

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

595-04439-17

2017466c3

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; specifying the purpose of a certain  
14          written statement; requiring the manufacturer, factory  
15          branch, distributor, or importer to pay the  
16          compensation within a specified timeframe after the  
17          motor vehicle dealer's application for payment;  
18          requiring such applications to be submitted monthly,  
19          as necessary, through the manufacturer's, factory  
20          branch's, distributor's, or importer's warranty  
21          application system or certain other system or process;  
22          providing for calculation of the amount of  
23          compensation; providing applicability; reenacting s.  
24          320.6992, F.S., relating to applicability of specified  
25          provisions to systems of distribution of motor  
26          vehicles in this state, to incorporate s. 320.6407,  
27          F.S., as created by the act, in references thereto;  
28          providing an effective date.  
29

595-04439-17

2017466c3

30 Be It Enacted by the Legislature of the State of Florida:

31  
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.

595-04439-17

2017466c3

59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87

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

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

320.6407 Recall notices under franchise agreements; compensation.—

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

(a) That is of the same make and model manufactured, imported, or distributed by the licensee;

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

(c) That is held by the motor vehicle dealer in the dealer's inventory at the time the recall notice is issued or that is taken by the motor vehicle dealer into the dealer's inventory after the recall notice as a result of a retail consumer trade-in or a lease return to the dealer inventory in accordance with an applicable lease contract;

(d) That cannot be repaired due to the unavailability, within 30 days after issuance of the recall notice, of a remedy

595-04439-17

2017466c3

88 or parts necessary for the motor vehicle dealer to make the  
89 recall repair; and

90 (e) For which the licensee has not issued a written  
91 statement to the motor vehicle dealer indicating that the used  
92 motor vehicle may be sold or delivered to a retail customer  
93 before completion of the recall repair. The purpose of such  
94 written statement is to provide notice to the motor vehicle  
95 dealer that the vehicle may be sold or delivered based solely on  
96 the specific recall notice and is not intended to address any  
97 other aspect of the vehicle unrelated to the recall notice.

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

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

106 (a) Payment at a rate of at least 1.5 percent per month of  
107 the motor vehicle value, as determined by the average Black Book  
108 value of the corresponding model year vehicle of average  
109 condition, of each eligible used motor vehicle in the motor  
110 vehicle dealer's inventory for each month that the dealer does  
111 not receive a remedy and parts to complete the required recall  
112 repair. Such payment must be prorated for any period less than 1  
113 month based on the number of days during the month each eligible  
114 used motor vehicle is in the motor vehicle dealer's inventory.  
115 Payment shall be calculated from the 31st day after the recall  
116 was issued, the 31st day after the vehicle was acquired, or July

595-04439-17

2017466c3

117 1, 2017, whichever is latest.

118 (b) Payment under a national program applicable to all  
119 motor vehicle dealers holding a franchise agreement with the  
120 licensee for the motor vehicle dealer's costs associated with  
121 holding the eligible used motor vehicles.

122 (4) For purposes of this section, a licensee does not  
123 include a motorcycle manufacturer, distributor, or importer.

124 Section 3. For the purpose of incorporating section  
125 320.6407, Florida Statutes, as created by this act, in  
126 references thereto, section 320.6992, Florida Statutes, is  
127 reenacted to read:

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

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