

1 A bill to be entitled
2 An act relating to motor vehicle manufacturers,
3 factory branches, distributors, importers, and
4 dealers; amending s. 320.64, F.S.; prohibiting certain
5 actions against a motor vehicle dealer; amending s.
6 324.021, F.S., relating to financial responsibility
7 for owning or operating a motor vehicle; revising
8 definitions; providing a limitation on liability for
9 certain owners who provide a temporary replacement
10 vehicle to a person whose motor vehicle is being
11 serviced; providing an effective date.

12
13 WHEREAS, motor vehicle manufacturers have vast control over
14 motor vehicle dealer operations, and

15 WHEREAS, at the beginning of the relationship and at
16 renewal periods determined entirely by the manufacturer, a
17 dealer must sign a contract of adhesion drafted by the
18 manufacturer and must do so generally without any negotiation,
19 and

20 WHEREAS, due to the unequal bargaining power wielded by
21 manufacturers, which has been recognized on both the state and
22 federal levels for more than the past 40 years, licensees or
23 franchisors demand, at the time of their appointment, that the
24 motor vehicle dealers provide dealership facilities in the size,
25 configuration, and appearance approved by the licensee or
26 franchiser, and such facilities require dealer investments

27 generally costing tens of millions of dollars and benefit the
28 public by their location, appearance, and good working
29 conditions for the dealer's employees, and

30 WHEREAS, without regard to the dealer's investment in an
31 approved facility, licensee-franchisers often establish new
32 facility standards or offer so-called "voluntary" incentive
33 programs for new renovations and alterations before the dealer
34 has had time to sufficiently depreciate the approved facility's
35 investment, and

36 WHEREAS, such programs, in effect, economically coerce a
37 dealer either to comply with the costly new facility demands or
38 risk not receiving the incentive and being placed at an unfair
39 competitive disadvantage which negatively affects Florida
40 consumers by, among other things, reducing competition and
41 increasing consumer costs, and

42 WHEREAS, the federal Graves Amendment has eliminated
43 liability for motor vehicle rental and leasing companies while
44 their vehicles are being operated by their customers; however,
45 motor vehicle dealers in Florida are still subjected to damages
46 for claims, demands, and suits during the time that their
47 service customers are operating temporary replacement vehicles
48 owned, but not then being operated, by the motor vehicle dealer
49 or its rental affiliate, and

50 WHEREAS, absent negligence or criminal conduct by the motor
51 vehicle dealer, subjecting motor vehicle dealers to vicarious
52 liability under the dangerous instrumentality doctrine is both

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53 | unfair and economically disadvantageous to motor vehicle dealers
 54 | and Florida consumers in that it causes dealers to suffer higher
 55 | insurance costs which they pass on to the consuming public, and
 56 | often serves to relieve the actual tortfeasor from liability,
 57 | NOW, THEREFORE,

58 |

59 | Be It Enacted by the Legislature of the State of Florida:

60 |

61 | Section 1. Subsections (26) and (38) of section 320.64,
 62 | Florida Statutes, are amended, and subsections (39) and (40) are
 63 | added to that section, to read:

64 | 320.64 Denial, suspension, or revocation of license;
 65 | grounds.—A license of a licensee under s. 320.61 may be denied,
 66 | suspended, or revoked within the entire state or at any specific
 67 | location or locations within the state at which the applicant or
 68 | licensee engages or proposes to engage in business, upon proof
 69 | that the section was violated with sufficient frequency to
 70 | establish a pattern of wrongdoing, and a licensee or applicant
 71 | shall be liable for claims and remedies provided in ss. 320.695
 72 | and 320.697 for any violation of any of the following
 73 | provisions. A licensee is prohibited from committing the
 74 | following acts:

75 | (26) Notwithstanding the terms of any franchise agreement,
 76 | including any licensee's program, policy, or procedure, the
 77 | applicant or licensee has refused to allocate, sell, or deliver
 78 | motor vehicles; charged back or withheld payments or other

79 | things of value for which the dealer is otherwise eligible under
80 | a sales promotion, program, or contest; prevented a motor
81 | vehicle dealer from participating in any promotion, program, or
82 | contest; or has taken or threatened to take any adverse action
83 | against a dealer, including charge-backs, reducing vehicle
84 | allocations, or terminating or threatening to terminate a
85 | franchise because the dealer sold or leased a motor vehicle to a
86 | customer who exported the vehicle to a foreign country or who
87 | resold the vehicle, unless the licensee proves that the dealer
88 | knew or reasonably should have known that the customer intended
89 | to export or resell the motor vehicle. There is a rebuttable
90 | presumption that the dealer neither knew nor reasonably should
91 | have known of its customer's intent to export or resell the
92 | vehicle if the vehicle is titled or registered in any state in
93 | this country. A licensee may not take any action against a motor
94 | vehicle dealer, including reducing its allocations or supply of
95 | motor vehicles to the dealer, or charging back a dealer for an
96 | incentive payment previously paid, unless the licensee first
97 | meets in person, by telephone, or video conference with an
98 | officer or other designated employee of the dealer. At such
99 | meeting, the licensee must provide a detailed explanation, with
100 | supporting documentation, as to the basis for its claim that the
101 | dealer knew or reasonably should have known of the customer's
102 | intent to export or resell the motor vehicle. Thereafter, the
103 | motor vehicle dealer shall have a reasonable period,
104 | commensurate with the number of motor vehicles at issue, but not

105 less than 15 days, to respond to the licensee's claims. If,
106 following the dealer's response and completion of all internal
107 dispute resolution processes provided through the applicant or
108 licensee, the dispute remains unresolved, the dealer may file a
109 protest with the department within 30 days after receipt of a
110 written notice from the licensee that it still intends to take
111 adverse action against the dealer with respect to the motor
112 vehicles still at issue. If a protest is timely filed, the
113 department shall notify the applicant or licensee of the filing
114 of the protest, and the applicant or licensee may not take any
115 action adverse to the dealer until the department renders a
116 final determination, which is not subject to further appeal,
117 that the licensee's proposed action is in compliance with the
118 provisions of this subsection. In any hearing pursuant to this
119 subsection, the applicant or licensee has the burden of proof on
120 all issues raised by this subsection. A licensee, by agreement,
121 program, rule, policy, standard, or otherwise, may not take
122 adverse action against a motor vehicle dealer, including,
123 without limitation, reducing allocations, product deliveries, or
124 planning volumes or imposing any monetary penalty or chargeback,
125 due to a motor vehicle being sold, leased, or delivered to a
126 customer or resold or exported unless such resale or export
127 occurred within 30 days after the date of sale, lease, or
128 delivery of such motor vehicle to the customer. A licensee may
129 not require a motor vehicle dealer in any manner to inquire of
130 any customer whether the customer taking delivery of a motor

131 vehicle will be the end user of the motor vehicle.
132 Notwithstanding the terms of any franchise agreement, a licensee
133 may not use as a basis for termination of a motor vehicle dealer
134 that one or more customers of that motor vehicle dealer resold
135 or exported a motor vehicle.

136 (38) Notwithstanding the terms of any franchise
137 agreement, the applicant or licensee has failed or refused to
138 offer a bonus, incentive, or other benefit program, in whole or
139 in part, to a dealer or dealers in this state which it offers to
140 all of its other same line-make dealers nationally or to all of
141 its other same line-make dealers in the licensee's designated
142 zone, region, or other licensee-designated area of which this
143 state is a part, unless the failure or refusal to offer the
144 program in this state is reasonably supported by substantially
145 different economic or marketing considerations than are
146 applicable to the licensee's same line-make dealers in this
147 state. For purposes of this chapter, a licensee may not
148 establish this state alone as a designated zone, region, or area
149 or any other designation for a specified territory.

150 (a) A licensee may offer a bonus, rebate, incentive, or
151 other benefit program to its dealers in this state which is
152 calculated or paid on a per vehicle basis and is related in part
153 to a dealer's ~~facility or the~~ expansion, improvement,
154 remodeling, alteration, or renovation of a dealer's existing
155 facility; however, except for a motor vehicle dealer whose
156 existing facility was required or approved by a licensee within

157 | the 10-year period before the effective date of such bonus,
158 | rebate, incentive, or other benefit program, and who shall be
159 | entitled to the facility-related portion of such bonus, rebate,
160 | incentive, or other benefit, ~~any dealer who does not comply~~
161 | with the facility-related ~~facility~~ criteria or eligibility
162 | requirements of such program is entitled to receive at least 80
163 | percent ~~a reasonable percentage~~ of the total bonus, incentive,
164 | rebate, or other benefit offered by the licensee under that
165 | program by complying with its ~~the~~ criteria or eligibility
166 | requirements that are not related ~~unrelated~~ to the dealer's
167 | facility ~~under that program. For purposes of the previous~~
168 | ~~sentence, the percentage unrelated to the facility criteria or~~
169 | ~~requirements is presumed to be "reasonable" if it is not less~~
170 | ~~than 80 percent of the total of the per vehicle bonus,~~
171 | ~~incentive, rebate, or other benefits offered under the program.~~

172 | (b) Notwithstanding the terms of any franchise agreement,
173 | an applicant or licensee, by agreement, program, incentive,
174 | bonus, rebate, standard, policy, or otherwise may not require a
175 | motor vehicle dealer to make improvements, renovations,
176 | remodeling, or alterations to its dealership facilities or to
177 | install new signs or other image elements that replace or alter
178 | the dealer's facilities, signs, or image elements that were
179 | required or approved by the licensee or applicant, or one of its
180 | common entities or affiliates, within the preceding 10 years. If
181 | a licensee, applicant, or common entity offers any bonus,
182 | incentive, rebate, or other program that is available to more

183 than one dealer in this state and is premised, wholly or in
184 part, on dealer facility improvements, renovations, expansion,
185 remodeling, or alterations or installation of signs or other
186 image elements, a motor vehicle dealer whose existing
187 facilities, signs, or other image elements were required or
188 approved by the licensee or applicant within 10 years preceding
189 the effective date thereof is deemed to be in full compliance
190 with such program's facilities-related eligibility requirements
191 for the duration of that 10-year period, whether or not the
192 dealer makes the facility improvements, remodeling, expansion,
193 renovations, or alterations. This paragraph does not apply to a
194 program under which a licensee offers to pay a lump sum payment
195 to assist dealers in making facility improvements or to pay for
196 signs or image elements when such payments are not calculated or
197 paid on a per-vehicle or unit-volume basis, and does not apply
198 to any letter of intent or any expansion, improvement,
199 alteration, remodeling, or renovation being implemented by a
200 dealer on the effective date of this paragraph.

201 (39) Notwithstanding the terms of any franchise agreement,
202 the applicant or licensee:

203 (a) Required or coerced, or attempted to require or
204 coerce, a motor vehicle dealer to purchase goods or services
205 from a vendor selected, identified, or designated by the
206 applicant or licensee, or one of its affiliates, by agreement,
207 standard, policy, program, incentive provision, or otherwise
208 without making available to the motor vehicle dealer the option

209 to obtain the goods or services of substantially similar design
210 and quality from a vendor chosen by the motor vehicle dealer. If
211 the dealer exercises such option, the dealer will qualify and be
212 eligible for all benefits described in such agreement, program,
213 or incentive. For purposes of this paragraph, the term "goods"
214 does not include material subject to intellectual property
215 rights of, or special tools and training as required by, the
216 licensee or applicant, or parts to be used in repairs under
217 warranty obligations of a licensee or applicant.

218 (b) Failed to provide written notice to a motor vehicle
219 dealer of the dealer's rights under paragraph (a) when requiring
220 the dealer to purchase goods or services from a vendor selected,
221 identified, or designated by the licensee or applicant.

222 (c) Failed to provide to a motor vehicle dealer, when the
223 applicant or licensee claims that a vendor chosen by the motor
224 vehicle dealer cannot supply goods and services of substantially
225 similar design and quality pursuant to paragraph (a), a written
226 statement disclosing the identity of the vendor selected,
227 identified, or designated by the licensee or applicant and
228 stating:

229 1. Whether the licensee or applicant, or one of its
230 affiliates, or any officer, director, or employee of the
231 applicant or licensee, has an ownership interest, actual or
232 beneficial, in the vendor and, if so, the percentage of the
233 ownership interest;

234 2. Whether the licensee or applicant, or one of its

235 affiliates, has an agreement or arrangement by which the vendor
236 pays to the licensee or applicant, or one of its affiliates or
237 common entity, or any officer, director, or employee of the
238 applicant or licensee any compensation and, if so, the basis and
239 amount of the compensation to be paid as a result of any
240 purchases by the motor vehicle dealer or any motor vehicle
241 dealer in the state that has made any similar purchases; and

242 3. Whether the compensation is to be paid by direct
243 payment by the vendor or by credit from the vendor for the
244 benefit of the recipient.

245
246 If the notice required under this paragraph discloses such an
247 ownership interest or any such compensation, that program or
248 incentive shall increase the dealer's benefits by the amount of
249 a pro rata share of such compensation or fair market value of
250 such ownership.

251 (d) Failed to provide to a motor vehicle dealer, if the
252 goods and services to be supplied to the dealer by a vendor
253 selected, identified, or designated by the applicant or licensee
254 are signs of other image elements to be leased to the motor
255 vehicle dealer, the right to purchase the signs or other image
256 elements of like kind and quality from a vendor selected by the
257 motor vehicle dealer. If the vendor selected by the applicant or
258 licensee is the only available vendor, the motor vehicle dealer
259 must be given the opportunity to purchase the signs or other
260 image elements at a price substantially similar to the

261 capitalized lease costs thereof. This paragraph does not allow a
262 motor vehicle dealer to impair or eliminate the intellectual
263 property rights of the applicant or licensee, and does not
264 permit a motor vehicle dealer to erect or maintain signs that do
265 not conform to the intellectual property usage guidelines of the
266 applicant or licensee.

267 (40) Has, in any manner, by agreement, policy, program,
268 standard, or otherwise, required a motor vehicle dealer to
269 participate in, contribute to, affiliate with, or join a dealer
270 advertising or marketing group, fund, pool, association, or
271 other entity, or, in any manner, taken or threatened to take any
272 adverse action against a motor vehicle dealer who refuses to
273 join or participate in such group, fund, pool, association, or
274 other entity. The term "adverse action" includes, without
275 limitation, reduction of allocations, charging fees for a
276 licensee's or dealer advertising or marketing group's
277 advertising or marketing, termination or threatening to
278 terminate the motor vehicle dealer, reducing any incentive or
279 bonus for which the motor vehicle dealer is eligible, or any
280 action that fails to take into account the interests of a motor
281 vehicle dealer.

282
283 A motor vehicle dealer who can demonstrate that a violation of,
284 or failure to comply with, any of the preceding provisions by an
285 applicant or licensee will or can adversely and pecuniarily
286 affect the complaining dealer, shall be entitled to pursue all

287 of the remedies, procedures, and rights of recovery available
 288 under ss. 320.695 and 320.697.

289 Section 2. Paragraph (c) of subsection (9) of section
 290 324.021, Florida Statutes, is amended to read:

291 324.021 Definitions; minimum insurance required.—The
 292 following words and phrases when used in this chapter shall, for
 293 the purpose of this chapter, have the meanings respectively
 294 ascribed to them in this section, except in those instances
 295 where the context clearly indicates a different meaning:

296 (9) OWNER; OWNER/LESSOR.—

297 (c) Application.—

298 1. The limits on liability in subparagraphs (b)2. and 3.
 299 do not apply to an owner of motor vehicles that are used for
 300 commercial activity in the owner's ordinary course of business,
 301 other than a rental company that rents or leases motor vehicles.
 302 For purposes of this paragraph, the term "rental company"
 303 includes only an entity that is engaged in the business of
 304 renting or leasing motor vehicles to the general public and that
 305 rents or leases a majority of its motor vehicles to persons with
 306 no direct or indirect affiliation with the rental company. The
 307 term also includes a motor vehicle dealer that provides
 308 temporary replacement vehicles to its customers ~~for up to 10~~
 309 ~~days~~. The term "rental company" also includes:

310 a. A related rental or leasing company that is a
 311 subsidiary of the same parent company as that of the renting or
 312 leasing company that rented or leased the vehicle.

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313 b. The holder of a motor vehicle title or an equity
314 interest in a motor vehicle title if the title or equity
315 interest is held pursuant to or to facilitate an asset-backed
316 securitization of a fleet of motor vehicles used solely in the
317 business of renting or leasing motor vehicles to the general
318 public and under the dominion and control of a rental company,
319 as described in this subparagraph, in the operation of such
320 rental company's business.

321 2. Furthermore, with respect to commercial motor vehicles
322 as defined in s. 627.732, the limits on liability in
323 subparagraphs (b)2. and 3. do not apply if, at the time of the
324 incident, the commercial motor vehicle is being used in the
325 transportation of materials found to be hazardous for the
326 purposes of the Hazardous Materials Transportation Authorization
327 Act of 1994, as amended, 49 U.S.C. ss. 5101 et seq., and that is
328 required pursuant to such act to carry placards warning others
329 of the hazardous cargo, unless at the time of lease or rental
330 either:

331 a. The lessee indicates in writing that the vehicle will
332 not be used to transport materials found to be hazardous for the
333 purposes of the Hazardous Materials Transportation Authorization
334 Act of 1994, as amended, 49 U.S.C. ss. 5101 et seq.; or

335 b. The lessee or other operator of the commercial motor
336 vehicle has in effect insurance with limits of at least
337 \$5,000,000 combined property damage and bodily injury liability.

338 3. A motor vehicle dealer that provides a temporary

339 replacement vehicle at no charge to a person whose vehicle is
340 being repaired, serviced, or adjusted by the dealer, or any
341 rental or leasing affiliate of the dealer which rents or
342 provides a temporary replacement vehicle to a service customer
343 of the dealer, is not liable, vicariously or otherwise, by
344 reason of being the owner of the temporary replacement vehicle
345 for harm to persons or property that arises out of the use,
346 operation, or possession of the temporary replacement vehicle
347 while the vehicle is used, operated, or controlled by or in the
348 possession of the motor vehicle dealer's service customer, or
349 such customer's designee, if there is no negligence or criminal
350 wrongdoing on the part of the temporary replacement motor
351 vehicle's owner. For purposes of this section, and
352 notwithstanding any other provision of law, it is not negligent,
353 and negligence may not be deemed, inferred, or found, for a
354 motor vehicle dealer to give possession, control, or use of a
355 temporary replacement vehicle to a motor vehicle dealer's
356 customer, if the motor vehicle dealer obtains the driver license
357 and insurance information from the customer or the customer's
358 designee. Any subsequent determination that the driver license
359 or insurance information provided to the motor vehicle dealer
360 was in any way false, fraudulent, misleading, or invalid does
361 not alter the protections provided by this section, unless the
362 motor vehicle dealer had actual knowledge of the false,
363 fraudulent, misleading, or invalid information. For purposes of
364 this section, the term "motor vehicle dealer" includes any

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365 | rental or leasing affiliate owned or controlled by such motor
366 | vehicle dealer.

367 | Section 3. This act shall take effect July 1, 2015.