

By Senator Hutson

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1 A bill to be entitled
2 An act relating to motor vehicle warranty repairs and
3 recall repairs; amending s. 320.64, F.S.; prohibiting
4 a manufacturer, factory branch, distributor, or
5 importer from denying a claim of a motor vehicle
6 dealer, reducing compensation to a motor vehicle
7 dealer, or processing a chargeback to a motor vehicle
8 dealer because of specified circumstances; creating s.
9 320.6407, F.S.; requiring a manufacturer, factory
10 branch, distributor, or importer to compensate a motor
11 vehicle dealer for a used motor vehicle under
12 specified circumstances; requiring the manufacturer,
13 factory branch, distributor, or importer to pay the
14 compensation within a specified timeframe after the
15 motor vehicle dealer's application for payment;
16 requiring such application to be made through the
17 manufacturer's, factory branch's, distributor's, or
18 importer's warranty application system or certain
19 other system or process; providing for calculation of
20 the amount of compensation; reenacting s. 320.6992,
21 F.S., relating to applicability of specified
22 provisions to systems of distribution of motor
23 vehicles in this state, to incorporate the amendments
24 made to s. 320.64, F.S., and to incorporate s.
25 320.6407, F.S., as created by the act, in references
26 thereto; providing an effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:

29
30 Section 1. Subsection (41) is added to section 320.64,
31 Florida Statutes, to read:

32 320.64 Denial, suspension, or revocation of license;

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

43 (41) Notwithstanding the terms of any franchise agreement,
44 and except as authorized under subsection (25), a licensee may
45 not deny a claim of a motor vehicle dealer, reduce the amount of
46 compensation to a motor vehicle dealer, or process a chargeback
47 to a motor vehicle dealer for performing covered warranty
48 repairs or required recall repairs on a used motor vehicle due
49 to either of the following circumstances:

50 (a) Discovery by the motor vehicle dealer of the need for
51 such repairs during the course of a separate repair requested by
52 the consumer.

53 (b) Notification by the motor vehicle dealer to the
54 consumer of the need for such repairs after the licensee or an
55 authorized government agency issues a notice of an outstanding
56 recall for a safety-related defect.

57
58 A motor vehicle dealer who can demonstrate that a violation of,
59 or failure to comply with, any of the preceding provisions by an
60 applicant or licensee will or can adversely and pecuniarily
61 affect the complaining dealer, shall be entitled to pursue all

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62 of the remedies, procedures, and rights of recovery available
63 under ss. 320.695 and 320.697.

64 Section 2. Section 320.6407, Florida Statutes, is created
65 to read:

66 320.6407 Recall notices under franchise agreements;
67 compensation.—

68 (1) As provided in subsection (3), a licensee under s.
69 320.61 which has entered into a franchise agreement with a motor
70 vehicle dealer must compensate the motor vehicle dealer for a
71 used motor vehicle that:

72 (a) Was originally manufactured, imported, or distributed
73 by the licensee;

74 (b) Is subject to a recall notice issued by the licensee or
75 an authorized government agency, regardless of whether the
76 vehicle is identified by its vehicle identification number;

77 (c) Is held by the motor vehicle dealer in the dealer's
78 inventory at the time the recall notice is issued or is taken by
79 the motor vehicle dealer into the dealer's inventory after the
80 recall notice as a result of a trade-in, lease return, or other
81 transaction; and

82 (d) Cannot be repaired due to the unavailability, within 15
83 days after issuance of the recall notice, of the remedy or parts
84 necessary for the motor vehicle dealer to make the repair.

85 (2) The licensee shall pay the required compensation within
86 30 days after the motor vehicle dealer's application for
87 payment, such application to be made through the licensee's
88 existing warranty application system or another system or
89 process established by the licensee which may not be unduly
90 burdensome or require information unnecessary for the payment.

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91 (3) Compensation under this subsection must be the greater
92 of:

93 (a) Payment at a rate of at least 2.43 percent of the motor
94 vehicle value, as determined by the average Black Book value of
95 the corresponding model year vehicle of average condition, of
96 each eligible used motor vehicle in the motor vehicle dealer's
97 inventory for each month or portion of a month that the dealer
98 does not receive a remedy or parts to complete the required
99 repair, calculated from the date the recall was issued or the
100 vehicle was acquired, whichever is later.

101 (b) Payment under a national program applicable to all
102 motor vehicle dealers holding a franchise agreement with the
103 licensee for the motor vehicle dealer's costs associated with
104 holding the eligible used motor vehicles.

105 Section 3. For the purpose of incorporating the amendment
106 made by this act to section 320.64, Florida Statutes, and
107 section 320.6407, Florida Statutes, as created by this act, in
108 references thereto, section 320.6992, Florida Statutes, is
109 reenacted to read:

110 320.6992 Application.—Sections 320.60-320.70, including
111 amendments to ss. 320.60-320.70, apply to all presently existing
112 or hereafter established systems of distribution of motor
113 vehicles in this state, except to the extent that such
114 application would impair valid contractual agreements in
115 violation of the State Constitution or Federal Constitution.
116 Sections 320.60-320.70 do not apply to any judicial or
117 administrative proceeding pending as of October 1, 1988. All
118 agreements renewed, amended, or entered into subsequent to
119 October 1, 1988, shall be governed by ss. 320.60-320.70,

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120 including any amendments to ss. 320.60-320.70 which have been or
121 may be from time to time adopted, unless the amendment
122 specifically provides otherwise, and except to the extent that
123 such application would impair valid contractual agreements in
124 violation of the State Constitution or Federal Constitution.

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