if the vehicle is titled or registered in any state in
122 this country. A licensee may not take any action against a motor
123 vehicle dealer, including reducing its allocations or supply of
124 motor vehicles to the dealer, ~~or charging back to a dealer any~~
125 ~~for an~~ incentive payment previously paid, unless the licensee
126 first meets in person, by telephone, or video conference with an
127 officer or other designated employee of the dealer. At such



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128 meeting, the licensee must provide a detailed explanation, with
129 supporting documentation, as to the basis for its claim that the
130 dealer knew or reasonably should have known of the customer's
131 intent to export or resell the motor vehicle. Thereafter, the
132 motor vehicle dealer shall have a reasonable period,
133 commensurate with the number of motor vehicles at issue, but not
134 less than 15 days, to respond to the licensee's claims. If,
135 following the dealer's response and completion of all internal
136 dispute resolution processes provided through the applicant or
137 licensee, the dispute remains unresolved, the dealer may file a
138 protest with the department within 30 days after receipt of a
139 written notice from the licensee that it still intends to take
140 adverse action against the dealer with respect to the motor
141 vehicles still at issue. If a protest is timely filed, the
142 department shall notify the applicant or licensee of the filing
143 of the protest, and the applicant or licensee may not take any
144 action adverse to the dealer until the department renders a
145 final determination, which is not subject to further appeal,
146 that the licensee's proposed action is in compliance with the
147 provisions of this subsection. In any hearing pursuant to this
148 subsection, the applicant or licensee has the burden of proof on
149 all issues raised by this subsection. An applicant or licensee
150 may not take any adverse action against a motor vehicle dealer
151 because the dealer sold or leased a motor vehicle to a customer
152 who exported the vehicle to a foreign country or who resold the
153 vehicle unless the applicant or licensee provides written
154 notification to the motor vehicle dealer of such resale or
155 export within 12 months after the date the dealer sold or leased
156 the vehicle to the customer.



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157 (39) Notwithstanding any agreement, program, incentive,
158 bonus, policy, or rule, an applicant or licensee may not fail to
159 make any payment pursuant to any agreement, program, incentive,
160 bonus, policy, or rule for any temporary replacement motor
161 vehicle loaned, rented, or provided by a motor vehicle dealer to
162 or for its service or repair customers, even if the temporary
163 replacement motor vehicle has been leased, rented, titled, or
164 registered to the motor vehicle dealer's rental or leasing
165 division or an entity that is owned or controlled by the motor
166 vehicle dealer, provided that the motor vehicle dealer or its
167 rental or leasing division or entity complies with the written
168 and uniformly enforced vehicle eligibility, use, and reporting
169 requirements specified by the applicant or licensee in its
170 agreement, program, policy, bonus, incentive, or rule relating
171 to loaner vehicles.

172 (40) Notwithstanding the terms of any franchise agreement,
173 the applicant or licensee may not require or coerce, or attempt
174 to require or coerce, a motor vehicle dealer to purchase goods
175 or services from a vendor selected, identified, or designated by
176 the applicant or licensee, or one of its parents, subsidiaries,
177 divisions, or affiliates, by agreement, standard, policy,
178 program, incentive provision, or otherwise, without making
179 available to the motor vehicle dealer the option to obtain the
180 goods or services of substantially similar design and quality
181 from a vendor chosen by the motor vehicle dealer. If the motor
182 vehicle dealer exercises such option, the dealer must provide
183 written notice of its desire to use the alternative goods or
184 services to the applicant or licensee, along with samples or
185 clear descriptions of the alternative goods or services that the



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186 dealer desires to use. The licensee or applicant shall have the
187 opportunity to evaluate the alternative goods or services for up
188 to 30 days to determine whether it will provide a written
189 approval to the motor vehicle dealer to use said alternative
190 goods or services. Approval may not be unreasonably withheld by
191 the applicant or licensee. If the motor vehicle dealer does not
192 receive a response from the applicant or licensee within 30
193 days, approval to use the alternative goods or services is
194 deemed granted. If a dealer using alternative goods or services
195 complies with this subsection and has received approval from the
196 licensee or applicant, the dealer is not ineligible for all
197 benefits described in the agreement, standard, policy, program,
198 incentive provision, or otherwise solely for having used such
199 alternative goods or services. As used in this subsection, the
200 term "goods or services" is limited to such goods and services
201 used to construct or renovate dealership facilities or furniture
202 and fixtures at the dealership facilities. The term does not
203 include:

204 (a) Any materials subject to the applicant's or licensee's
205 intellectual property rights, including copyright, trademark, or
206 trade dress rights;

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

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

211 (d) Any good or service paid for entirely by the applicant
212 or licensee; or

213 (e) Any applicant's or licensee's design or architectural
214 review service.



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216 A motor vehicle dealer who can demonstrate that a violation of,
217 or failure to comply with, any of the preceding provisions by an
218 applicant or licensee will or can adversely and pecuniarily
219 affect the complaining dealer, shall be entitled to pursue all
220 of the remedies, procedures, and rights of recovery available
221 under ss. 320.695 and 320.697.
222

223 ===== T I T L E A M E N D M E N T =====

224 And the title is amended as follows:

225 Delete lines 2 - 3

226 and insert:

227 An act relating to motor vehicle dealers; amending s.
228 320.64, F.S.; revising provisions for denial,
229 suspension, or revocation of the license of a
230 manufacturer, factory branch, distributor, or importer
231 of motor vehicles; revising provisions for certain
232 audits of service-related payments or incentive
233 payments to a dealer by an applicant or licensee and
234 the timeframe for the performance of such audits;
235 defining the term "incentive"; revising provisions for
236 denial or chargeback of claims; revising provisions
237 that prohibit certain adverse actions against a dealer
238 that sold or leased a motor vehicle to a customer who
239 exported the vehicle to a foreign country or who
240 resold the vehicle; revising conditions for taking
241 such adverse actions; prohibiting failure to make
242 certain payments to a motor vehicle dealer for
243 temporary replacement vehicles under certain



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244 circumstances; prohibiting requiring or coercing a
245 dealer to purchase goods or services from a vendor
246 designated by the applicant or licensee unless certain
247 conditions are met; providing procedures for approval
248 of a dealer to purchase goods or services from a
249 vendor not designated by the applicant or licensee;
250 defining the term "goods or services"; creating s.
251 320.646, F.S.;