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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/21/2016	.	
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The Committee on Transportation (Grimsley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 320.646, Florida Statutes, is created to
read:

320.646 Consumer data protection.-

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

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

as such term is defined in 15 U.S.C. s. 6809(4) collected by a



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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.

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



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40 consumer data has been provided by the licensee or a third party
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,
67 and through a third-party vendor selected by the motor vehicle
68 dealer. However, a licensee may access or obtain consumer data



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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 paragraphs (2) (a), (2) (b), or
83 (2) (c), the person bringing the action has the burden of proving
84 that the violation was willful or with sufficient frequency to
85 establish a pattern of wrongdoing with respect to such person's
86 consumer data.

87 Section 2. 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
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



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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 Section 3. This act shall take effect upon becoming a law.

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

108 And the title is amended as follows:

109 Delete everything before the enacting clause
110 and insert:

111 A bill to be entitled
112 An act relating to protection of motor vehicle
113 dealers' consumer data; creating s. 320.646, F.S.;
114 defining the terms "consumer data" and "data
115 management system"; requiring that a licensee or a
116 third party comply with certain restrictions on reuse
117 or disclosure of consumer data received from a motor
118 vehicle dealer; requiring that such person provide a
119 written statement to the motor vehicle dealer
120 delineating the established procedures adopted by the
121 person which meet or exceed certain requirements to
122 safeguard consumer data; requiring that upon request
123 of a motor vehicle dealer a licensee provide a list of
124 the consumer data obtained and all persons to whom any
125 of the data has been disclosed, subject to certain
126 requirements; prohibiting a licensee from requiring a



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127 motor vehicle dealer to grant the licensee or third
128 party access to the dealer's data management system;
129 requiring a licensee to permit a motor vehicle dealer
130 to furnish consumer data in a widely accepted file
131 format and through a third-party vendor selected by
132 the motor vehicle dealer; authorizing a licensee to
133 access or obtain consumer data from a motor vehicle
134 dealer's data management system with the dealer's
135 express written consent, subject to certain
136 requirements; requiring the licensee to indemnify the
137 motor vehicle dealer for certain claims or damages;
138 providing that a person bringing a specified cause of
139 action for certain violations must meet certain
140 requirements; reenacting s. 320.6992, F.S., relating
141 to the provisions that apply to established systems of
142 distribution of motor vehicles in this state, to
143 incorporate s. 320.646, F.S., as created by the act,
144 in a reference thereto; providing an effective date.