

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u>      </u>	(Y/N)
ADOPTED AS AMENDED	<u>      </u>	(Y/N)
ADOPTED W/O OBJECTION	<u>      </u>	(Y/N)
FAILED TO ADOPT	<u>      </u>	(Y/N)
WITHDRAWN	<u>      </u>	(Y/N)
OTHER	<u>      </u>	

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1 Committee/Subcommittee hearing bill: Business & Professions  
2 Subcommittee

3 Representative Trujillo offered the following:

**Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsections (25) and (26) are amended, and  
8 subsections (39), and (40) are added to section 320.64, Florida  
9 Statutes, to read:

10 320.64 Denial, suspension, or revocation of license;  
11 grounds.—A license of a licensee under s. 320.61 may be denied,  
12 suspended, or revoked within the entire state or at any specific  
13 location or locations within the state at which the applicant or  
14 licensee engages or proposes to engage in business, upon proof  
15 that the section was violated with sufficient frequency to  
16 establish a pattern of wrongdoing, and a licensee or applicant  
17 shall be liable for claims and remedies provided in ss. 320.695

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18 and 320.697 for any violation of any of the following  
19 provisions. A licensee is prohibited from committing the  
20 following acts:

21 (25) The applicant or licensee has undertaken or engaged  
22 in an audit of warranty, maintenance, and other service-related  
23 payments or incentive payments, including payments to a motor  
24 vehicle dealer under any licensee-issued program, policy, or  
25 other benefit, which were previously ~~have been~~ paid to a motor  
26 vehicle dealer in violation of this section or has failed to  
27 comply with any of its obligations under s. 320.696. An  
28 applicant or licensee may reasonably and periodically audit a  
29 motor vehicle dealer to determine the validity of paid claims as  
30 provided in s. 320.696. Audits of warranty, maintenance, and  
31 other service-related payments shall be performed by an  
32 applicant or licensee only during the 12-month ~~1-year~~ period  
33 immediately following the date the claim was paid. Audits ~~Audit~~  
34 of incentive payments shall ~~only~~ be performed only during the  
35 12-month ~~for an 18-month~~ period immediately following the date  
36 the incentive was paid. As used in this section, the term  
37 "incentive" includes any bonus, incentive, or other monetary or  
38 nonmonetary consideration. After such time periods have elapsed,  
39 all warranty, maintenance, and other service-related payments  
40 and incentive payments shall be deemed final and  
41 incontrovertible for any reason notwithstanding any otherwise  
42 applicable law, and the motor vehicle dealer shall not be  
43 subject to any chargeback ~~charge-back~~ or repayment. An applicant

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

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70 supporting documentation, as to the basis for each of the claims  
71 for which the applicant or licensee proposed a chargeback  
72 ~~charge-back~~ to the dealer and a written statement containing the  
73 basis upon which the motor vehicle dealer was selected for audit  
74 or review. Thereafter, the applicant or licensee must provide  
75 the motor vehicle dealer's representative a reasonable period  
76 after the meeting within which to respond to the proposed  
77 chargebacks ~~charge-backs~~, with such period to be commensurate  
78 with the volume of claims under consideration, but in no case  
79 less than 45 days after the meeting. The applicant or licensee  
80 is prohibited from changing or altering the basis for each of  
81 the proposed chargebacks ~~charge-backs~~ as presented to the motor  
82 vehicle dealer's representative following the conclusion of the  
83 audit unless the applicant or licensee receives new information  
84 affecting the basis for one or more chargebacks ~~charge-backs~~ and  
85 that new information is received within 30 days after the  
86 conclusion of the timely conducted audit. If the applicant or  
87 licensee claims the existence of new information, the dealer  
88 must be given the same right to a meeting and right to respond  
89 as when the chargeback ~~charge-back~~ was originally presented.  
90 After all internal dispute resolution processes provided through  
91 the applicant or licensee have been completed, the applicant or  
92 licensee shall give written notice to the motor vehicle dealer  
93 of the final amount of its proposed chargeback ~~charge-back~~. If  
94 the dealer disputes that amount, the dealer may file a protest  
95 with the department within 30 days after receipt of the notice.

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96 If a protest is timely filed, the department shall notify the  
97 applicant or licensee of the filing of the protest, and the  
98 applicant or licensee may not take any action to recover the  
99 amount of the proposed chargeback ~~charge-back~~ until the  
100 department renders a final determination, which is not subject  
101 to further appeal, that the chargeback ~~charge-back~~ is in  
102 compliance with the provisions of this section. In any hearing  
103 pursuant to this subsection, the applicant or licensee has the  
104 burden of proof that its audit and resulting chargeback ~~charge-~~  
105 ~~back~~ are in compliance with this subsection.

106 (26) Notwithstanding the terms of any franchise agreement,  
107 including any licensee's program, policy, or procedure, the  
108 applicant or licensee has refused to allocate, sell, or deliver  
109 motor vehicles; charged back or withheld payments or other  
110 things of value for which the dealer is otherwise eligible under  
111 a sales promotion, program, or contest; prevented a motor  
112 vehicle dealer from participating in any promotion, program, or  
113 contest; or has taken or threatened to take any adverse action  
114 against a dealer, including chargebacks ~~charge-backs~~, reducing  
115 vehicle allocations, or terminating or threatening to terminate  
116 a franchise because the dealer sold or leased a motor vehicle to  
117 a customer who exported the vehicle to a foreign country or who  
118 resold the vehicle, unless the licensee proves that the dealer  
119 knew or reasonably should have known that the customer intended  
120 to export or resell the motor vehicle. There is a rebuttable  
121 presumption that the dealer neither knew nor reasonably should

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122 have known of its customer's intent to export or resell the  
123 vehicle if the vehicle is titled or registered in any state in  
124 this country. A licensee may not take any action against a motor  
125 vehicle dealer, including reducing its allocations or supply of  
126 motor vehicles to the dealer, ~~or charging back~~ to a dealer any  
127 ~~for an~~ incentive payment previously paid, unless the licensee  
128 first meets in person, by telephone, or video conference with an  
129 officer or other designated employee of the dealer. At such  
130 meeting, the licensee must provide a detailed explanation, with  
131 supporting documentation, as to the basis for its claim that the  
132 dealer knew or reasonably should have known of the customer's  
133 intent to export or resell the motor vehicle. Thereafter, the  
134 motor vehicle dealer shall have a reasonable period,  
135 commensurate with the number of motor vehicles at issue, but not  
136 less than 15 days, to respond to the licensee's claims. If,  
137 following the dealer's response and completion of all internal  
138 dispute resolution processes provided through the applicant or  
139 licensee, the dispute remains unresolved, the dealer may file a  
140 protest with the department within 30 days after receipt of a  
141 written notice from the licensee that it still intends to take  
142 adverse action against the dealer with respect to the motor  
143 vehicles still at issue. If a protest is timely filed, the  
144 department shall notify the applicant or licensee of the filing  
145 of the protest, and the applicant or licensee may not take any  
146 action adverse to the dealer until the department renders a  
147 final determination, which is not subject to further appeal,

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148 that the licensee's proposed action is in compliance with the  
149 provisions of this subsection. In any hearing pursuant to this  
150 subsection, the applicant or licensee has the burden of proof on  
151 all issues raised by this subsection. An applicant or licensee  
152 may not take any adverse action against a motor vehicle dealer  
153 because the dealer sold or leased a motor vehicle to a customer  
154 who exported the vehicle to a foreign country or who resold the  
155 vehicle unless the applicant or licensee provides written  
156 notification to the motor vehicle dealer of such resale or  
157 export within 12 months after the date the dealer sold or leased  
158 the vehicle to the customer.

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

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174       (40) Notwithstanding the terms of any franchise agreement,  
175 the applicant or licensee may not require or coerce, or attempt  
176 to require or coerce, a motor vehicle dealer to purchase goods  
177 or services from a vendor selected, identified, or designated by  
178 the applicant or licensee, or one of its parents, subsidiaries,  
179 divisions, or affiliates, by agreement, standard, policy,  
180 program, incentive provision, or otherwise, without making  
181 available to the motor vehicle dealer the option to obtain the  
182 goods or services of substantially similar design and quality  
183 from a vendor chosen by the motor vehicle dealer. If the motor  
184 vehicle dealer exercises such option, the dealer must provide  
185 written notice of its desire to use the alternative goods or  
186 services to the applicant or licensee, along with samples or  
187 clear descriptions of the alternative goods or services that the  
188 dealer desires to use. The licensee or applicant shall have the  
189 opportunity to evaluate the alternative goods or services for up  
190 to 30 days to determine whether it will provide a written  
191 approval to the motor vehicle dealer to use said alternative  
192 goods or services. Approval may not be unreasonably withheld by  
193 the applicant or licensee. If the motor vehicle dealer does not  
194 receive a response from the applicant or licensee within 30  
195 days, approval to use the alternative goods or services is  
196 deemed granted. If a dealer using alternative goods or services  
197 complies with this subsection and has received approval from the  
198 licensee or applicant, the dealer is not ineligible for all  
199 benefits described in the agreement, standard, policy, program,

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200 incentive provision, or otherwise solely for having used such  
201 alternative goods or services. As used in this subsection, the  
202 term "goods or services" is limited to such goods and services  
203 used to construct or renovate dealership facilities or furniture  
204 and fixtures at the dealership facilities. The term does not  
205 include:

206 (a) Any intellectual property of the applicant or  
207 licensee, including signage incorporating the applicant's or  
208 licensee's trademark or copyright, or facility or building  
209 materials to the extent that the applicant's or licensee's  
210 trademark is displayed thereon;

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

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

215 (d) Any good or service paid for entirely by the applicant  
216 or licensee; or

217 (e) Any applicant's or licensee's design or architectural  
218 review service.

219

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

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226           Section 2. This act applies to all franchise agreements  
227 entered into, renewed, or amended after October 1, 1988, except  
228 to the extent that such application would impair valid  
229 contractual agreements in violation of the State Constitution or  
230 the United States Constitution.

231           Section 3. If any provision of this act or its application  
232 to any person or circumstance is held invalid, the invalidity  
233 does not affect other provisions or applications of this act  
234 which can be given effect without the invalid provision or  
235 application, and to this end the provisions of this act are  
236 severable.

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

238

239

240

**T I T L E   A M E N D M E N T**

241

Remove everything before the enacting clause and insert:

242

A bill to be entitled

243

An act relating to motor vehicle manufacturer

244

licenses; amending s. 320.64, F.S.; revising

245

provisions for denial, suspension, or revocation of

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the license of a manufacturer, factory branch,

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distributor, or importer of motor vehicles; revising

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provisions for certain audits of service-related

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payments or incentive payments to a dealer by an

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applicant or licensee and the timeframe for the

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performance of such audits; defining the term

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252 "incentive"; revising provisions for denial or  
253 chargeback of claims; revising provisions that  
254 prohibit certain adverse actions against a dealer that  
255 sold or leased a motor vehicle to a customer who  
256 exported the vehicle to a foreign country or who  
257 resold the vehicle; revising conditions for taking  
258 such adverse actions; prohibiting failure to make  
259 certain payments to a motor vehicle dealer for  
260 temporary replacement vehicles under certain  
261 circumstances; prohibiting requiring or coercing a  
262 dealer to purchase goods or services from a vendor  
263 designated by the applicant or licensee unless certain  
264 conditions are met; providing procedures for approval  
265 of a dealer to purchase goods or services from a  
266 vendor not designated by the applicant or licensee;  
267 defining the term "goods or services"; providing for  
268 retroactive applicability; providing for severability;  
269 providing an effective date.