



601462

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/19/2016	.	
	.	
	.	
	.	

---

Appropriations Subcommittee on Transportation, Tourism, and Economic Development (Latvala) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 453 and 454

insert:

Section 10. Subsections (25) and (26) of section 320.64, Florida Statutes, are amended, and subsections (39) and (40) are added to that section, 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



601462

11 location or locations within the state at which the applicant or  
12 licensee engages or proposes to engage in business, upon proof  
13 that the section was violated with sufficient frequency to  
14 establish a pattern of wrongdoing, and a licensee or applicant  
15 shall be liable for claims and remedies provided in ss. 320.695  
16 and 320.697 for any violation of any of the following  
17 provisions. A licensee is prohibited from committing the  
18 following acts:

19       (25) The applicant or licensee has undertaken or engaged in  
20 an audit of warranty, maintenance, and other service-related  
21 payments or incentive payments, including payments to a motor  
22 vehicle dealer under any licensee-issued program, policy, or  
23 other benefit, which were previously ~~have been~~ paid to a motor  
24 vehicle dealer in violation of this section or has failed to  
25 comply with any of its obligations under s. 320.696. An  
26 applicant or licensee may reasonably and periodically audit a  
27 motor vehicle dealer to determine the validity of paid claims as  
28 provided in s. 320.696. Audits of warranty, maintenance, and  
29 other service-related payments shall be performed by an  
30 applicant or licensee only during the 12-month ~~1-year~~ period  
31 immediately following the date the claim was paid. Audits ~~Audit~~  
32 of incentive payments shall ~~only~~ be performed only during the  
33 12-month ~~for an 18-month~~ period immediately following the date  
34 the incentive was paid. As used in this section, the term  
35 "incentive" includes any bonus, incentive, or other monetary or  
36 nonmonetary consideration. After such time periods have elapsed,  
37 all warranty, maintenance, and other service-related payments  
38 and incentive payments shall be deemed final and  
39 incontrovertible for any reason notwithstanding any otherwise



601462

40 applicable law, and the motor vehicle dealer shall not be  
41 subject to any chargeback ~~charge-back~~ or repayment. An applicant  
42 or licensee may deny a claim or, as a result of a timely  
43 conducted audit, impose a chargeback ~~charge-back~~ against a motor  
44 vehicle dealer for warranty, maintenance, or other service-  
45 related payments or incentive payments only if the applicant or  
46 licensee can show that the warranty, maintenance, or other  
47 service-related claim or incentive claim was false or fraudulent  
48 or that the motor vehicle dealer failed to substantially comply  
49 with the reasonable written and uniformly applied procedures of  
50 the applicant or licensee for such repairs or incentives, but  
51 only for that portion of the claim so shown. Notwithstanding the  
52 terms of any franchise agreement, guideline, program, policy, or  
53 procedure, an applicant or licensee may deny or charge back only  
54 that portion of a warranty, maintenance, or other service-  
55 related claim or incentive claim which the applicant or licensee  
56 has proven to be false or fraudulent or for which the dealer  
57 failed to substantially comply with the reasonable written and  
58 uniformly applied procedures of the applicant or licensee for  
59 such repairs or incentives, as set forth in this subsection. An  
60 applicant or licensee may not charge back a motor vehicle dealer  
61 ~~back~~ subsequent to the payment of a warranty, maintenance, or  
62 service-related claim or incentive claim unless, within 30 days  
63 after a timely conducted audit, a representative of the  
64 applicant or licensee first meets in person, by telephone, or by  
65 video teleconference with an officer or employee of the dealer  
66 designated by the motor vehicle dealer. At such meeting the  
67 applicant or licensee must provide a detailed explanation, with  
68 supporting documentation, as to the basis for each of the claims



601462

69 for which the applicant or licensee proposed a chargeback  
70 ~~charge-back~~ to the dealer and a written statement containing the  
71 basis upon which the motor vehicle dealer was selected for audit  
72 or review. Thereafter, the applicant or licensee must provide  
73 the motor vehicle dealer's representative a reasonable period  
74 after the meeting within which to respond to the proposed  
75 chargebacks ~~charge-backs~~, with such period to be commensurate  
76 with the volume of claims under consideration, but in no case  
77 less than 45 days after the meeting. The applicant or licensee  
78 is prohibited from changing or altering the basis for each of  
79 the proposed chargebacks ~~charge-backs~~ as presented to the motor  
80 vehicle dealer's representative following the conclusion of the  
81 audit unless the applicant or licensee receives new information  
82 affecting the basis for one or more chargebacks ~~charge-backs~~ and  
83 that new information is received within 30 days after the  
84 conclusion of the timely conducted audit. If the applicant or  
85 licensee claims the existence of new information, the dealer  
86 must be given the same right to a meeting and right to respond  
87 as when the chargeback ~~charge-back~~ was originally presented.  
88 After all internal dispute resolution processes provided through  
89 the applicant or licensee have been completed, the applicant or  
90 licensee shall give written notice to the motor vehicle dealer  
91 of the final amount of its proposed chargeback ~~charge-back~~. If  
92 the dealer disputes that amount, the dealer may file a protest  
93 with the department within 30 days after receipt of the notice.  
94 If a protest is timely filed, the department shall notify the  
95 applicant or licensee of the filing of the protest, and the  
96 applicant or licensee may not take any action to recover the  
97 amount of the proposed chargeback ~~charge-back~~ until the



601462

98 department renders a final determination, which is not subject  
99 to further appeal, that the chargeback ~~charge-back~~ is in  
100 compliance with the provisions of this section. In any hearing  
101 pursuant to this subsection, the applicant or licensee has the  
102 burden of proof that its audit and resulting chargeback ~~charge-~~  
103 ~~back~~ are in compliance with this subsection.

104 (26) Notwithstanding the terms of any franchise agreement,  
105 including any licensee's program, policy, or procedure, the  
106 applicant or licensee has refused to allocate, sell, or deliver  
107 motor vehicles; charged back or withheld payments or other  
108 things of value for which the dealer is otherwise eligible under  
109 a sales promotion, program, or contest; prevented a motor  
110 vehicle dealer from participating in any promotion, program, or  
111 contest; or has taken or threatened to take any adverse action  
112 against a dealer, including chargebacks ~~charge-backs~~, reducing  
113 vehicle allocations, or terminating or threatening to terminate  
114 a franchise because the dealer sold or leased a motor vehicle to  
115 a customer who exported the vehicle to a foreign country or who  
116 resold the vehicle, unless the licensee proves that the dealer  
117 knew or reasonably should have known that the customer intended  
118 to export or resell the motor vehicle. There is a rebuttable  
119 presumption that the dealer neither knew nor reasonably should  
120 have known of its customer's intent to export or resell the  
121 vehicle if the vehicle is titled or registered in any state in  
122 this country. A licensee may not take any action against a motor  
123 vehicle dealer, including reducing its allocations or supply of  
124 motor vehicles to the dealer, ~~or charging back to~~ a dealer any  
125 ~~for an~~ incentive payment previously paid, unless the licensee  
126 first meets in person, by telephone, or video conference with an



601462

127 officer or other designated employee of the dealer. At such  
128 meeting, the licensee must provide a detailed explanation, with  
129 supporting documentation, as to the basis for its claim that the  
130 dealer knew or reasonably should have known of the customer's  
131 intent to export or resell the motor vehicle. Thereafter, the  
132 motor vehicle dealer shall have a reasonable period,  
133 commensurate with the number of motor vehicles at issue, but not  
134 less than 15 days, to respond to the licensee's claims. If,  
135 following the dealer's response and completion of all internal  
136 dispute resolution processes provided through the applicant or  
137 licensee, the dispute remains unresolved, the dealer may file a  
138 protest with the department within 30 days after receipt of a  
139 written notice from the licensee that it still intends to take  
140 adverse action against the dealer with respect to the motor  
141 vehicles still at issue. If a protest is timely filed, the  
142 department shall notify the applicant or licensee of the filing  
143 of the protest, and the applicant or licensee may not take any  
144 action adverse to the dealer until the department renders a  
145 final determination, which is not subject to further appeal,  
146 that the licensee's proposed action is in compliance with the  
147 provisions of this subsection. In any hearing pursuant to this  
148 subsection, the applicant or licensee has the burden of proof on  
149 all issues raised by this subsection. An applicant or licensee  
150 may not take any adverse action against a motor vehicle dealer  
151 because the dealer sold or leased a motor vehicle to a customer  
152 who exported the vehicle to a foreign country or who resold the  
153 vehicle unless the applicant or licensee provides written  
154 notification to the motor vehicle dealer of such resale or  
155 export within 12 months after the date the dealer sold or leased



601462

156 the vehicle to the customer.

157 (39) Notwithstanding any agreement, program, incentive,  
158 bonus, policy, or rule, an applicant or licensee may not fail to  
159 make any payment pursuant to any agreement, program, incentive,  
160 bonus, policy, or rule for any temporary replacement motor  
161 vehicle loaned, rented, or provided by a motor vehicle dealer to  
162 or for its service or repair customers, even if the temporary  
163 replacement motor vehicle has been leased, rented, titled, or  
164 registered to the motor vehicle dealer's rental or leasing  
165 division or an entity that is owned or controlled by the motor  
166 vehicle dealer, provided that the motor vehicle dealer or its  
167 rental or leasing division or entity complies with the written  
168 and uniformly enforced vehicle eligibility, use, and reporting  
169 requirements specified by the applicant or licensee in its  
170 agreement, program, policy, bonus, incentive, or rule relating  
171 to loaner vehicles.

172 (40) Notwithstanding the terms of any franchise agreement,  
173 the applicant or licensee may not require or coerce, or attempt  
174 to require or coerce, a motor vehicle dealer to purchase goods  
175 or services from a vendor selected, identified, or designated by  
176 the applicant or licensee, or one of its parents, subsidiaries,  
177 divisions, or affiliates, by agreement, standard, policy,  
178 program, incentive provision, or otherwise, without making  
179 available to the motor vehicle dealer the option to obtain the  
180 goods or services of substantially similar design and quality  
181 from a vendor chosen by the motor vehicle dealer. If the motor  
182 vehicle dealer exercises such option, the dealer must provide  
183 written notice of its desire to use the alternative goods or  
184 services to the applicant or licensee, along with samples or



601462

185 clear descriptions of the alternative goods or services that the  
186 dealer desires to use. The licensee or applicant shall have the  
187 opportunity to evaluate the alternative goods or services for up  
188 to 30 days to determine whether it will provide a written  
189 approval to the motor vehicle dealer to use said alternative  
190 goods or services. Approval may not be unreasonably withheld by  
191 the applicant or licensee. If the motor vehicle dealer does not  
192 receive a response from the applicant or licensee within 30  
193 days, approval to use the alternative goods or services is  
194 deemed granted. If a dealer using alternative goods or services  
195 complies with this subsection and has received approval from the  
196 licensee or applicant, the dealer is not ineligible for all  
197 benefits described in the agreement, standard, policy, program,  
198 incentive provision, or otherwise solely for having used such  
199 alternative goods or services. As used in this subsection, the  
200 term "goods or services" is limited to such goods and services  
201 used to construct or renovate dealership facilities or furniture  
202 and fixtures at the dealership facilities. The term does not  
203 include:

204 (a) Any materials subject to applicant's or licensee's  
205 copyright, trademark, or trade dress rights;

206 (b) Any special tool and training as required by the  
207 licensee or applicant;

208 (c) Any part to be used in repairs under warranty  
209 obligations of an applicant or licensee;

210 (d) Any good or service paid for entirely by the applicant  
211 or licensee; or

212 (e) Any applicant's or licensee's design or architectural  
213 review service.





601462

214  
215 A motor vehicle dealer who can demonstrate that a violation of,  
216 or failure to comply with, any of the preceding provisions by an  
217 applicant or licensee will or can adversely and pecuniarily  
218 affect the complaining dealer, shall be entitled to pursue all  
219 of the remedies, procedures, and rights of recovery available  
220 under ss. 320.695 and 320.697.

221  
222 ===== T I T L E A M E N D M E N T =====

223 And the title is amended as follows:

224 Delete line 40

225 and insert:

226 certain date; amending s. 320.64, F.S.; revising  
227 provisions for denial, suspension, or revocation of  
228 the license of a manufacturer, factory branch,  
229 distributor, or importer of motor vehicles; revising  
230 provisions for certain audits of service-related  
231 payments or incentive payments to a dealer by an  
232 applicant or licensee and the timeframe for the  
233 performance of such audits; defining the term  
234 "incentive"; revising provisions for denial or  
235 chargeback of claims; revising provisions that  
236 prohibit certain adverse actions against a dealer that  
237 sold or leased a motor vehicle to a customer who  
238 exported the vehicle to a foreign country or who  
239 resold the vehicle; revising conditions for taking  
240 such adverse actions; prohibiting failure to make  
241 certain payments to a motor vehicle dealer for  
242 temporary replacement vehicles under certain



601462

243 circumstances; prohibiting requiring or coercing a  
244 dealer to purchase goods or services from a vendor  
245 designated by the applicant or licensee unless certain  
246 conditions are met; providing procedures for approval  
247 of a dealer to purchase goods or services from a  
248 vendor not designated by the applicant or licensee;  
249 defining the term "goods or services"; amending s.  
250 322.051, F.S.; requiring the