

By the Committees on Commerce and Tourism; and Transportation;
and Senators Hutson, Gainer, and Broxson

577-02916-17

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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; providing retroactive
13 applicability; requiring the manufacturer, factory
14 branch, distributor, or importer to pay the
15 compensation within a specified timeframe after the
16 motor vehicle dealer's application for payment;
17 requiring such applications to be submitted monthly,
18 as necessary, through the manufacturer's, factory
19 branch's, distributor's, or importer's warranty
20 application system or certain other system or process;
21 providing for calculation of the amount of
22 compensation; providing applicability; reenacting s.
23 320.6992, F.S., relating to applicability of specified
24 provisions to systems of distribution of motor
25 vehicles in this state, to incorporate the amendment
26 made to s. 320.64, F.S., and to incorporate s.
27 320.6407, F.S., as created by the act, in references
28 thereto; providing an effective date.
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30 Be It Enacted by the Legislature of the State of Florida:

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32 Section 1. Subsection (41) is added to section 320.64,
33 Florida Statutes, to read:

34 320.64 Denial, suspension, or revocation of license;
35 grounds.—A license of a licensee under s. 320.61 may be denied,
36 suspended, or revoked within the entire state or at any specific
37 location or locations within the state at which the applicant or
38 licensee engages or proposes to engage in business, upon proof
39 that the section was violated with sufficient frequency to
40 establish a pattern of wrongdoing, and a licensee or applicant
41 shall be liable for claims and remedies provided in ss. 320.695
42 and 320.697 for any violation of any of the following
43 provisions. A licensee is prohibited from committing the
44 following acts:

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

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

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

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

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

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

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

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

76 (b) That is subject to a recall notice issued by the
77 licensee or an authorized governmental agency, including recalls
78 issued prior to July 1, 2017, regardless of whether the vehicle
79 is identified by its vehicle identification number;

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

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

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88 repair; and

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

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

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

101 (a) Payment at a rate of at least 1.75 percent per month of
102 the motor vehicle value, as determined by the average Black Book
103 value of the corresponding model year vehicle of average
104 condition, of each eligible used motor vehicle in the motor
105 vehicle dealer's inventory for each month that the dealer does
106 not receive a remedy or parts to complete the required repair.
107 Such payment must be prorated for any period less than a month
108 based on the number of days during the month each eligible used
109 motor vehicle is in the motor vehicle dealer's inventory.

110 Payments shall be calculated from the date the recall was issued
111 or the vehicle was acquired, whichever is later.

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

116 (4) For purposes of this section, a licensee does not

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117 include a motorcycle manufacturer, distributor, or importer.

118 Section 3. For the purpose of incorporating the amendment
119 made by this act to section 320.64, Florida Statutes, and
120 section 320.6407, Florida Statutes, as created by this act, in
121 references thereto, section 320.6992, Florida Statutes, is
122 reenacted to read:

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

138 Section 4. This act shall take effect July 1, 2017.