

Amendment No. sa1

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WITHDRAWN	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>	

1 Committee/Subcommittee hearing bill: Business & Professions
 2 Subcommittee
 3 Representative Trujillo offered the following:

4
 5 **Substitute Amendment for Amendment (542601) by**
 6 **Representative Trujillo (with title amendment)**

7 Remove everything after the enacting clause and insert:

8 Section 1. Present paragraph (h) of subsection (10) of
 9 section 320.64, Florida Statutes, is redesigned as paragraph (i)
 10 and amended, a new paragraph (h) is added to that subsection,
 11 and subsections (25) and (26) of that section are amended, and
 12 subsections (39) through (41), are added to that section to
 13 read:

14 320.64 Denial, suspension, or revocation of license;
 15 grounds.—A license of a licensee under s. 320.61 may be denied,
 16 suspended, or revoked within the entire state or at any specific
 17 location or locations within the state at which the applicant or

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18 licensee engages or proposes to engage in business, upon proof
 19 that the section was violated with sufficient frequency to
 20 establish a pattern of wrongdoing, and a licensee or applicant
 21 shall be liable for claims and remedies provided in ss. 320.695
 22 and 320.697 for any violation of any of the following
 23 provisions. A licensee is prohibited from committing the
 24 following acts:

25 (10)

26 (h) If an applicant or licensee offers any bonus,
 27 incentive, rebate, or other program, standard or policy that is
 28 available to a motor vehicle dealer in this state which is
 29 premised, wholly or in part, on dealer facility improvements,
 30 renovations, expansion, remodeling, alterations, or installation
 31 of signs or other image elements, a motor vehicle dealer who
 32 completes an approved facility in reliance upon such offer shall
 33 be deemed to be in full compliance with all of the applicant's
 34 or licensee's facility, sign, and image-related requirements for
 35 the duration of a 10-year period following such completion. If
 36 during the aforesaid 10-year period an applicant or licensee
 37 establishes a program, standard or policy that offers a new
 38 bonus, incentive, rebate or other benefit, a motor vehicle
 39 dealer that had completed an approved facility in reliance upon
 40 the prior program, standard or policy but does not comply with
 41 the facility, sign or image-related provisions under the new
 42 program, standard or policy, except as hereinafter provided,
 43 shall not be eligible for benefits under the facility, sign or

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44 image-related provisions of the new program, standard or policy,
 45 but shall remain entitled to all the benefits under the older
 46 program, standard or policy plus any increase in the benefits
 47 between the old and new programs, standards or policies during
 48 the remainder of the 10-year period. Nothing contained in this
 49 subsection shall in any way obviate, affect, or alter the
 50 provisions of Section 320.64(38).

51 (i) ~~(h)~~ A violation of paragraphs (b) through (h) ~~(g)~~ is not
 52 a violation of s. 320.70 and does not subject any licensee to
 53 any criminal penalty under s. 320.70.

54 (25) The applicant or licensee has undertaken or engaged
 55 in an audit of warranty, maintenance, and other service-related
 56 payments or incentive payments, including payments to a motor
 57 vehicle dealer under any licensee-issued program, policy, or
 58 other benefit, which previously have been paid to a motor
 59 vehicle dealer in violation of this section or has failed to
 60 comply with any of its obligations under s. 320.696. An
 61 applicant or licensee may reasonably and periodically audit a
 62 motor vehicle dealer to determine the validity of paid claims as
 63 provided in s. 320.696. Audits of warranty, maintenance, and
 64 other service-related payments shall be performed by an
 65 applicant or licensee only during the 12-month ~~1-year~~ period
 66 immediately following the date the claim was paid. Audits ~~Audit~~
 67 of incentive payments shall ~~only~~ be performed only during the
 68 12-month ~~for an 18-month~~ period immediately following the date
 69 the incentive was paid. As used in this section, the term

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70 "incentive" includes any bonus, incentive, or other monetary or
 71 nonmonetary thing of value. After such time periods have
 72 elapsed, all warranty, maintenance, and other service-related
 73 payments and incentive payments shall be deemed final and
 74 incontrovertible for any reason notwithstanding any otherwise
 75 applicable law, and the motor vehicle dealer shall not be
 76 subject to any charge-back or repayment. An applicant or
 77 licensee may deny a claim or, as a result of a timely conducted
 78 audit, impose a charge-back against a motor vehicle dealer for
 79 warranty, maintenance, or other service-related payments or
 80 incentive payments only if the applicant or licensee can show
 81 that the warranty, maintenance, or other service-related claim
 82 or incentive claim was false or fraudulent or that the motor
 83 vehicle dealer failed to substantially comply with the
 84 reasonable written and uniformly applied procedures of the
 85 applicant or licensee for such repairs or incentives, but only
 86 for that portion of the claim so shown. Notwithstanding the
 87 terms of any franchise agreement, guideline, program, policy, or
 88 procedure, an applicant or licensee may only deny or charge back
 89 that portion of a warranty, maintenance, or other service-
 90 related claim or incentive claim which the applicant or licensee
 91 has proven to be false or fraudulent or for which the dealer
 92 failed to substantially comply with the reasonable, written, and
 93 uniformly applied procedures of the applicant or licensee for
 94 such repairs or incentives, as set forth in this subsection. An
 95 applicant or licensee may not charge a motor vehicle dealer back

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96 subsequent to the payment of a warranty, maintenance, or
97 service-related claim or incentive claim unless, within 30 days
98 after a timely conducted audit, a representative of the
99 applicant or licensee first meets in person, by telephone, or by
100 video teleconference with an officer or employee of the dealer
101 designated by the motor vehicle dealer. At such meeting the
102 applicant or licensee must provide a detailed explanation, with
103 supporting documentation, as to the basis for each of the claims
104 for which the applicant or licensee proposed a charge-back to
105 the dealer and a written statement containing the basis upon
106 which the motor vehicle dealer was selected for audit or review.
107 Thereafter, the applicant or licensee must provide the motor
108 vehicle dealer's representative a reasonable period after the
109 meeting within which to respond to the proposed charge-backs,
110 with such period to be commensurate with the volume of claims
111 under consideration, but in no case less than 45 days after the
112 meeting. The applicant or licensee is prohibited from changing
113 or altering the basis for each of the proposed charge-backs as
114 presented to the motor vehicle dealer's representative following
115 the conclusion of the audit unless the applicant or licensee
116 receives new information affecting the basis for one or more
117 charge-backs and that new information is received within 30 days
118 after the conclusion of the timely conducted audit. If the
119 applicant or licensee claims the existence of new information,
120 the dealer must be given the same right to a meeting and right
121 to respond as when the charge-back was originally presented.

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122 After all internal dispute resolution processes provided through
123 the applicant or licensee have been completed, the applicant or
124 licensee shall give written notice to the motor vehicle dealer
125 of the final amount of its proposed charge-back. If the dealer
126 disputes that amount, the dealer may file a protest with the
127 department within 30 days after receipt of the notice. If a
128 protest is timely filed, the department shall notify the
129 applicant or licensee of the filing of the protest, and the
130 applicant or licensee may not take any action to recover the
131 amount of the proposed charge-back until the department renders
132 a final determination, which is not subject to further appeal,
133 that the charge-back is in compliance with the provisions of
134 this section. In any hearing pursuant to this subsection, the
135 applicant or licensee has the burden of proof that its audit and
136 resulting charge-back are in compliance with this subsection.

137 (26) Notwithstanding the terms of any franchise agreement,
138 including any licensee's program, policy, or procedure, the
139 applicant or licensee has refused to allocate, sell, or deliver
140 motor vehicles; charged back or withheld payments or other
141 things of value for which the dealer is otherwise eligible under
142 a sales promotion, program, or contest; prevented a motor
143 vehicle dealer from participating in any promotion, program, or
144 contest; or has taken or threatened to take any adverse action
145 against a dealer, including charge-backs, reducing vehicle
146 allocations, or terminating or threatening to terminate a
147 franchise because the dealer sold or leased a motor vehicle to a

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148 customer who exported the vehicle to a foreign country or who
149 resold the vehicle, unless the licensee proves that the dealer
150 knew or reasonably should have known that the customer intended
151 to export or resell the motor vehicle. There is a rebuttable
152 presumption that the dealer neither knew nor reasonably should
153 have known of its customer's intent to export or resell the
154 vehicle if the vehicle is titled or registered in any state in
155 this country. A licensee may not take any action against a motor
156 vehicle dealer, including reducing its allocations or supply of
157 motor vehicles to the dealer, or charging back a dealer for an
158 incentive payment previously paid, unless the licensee first
159 meets in person, by telephone, or video conference with an
160 officer or other designated employee of the dealer. At such
161 meeting, the licensee must provide a detailed explanation, with
162 supporting documentation, as to the basis for its claim that the
163 dealer knew or reasonably should have known of the customer's
164 intent to export or resell the motor vehicle. Thereafter, the
165 motor vehicle dealer shall have a reasonable period,
166 commensurate with the number of motor vehicles at issue, but not
167 less than 15 days, to respond to the licensee's claims. If,
168 following the dealer's response and completion of all internal
169 dispute resolution processes provided through the applicant or
170 licensee, the dispute remains unresolved, the dealer may file a
171 protest with the department within 30 days after receipt of a
172 written notice from the licensee that it still intends to take
173 adverse action against the dealer with respect to the motor

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174 vehicles still at issue. If a protest is timely filed, the
175 department shall notify the applicant or licensee of the filing
176 of the protest, and the applicant or licensee may not take any
177 action adverse to the dealer until the department renders a
178 final determination, which is not subject to further appeal,
179 that the licensee's proposed action is in compliance with the
180 provisions of this subsection. In any hearing pursuant to this
181 subsection, the applicant or licensee has the burden of proof on
182 all issues raised by this subsection. In addition to the
183 requirements, protections, and procedures set forth in this
184 subsection, an applicant or licensee, by agreement, program,
185 rule, policy, standard or otherwise, may not take adverse action
186 against a motor vehicle dealer, including, without limitation,
187 reducing allocations, product deliveries, or planning volumes,
188 or imposing any penalty or charge-back, because a motor vehicle
189 that was sold, leased, or delivered to a customer was resold or
190 exported more than 120 days after it was delivered to the
191 customer. If the applicant or licensee does not provide written
192 notification to the motor vehicle dealer of such resale or
193 export within 12 months of the date of the motor vehicle
194 dealer's delivery of the vehicle to the customer, the motor
195 vehicle dealer shall not be subject to any adverse action.
196 Notwithstanding the provisions of any franchise agreement,
197 program, policy, or procedure, a motor vehicle dealer's
198 franchise agreement may not be terminated, canceled,
199 discontinued, or nonrenewed by an applicant or licensee on the

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200 basis of any act related to a customer's exporting or reselling
 201 of a motor vehicle, unless the applicant or licensee proves by
 202 clear and convincing evidence before a trier of fact that the
 203 motor vehicle dealer knowingly engaged in a pattern of conduct
 204 of selling to known exporters and that the majority owner, or if
 205 there is no majority owner, the person designated as the dealer-
 206 principal or a person similarly designated in the franchise
 207 agreement, at the time the motor vehicle was sold, leased or
 208 delivered, had actual knowledge that the customer intended to
 209 export or resell the motor vehicle.

210 (39) Notwithstanding the terms of any agreement, program,
 211 incentive, bonus, policy, or rule, an applicant or licensee
 212 fails to make any payment pursuant to any of the foregoing for
 213 any temporary replacement motor vehicle loaned, rented, or
 214 provided by a motor vehicle dealer to or for its service or
 215 repair customers, even if the temporary replacement motor
 216 vehicle has been leased, rented, titled or registered to the
 217 motor vehicle dealer's rental or leasing division or an entity
 218 that is owned or controlled by the motor vehicle dealer.

219 (40) Notwithstanding the terms of any franchise agreement,
 220 the applicant or licensee has required or coerced, or attempted
 221 to require or coerce, a motor vehicle dealer to purchase goods
 222 or services from a vendor selected, identified, or designated by
 223 an applicant or licensee, or one of its parents, subsidiaries,
 224 divisions, or affiliates, by agreement, standard, policy,
 225 program, incentive provision, or otherwise, without making

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226 available to the motor vehicle dealer the option to obtain the
227 goods or services of like kind, design, and quality from a
228 vendor chosen by the motor vehicle dealer. If the motor vehicle
229 dealer exercises such option, the dealer must provide written
230 notice of its desire to use the alternative goods or services to
231 the licensee or applicant, along with samples and/or clear
232 descriptions of the alternative goods or services that the
233 dealer desires to use. The licensee or applicant shall have the
234 opportunity to evaluate the alternative good or service for up
235 to 30 days, and provide its written consent to use said good or
236 service; such consent may not be unreasonably withheld by the
237 applicant or licensee. If the motor vehicle dealer does not
238 receive a response from the applicant or licensee within the 30
239 days, consent to use the alternative goods or services shall be
240 deemed granted. Provided that the dealer complies with the terms
241 of this subsection, a dealer using such alternative goods or
242 services shall qualify and be eligible for all benefits
243 described in such agreement, standard, policy, program,
244 incentive provision, or otherwise. For purposes of this
245 subsection, the term "goods and services" are limited to such
246 goods and services used to construct or renovate dealership
247 facilities, or furniture and fixtures at the dealership
248 facilities, but shall not include: (i) any intellectual
249 property of the licensee or applicant, including without
250 limitation, to signage incorporating the licensee's or
251 applicant's trademark or copyright, any facility or building

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252 materials protected by the licensee's or applicant's trademark
 253 or trade dress rights, (ii) any special tools and training as
 254 required by the licensee or applicant, or (iii) parts to be used
 255 in repairs under warranty obligations of a licensee or
 256 applicant.

257 (41) (a) An applicant or licensee may not, by agreement,
 258 policy, program, standard, or otherwise, require a motor vehicle
 259 dealer, directly or indirectly, to advance or pay for, or to
 260 reimburse the applicant or licensee for, any costs related to
 261 the creation, development, showing, or publication in any media
 262 of any advertisement for a motor vehicle, or require a motor
 263 vehicle dealer to participate in, contribute to, affiliate with,
 264 or join a dealer advertising or marketing group, fund, pool,
 265 association, or other entity and may not take or threaten to
 266 take any adverse action against a motor vehicle dealer that
 267 refuses to join or participate in such group, fund, pool,
 268 association, or other entity. For purposes of this subsection,
 269 the term "adverse action" includes, without limitation,
 270 reduction of allocations, charging fees for a licensee's or
 271 dealer's advertising or a marketing group's advertising or
 272 marketing, termination of or threatening to terminate the motor
 273 vehicle dealer's franchise, reducing any incentive for which the
 274 motor vehicle dealer is eligible, or any action that fails to
 275 take into account the equities of the motor vehicle dealer.

276 (b) An applicant or licensee may not require a dealer to
 277 participate in, and may not preclude only a portion of its motor

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278 vehicle dealers in a designated market area from establishing, a
 279 voluntary motor vehicle dealer advertising or marketing group,
 280 fund, pool, association, or other entity. Except as provided in
 281 an agreement, when motor vehicle dealers choose to form an
 282 independent advertising or marketing group, an applicant or
 283 licensee shall not be required to fund such group.

284 (c) Nothing in this subsection shall prohibit an applicant
 285 or licensee from offering advertising or promotional materials
 286 to a motor vehicle dealer for a fee or charge, so long as the
 287 use of such advertising or promotional materials is voluntary
 288 for the motor vehicle dealer.

289
 290 A motor vehicle dealer who can demonstrate that a violation of,
 291 or failure to comply with, any of the preceding provisions by an
 292 applicant or licensee will or can adversely and pecuniarily
 293 affect the complaining dealer, shall be entitled to pursue all
 294 of the remedies, procedures, and rights of recovery available
 295 under ss. 320.695 and 320.697.

296 Section 2. This act shall apply to all franchise
 297 agreements entered into, renewed, or amended subsequent to
 298 October 1, 1988.

299 Section 3. If any provision of this act or its application
 300 to any person or circumstances is held invalid, the invalidity
 301 does not affect other provisions or applications of this act
 302 that can be given effect without the invalid provision or

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303 application, and to this end the provisions of this act are
 304 severable.

305 Section 4. This act shall take effect upon becoming a law.
 306

307 -----

308 **T I T L E A M E N D M E N T**

309 Remove everything before the enacting clause and insert:

310 A bill to be entitled

311 An act relating to motor vehicle manufacturer licenses; amending
 312 s. 320.64, F.S.; providing that a motor vehicle dealer who
 313 received approval of a facility from an applicant or licensee
 314 within a specified timeframe is deemed to be in full compliance
 315 with facility-related requirements; revising provisions relating
 316 to when an applicant or licensee has undertaken or engaged in an
 317 audit of service- related payments or incentive payments;
 318 limiting the timeframe for the performance of such audits;
 319 providing that an applicant or licensee may only deny or charge
 320 back that portion of a service-related claim or incentive claim
 321 which the applicant or licensee has proven to be false or
 322 fraudulent or for which the dealer failed to substantially
 323 comply with certain procedures; prohibiting an applicant or
 324 licensee from taking adverse action against a motor vehicle
 325 dealer because a motor vehicle sold, leased, or delivered to a
 326 customer was resold or exported after a specified period after
 327 delivery to the customer, subject to certain requirements and
 328 restrictions; prohibiting an applicant or licensee from failing

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329 to make any payment due a motor vehicle dealer that
 330 substantially complies with the terms of a certain contract
 331 between the two parties regarding reimbursement for temporary
 332 replacement vehicles under certain circumstances; allowing a
 333 motor vehicle dealer to purchase goods or services from a local
 334 vendor under certain circumstances; defining the term "goods and
 335 services"; prohibiting the applicant or licensee from failing to
 336 provide a motor vehicle dealer a written statement disclosing
 337 the identity of its approved vendor under certain circumstances
 338 and subject to certain requirements; prohibiting an applicant or
 339 licensee from requiring a motor vehicle dealer to pay for
 340 certain advertising or marketing, or to participate in or
 341 affiliate with a dealer advertising or marketing entity;
 342 providing that an applicant or licensee may not take or threaten
 343 to take any adverse action against a motor vehicle dealer who
 344 refuses to join or participate in such entity; defining the term
 345 "adverse action"; providing that an applicant or licensee may
 346 not require a dealer to participate in, and may not preclude
 347 only some of its motor vehicle dealers in a designated market
 348 area from establishing, a voluntary motor vehicle dealer
 349 advertising or marketing entity; amending s. 320.641, F.S.;
 350 specifying the circumstances under which a complainant motor
 351 vehicle dealer prevails in a certain cause of action; providing
 352 for application of this act to all existing franchise
 353 agreements; providing a severability clause; providing an
 354 effective date.

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