

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Transportation

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BILL: CS/SB 466

INTRODUCER: Transportation Committee and Senator Hutson and others

SUBJECT: Motor Vehicle Warranty Repairs and Recall Repairs

DATE: March 15, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Miller	TR	Fav/CS
2.			CM	
3.			RC	

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 466 prohibits a licensee, except as authorized by law, from denying a dealer's claim, reducing the dealer's compensation, or processing a chargeback to a dealer for performing covered warranty or recall repairs on a used motor vehicle under specified circumstances.

The bill also requires that a licensee, which has a franchise agreement with a motor vehicle dealer, must compensate the dealer for a used vehicle that:

- Was originally manufactured, imported, or distributed by the licensee;
- Is subject to a recall notice;
- Is held in the dealer's inventory at the time the recall notice was issued, or taken into the dealer's inventory after the recall notice;
- Cannot be repaired due to unavailability of a remedy within 30 days of the recall; and
- For which the licensee has not issued a written statement to the dealer indicating the vehicle may be sold or delivered to a retail customer before completion of the recall repair.

The bill requires such compensation to be the greater of:

- Payment of at least two percent of the motor vehicle value for each month or portion of a month that the dealer does not receive a remedy for the vehicle; or
- Payment under a national program applicable to motor vehicle dealers holding a franchise agreement with the licensee for the dealer's costs associated with holding the used vehicle.

The bill does not appear to have a significant fiscal impact on state or local governments.

The bill takes effect upon becoming law.

## II. Present Situation:

Florida has substantially regulated motor vehicle manufacturers and motor vehicle dealers since before 1950.<sup>1</sup> Initially, the Florida Legislature approached the issue by implementing only consumer protections aimed at preventing consumer abuse by dealers.<sup>2</sup> In 1970, the Legislature passed more comprehensive legislation, embodied in ch. 320, F.S.,<sup>3</sup> which regulates the contractual relationship between manufacturers and dealers,<sup>4</sup> requires the licensing of manufacturers, and regulates numerous aspects of the contracts between manufacturers and dealers.

### Florida Automobile Dealers Act

A manufacturer, factory branch, distributor, or importer (licensee) must be licensed under s. 320.61(1), F.S., to engage in business in Florida. Sections 320.60-320.70, F.S., the “Florida Automobile Dealers Act”<sup>5</sup> (act), primarily regulate the contractual business relationship between dealers and licensees, and provide for the licensure of manufacturers, factory branches, distributors, or importers. The act specifies, in part:

- The conditions and situations under which the Department of Highway Safety and Motor Vehicles (DHSMV) may deny, suspend, or revoke a regulated license;
- The process, timing, and notice requirements for licensees who wish to discontinue, cancel, modify, or otherwise replace a franchise agreement with a dealer, and the conditions under which the DHSMV may deny such a request;
- The procedures a licensee must follow to add a dealership in an area already served by a franchised dealer, the protest process, and the DHSMV’s role in these circumstances;
- The damages that can be assessed against a licensee who is in violation of Florida Statutes; and
- The DHSMV’s authority to adopt rules to implement these sections of law.

Section 320.64, F.S., currently lists 40 different criteria that may cause the DHSMV to deny, suspend, or revoke the licensee’s license. A motor vehicle dealer who can demonstrate that a violation of, or failure to comply with any of these provisions by an applicant or licensee will or can adversely and pecuniarily affect the dealer, is entitled to pursue an injunction against the licensee, treble damages, and attorney’s fees.<sup>6</sup> The licensee has the burden to prove that such violation did not occur upon a prima facie showing by the person bringing the action.<sup>7</sup>

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<sup>1</sup> Chapter 9157, L.O.F. (1923); Chapter 20236, L.O.F. (1941).

<sup>2</sup> Walter E. Forehand and John W. Forehand, *Motor Vehicle Dealer and Motor Vehicle Manufacturers: Florida Reacts to Pressures in the Marketplace*, 29 Fla. St. Univ. Law Rev. 1058, 1064 (2002), <http://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1632&context=lr> (last visited Mar. 9, 2017).

<sup>3</sup> See ch. 70-424, L.O.F.

<sup>4</sup> See s. 320.60(11), F.S.

<sup>5</sup> Walter E. Forehand, *supra* note 2 at 1065.

<sup>6</sup> See ss. 320.64, 320.694, and 320.697, F.S.

<sup>7</sup> Section 320.697, F.S.

### ***Applicability***

Section 320.6992, F.S., provides that the act shall apply to all presently existing or future systems of distribution of motor vehicles in Florida, except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution. Generally, all agreements that are renewed, amended, or entered into subsequent to October 1, 1988, are governed by the act, including amendments to the act, unless specifically providing otherwise.

In 2009, the DHSMV held in an administrative proceeding that amendments to the act do not apply to dealers whose franchise agreements were signed prior to the effective date of various amendments to the act.<sup>8</sup> The DHSMV has indicated that it will apply the *Motorsports* holding to every amendment to the act. This may result in different protections accruing to dealers, depending on when they signed their franchise agreements.

### **Motor Vehicle Warranties**

A motor vehicle warranty is any written warranty, or affirmation of fact or promise issued or made by the motor vehicle manufacturer in connection with the sale of a motor vehicle to a consumer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is free of defects or will meet a specified level of performance.<sup>9</sup>

Chapter 681 of the Florida Statutes, the “Motor Vehicle Warranty Enforcement Act,” provides a regulatory framework for consumers and motor vehicle manufacturers when dealing with motor vehicle sales warranties.

### ***Motor Vehicle Warranty Repairs***

A licensee is required to timely compensate a motor vehicle dealer who performs work to maintain or repair a licensee’s product under a warranty.<sup>10</sup> For this purpose, “timely” means within 30 days of receipt of the claim, and “compensate” includes payment for all labor (employee time spent for diagnosis and repair) and parts (replacement parts and accessories) included in the work.<sup>11</sup>

### **Motor Vehicle Recalls**

Upon finding that a motor vehicle or its equipment contains a defect related to motor vehicle safety or does not comply with applicable federal motor vehicle safety standards, a manufacturer can decide to issue a recall notice, or may be required to issue a recall notice if ordered by the

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<sup>8</sup> See *Motorsports of Delray, LLC v. Yamaha Motor Corp., U.S.A.*, Case No. 09-0935 (Fla. DOAH Dec. 9, 2009). The DHSMV ruled that a 2006 amendment to the Florida Automobile Dealers Act does not apply to a dealer terminated in 2008 because the dealer’s franchise agreement was entered into prior to the effective date of the amendment. This Final Order was initially appealed but was later voluntarily dismissed. See also, *In re Am. Suzuki Motor Corp.*, 494 B.R. 466, 480 (Bankr. C.D. Cal. 2013).

<sup>9</sup> Section 681.102(22), F.S.

<sup>10</sup> Section 320.696(1), F.S.

<sup>11</sup> *Id.*

National Highway Traffic Safety Administration (NHTSA).<sup>12</sup> A manufacturer is required to submit a report to NHTSA not more than five working days after a defect in its vehicle or its equipment is determined to be safety related or noncompliant with motor vehicle safety standards; however, a manufacturer may choose to petition for exemption from recall notification and remedy requirements if the defect or noncompliance is inconsequential to motor vehicle safety.<sup>13</sup> If it is determined the defect or noncompliance does pose a risk to safety, the manufacturer is required to:

- Notify owners, purchasers, and dealers of the vehicle or equipment; and
- Remedy the defect or noncompliance (either by repairing or replacing it, offering a refund, or repurchasing the vehicle.)<sup>14</sup>

The recall notice must be issued no later than 60 days from the date the manufacturer filed its report with NHTSA.<sup>15</sup> Recall notifications sent to motor vehicle dealers and distributors must contain a clear statement identifying the notification as being a safety recall notice, and include:

- An identification of the motor vehicles or equipment included in the recall;
- A description of the defect or noncompliance;
- A brief evaluation of the risk to motor vehicle safety related to the defect or noncompliance;
- A complete description on the recall remedy;
- The estimated date on which the remedy will be available; and
- An advisory stating that it is a Federal violation for a dealer to deliver a new motor vehicle or any new or used item of motor vehicle equipment covered by the notification under a sale or lease until the defect or noncompliance is remedied.<sup>16</sup>

A 2015 NHTSA annual report of recalls by year shows a steady increase in the number of recalls issued from 1995 to 2005.<sup>17</sup> In 2015, 973 recalls were issued affecting over 87.5 million vehicles or equipment.<sup>18</sup>

### ***Recalls on New Vehicles***

Federal law prohibits the sale of new motor vehicles determined to have a safety defect or noncompliance with motor vehicle safety standards<sup>19</sup>, and requires a manufacturer, after selling the motor vehicle or equipment to the dealer and before it is sold by the dealer, to:

- Immediately repurchase the vehicle or equipment from the motor vehicle dealer at the same price paid, plus transportation charges and at least one percent a month of the price paid prorated from the date of notice to the date of repurchase; or
- Immediately give the dealer, at the manufacturer's expense, the part or equipment needed to remedy the defect or noncompliance, plus cost of installation and one percent a month of the

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<sup>12</sup> 49 C.F.R. ss. 577.5 and 577.6

<sup>13</sup> 49 C.F.R. s. 573.6

<sup>14</sup> NHTSA's Safercar.gov website, *Vehicle Recalls: Frequently Asked Questions*, <https://vinrcl.safercar.gov/vin/faq.jsp> (last visited Mar. 9, 2017).

<sup>15</sup> 49 C.F.R. s. 577.7

<sup>16</sup> 49 C.F.R. s. 577.13

<sup>17</sup> NHTSA's Safercar.gov website, *2015 Annual Recalls Report*, <https://www.safercar.gov/staticfiles/safercar/pdf/2015-annual-recalls-report.pdf> (last visited Mar. 9, 2017).

<sup>18</sup> *Id.*

<sup>19</sup> Commonly referred to as "stop sale" notices.

price paid prorated from the date of notice to the date the defect or noncompliance is remedied.<sup>20</sup>

### ***Recalls on Used Vehicles***

Federal law, generally, does not prohibit the resale of used vehicles subject to a safety recall. However, manufacturers may choose to direct their dealers to stop selling such vehicles. Additionally, such vehicles may be required to be held in the dealer's inventory without an available remedy.

In 2016, Virginia and Maryland passed laws to require licensees to compensate their franchise dealers if the dealer is instructed or coerced by the licensee not to sell used vehicles within its inventory that have a recall with no remedy available. Specifically, Maryland law requires if a licensee issues a stop sale directive to its franchise dealer on a used vehicle held in inventory by that dealer without a remedy for the recall available, the licensee must compensate the dealer by:

- Providing payment to the dealer at a rate of at least one percent per month or portion of a month of the value of the vehicle; or
- Compensating the dealer under a national program that is applicable to all dealers holding a franchise from the licensee for the dealer's costs associated with the stop sale directive.<sup>21</sup>

Virginia prohibits a licensee from coercing or requiring any dealer, whether by agreement program, incentive provision, or for loss of incentive payments or other benefits, to refrain from selling any used motor vehicle subject to a recall, stop sale directive, technical service bulletin<sup>22</sup>, or other licensee notification unless the licensee has a remedy available. If no remedy is available, the licensee must compensate the dealer for any affected used motor vehicle in its inventory that the dealer is instructed not to sell by the licensee at at least one percent a month or any part of a month of the cost of such used vehicle, including repairs and re-conditioning expenses.<sup>23</sup>

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 320.64, F.S, to prohibit a licensee, notwithstanding the terms of any franchise agreement, and except as authorized by law upon detection of fraudulent payments, from denying a dealer's claim, reducing the dealer's compensation, or processing a chargeback to a dealer for performing covered warranty or recall repairs on a used motor vehicle due to:

- Discovery of the need for such repairs by the dealer during the course of a separate repair requested by the consumer.
- Notification by the dealer to the consumer of the need for such repairs after issuance of an outstanding recall for a safety-related defect.

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<sup>20</sup> 49 U.S.C. s. 30116

<sup>21</sup> Maryland General Assembly, *House Bill 525 – Enrolled*, (Enacted May 28, 2016), available at <http://mgaleg.maryland.gov/2016RS/bills/hb/hb0525E.pdf> (last visited Mar. 10, 2017).

<sup>22</sup> Technical service bulletins, not to be confused with recalls, are notices issued to dealers from manufacturers for nonsafety-related defects. These bulletins usually include recommended procedures for repairing vehicles if certain issues arise.

<sup>23</sup> Virginia Acts of Assembly – 2016 Session, *Chapter 534* (Mar. 29, 2016), available at <https://lis.virginia.gov/cgi-bin/legp604.exe?161+ful+CHAP0534+pdf> (last visited Mar. 10, 2017).

**Section 2** creates s. 320.6407, F.S., relating to recall notices under franchise agreements. The bill requires that a licensee, which has a franchise agreement with a motor vehicle dealer, must compensate the dealer for a used vehicle that:

- Was originally manufactured, imported, or distributed by the licensee;
- Is subject to a recall notice;
- Is held in the dealer's inventory at the time the recall notice was issued, or taken into the dealer's inventory after the recall notice due to a trade-in, lease return, or other transaction;
- Cannot be repaired due to unavailability of a remedy for the vehicle within 30 days after issuance of the recall notice; and
- For which the licensee has not issued a written statement to the dealer indicating the vehicle may be sold or delivered to a retail customer before completion of the recall repair.

The bill requires such compensation to be the greater of:

- Payment of at least two percent of the motor vehicle value (as determined by the average Black Book value for that vehicle's model year and condition) for each month or portion of a month that the dealer does not receive a remedy for the vehicle, calculated from the later of either the date the recall was issued or when the vehicle was acquired by the dealer; or
- Payment under a national program applicable to motor vehicle dealers holding a franchise agreement with the licensee for the dealer's costs associated with holding the used vehicle.

**Section 3** reenacts s. 320.6992, F.S., providing that amendments made to the act shall apply to all presently existing or future systems of distribution of motor vehicles in Florida, except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution.

**Section 4** provides that the bill takes effect upon becoming law.

#### **IV. Constitutional Issues:**

##### A. Municipality/County Mandates Restrictions:

None.

##### B. Public Records/Open Meetings Issues:

None.

##### C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

##### A. Tax/Fee Issues:

None.

**B. Private Sector Impact:**

The fiscal impact to the private sector is indeterminate. To the extent that agreements between dealers and licensees change, the parties could be impacted positively or negatively. Dealers with vehicles in their inventory impacted by a recall that cannot be repaired or sold will likely experience a positive fiscal impact.

**C. Government Sector Impact:**

The fiscal impact to the government sector is indeterminate, but appears insignificant. The DHSMV may experience an increase in the number of administrative hearings as a result of the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 320.64 of the Florida Statutes.

This bill creates section 320.6407 of the Florida Statutes.

This bill reenacts section 320.6992 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Transportation on March 14, 2017:**

The CS extends the length of time that the licensee must make a recall remedy available to a dealer to avoid compensating that dealer for the used vehicle, from 15 to 30 days, and reduces the amount required to be paid to the dealer, from 2.43 percent to 2 percent.

The CS also adds that such compensation is not required for used vehicles for which the licensee has issued a written statement to the dealer indicating the used vehicle may be sold or delivered to a retail customer prior to completion of the recall repair.

**B. Amendments:**

None.