

By the Committee on Transportation; and Senators Hutson, Gainer, and Broxson

596-02448-17

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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 applications to be submitted monthly,
17 as necessary, through the manufacturer's, factory
18 branch's, distributor's, or importer's warranty
19 application system or certain other system or process;
20 providing for calculation of the amount of
21 compensation; reenacting s. 320.6992, F.S., relating
22 to applicability of specified provisions to systems of
23 distribution of motor vehicles in this state, to
24 incorporate the amendments made to s. 320.64, F.S.,
25 and to incorporate s. 320.6407, F.S., as created by
26 the act, in references thereto; providing an effective
27 date.

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

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Section 1. Subsection (41) is added to section 320.64, Florida Statutes, 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 licensee engages or proposes to engage in business, upon proof that the section was violated with sufficient frequency to establish a pattern of wrongdoing, and a licensee or applicant shall be liable for claims and remedies provided in ss. 320.695 and 320.697 for any violation of any of the following provisions. A licensee is prohibited from committing the following acts:

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

(a) Discovery by the motor vehicle dealer of the need for warranty or recall repairs during the course of a separate repair requested by the consumer.

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

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59 A motor vehicle dealer who can demonstrate that a violation of,
60 or failure to comply with, any of the preceding provisions by an
61 applicant or licensee will or can adversely and pecuniarily
62 affect the complaining dealer, shall be entitled to pursue all
63 of the remedies, procedures, and rights of recovery available
64 under ss. 320.695 and 320.697.

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

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

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

73 (a) That was originally manufactured, imported, or
74 distributed by the licensee;

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

79 (c) That is held by the motor vehicle dealer in the
80 dealer's inventory at the time the recall notice is issued or
81 that is taken by the motor vehicle dealer into the dealer's
82 inventory after the recall notice as a result of a trade-in,
83 lease return, or otherwise;

84 (d) That cannot be repaired due to the unavailability,
85 within 30 days after issuance of the recall notice, of remedy or
86 parts necessary for the motor vehicle dealer to make the recall
87 repair; and

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88 (e) For which the licensee has not issued a written
89 statement to the motor vehicle dealer indicating that the used
90 motor vehicle may be sold or delivered to a retail customer
91 before completion of the recall repair.

92 (2) The licensee shall pay the required compensation within
93 30 days after the motor vehicle dealer's application for
94 payment. Applications for compensation payments must be
95 submitted monthly, as necessary, through the licensee's existing
96 warranty application system or another system or process
97 established by the licensee which is not unduly burdensome or
98 which does not require information unnecessary for the payment.

99 (3) Compensation under this section must be the greater of:

100 (a) Payment at a rate of at least 2 percent per month of
101 the motor vehicle value, as determined by the average Black Book
102 value of corresponding model year vehicle of average condition,
103 of each eligible used motor vehicle in the motor vehicle
104 dealer's inventory for each month that the dealer does not
105 receive a remedy or parts to complete the required repair. Such
106 payment must be prorated for any period less than a month based
107 on the number of days during the month each eligible used motor
108 vehicle is in the motor vehicle dealer's inventory. Payments
109 shall be calculated from the date the recall was issued or the
110 vehicle was acquired, whichever is later.

111 (b) Payment under a national program applicable to all
112 motor vehicle dealers holding a franchise agreement with the
113 licensee for the motor vehicle dealer's costs associated with
114 holding the eligible used motor vehicles.

115 Section 3. For the purpose of incorporating the amendment
116 made by this act to section 320.64, Florida Statutes, and

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117 section 320.6407, Florida Statutes, as created by this act, in
118 references thereto, section 320.6992, Florida Statutes, is
119 reenacted to read:

120 320.6992 Application.—Sections 320.60-320.70, including
121 amendments to ss. 320.60-320.70, apply to all presently existing
122 or hereafter established systems of distribution of motor
123 vehicles in this state, except to the extent that such
124 application would impair valid contractual agreements in
125 violation of the State Constitution or Federal Constitution.
126 Sections 320.60-320.70 do not apply to any judicial or
127 administrative proceeding pending as of October 1, 1988. All
128 agreements renewed, amended, or entered into subsequent to
129 October 1, 1988, shall be governed by ss. 320.60-320.70,
130 including any amendments to ss. 320.60-320.70 which have been or
131 may be from time to time adopted, unless the amendment
132 specifically provides otherwise, and except to the extent that
133 such application would impair valid contractual agreements in
134 violation of the State Constitution or Federal Constitution.

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