

1 A bill to be entitled
2 An act relating to motor vehicle manufacturer
3 licenses; amending s. 320.64, F.S.; revising
4 provisions for denial, suspension, or revocation of
5 the license of a manufacturer, factory branch,
6 distributor, or importer of motor vehicles; providing
7 requirements for incentive payments made to motor
8 vehicle dealers for making certain changes or
9 additions to a dealer's facility or signage; providing
10 applicability; revising provisions for certain audits
11 of service-related payments or incentive payments to a
12 dealer by an applicant or licensee and the timeframe
13 for the performance of such audits; defining the term
14 "incentive"; revising provisions for denial or
15 chargeback of claims; revising provisions that
16 prohibit certain adverse actions against a dealer that
17 sold or leased a motor vehicle to a customer who
18 exported the vehicle to a foreign country or who
19 resold the vehicle; revising conditions for taking
20 such adverse actions; prohibiting failure to make
21 certain payments to a motor vehicle dealer for
22 temporary replacement vehicles under certain
23 circumstances; prohibiting requiring or coercing a
24 dealer to purchase goods or services from a vendor
25 designated by the applicant or licensee unless certain
26 conditions are met; providing procedures for approval

27 of a dealer to purchase goods or services from a
28 vendor not designated by the applicant or licensee;
29 defining the term "goods or services"; prohibiting an
30 applicant or licensee from requiring a motor vehicle
31 dealer to pay for certain advertising or marketing, or
32 to participate in or affiliate with a dealer
33 advertising or marketing entity; prohibiting an
34 applicant or licensee from taking or threatening to
35 take any adverse action against a motor vehicle dealer
36 who refuses to join or participate in such entity;
37 defining the term "adverse action"; providing that an
38 applicant or licensee may not require a dealer to
39 participate in, or may not preclude its motor vehicle
40 dealers in a designated market area from establishing,
41 a voluntary motor vehicle dealer advertising or
42 marketing entity; providing that an applicant or
43 licensee is not required to fund such an entity under
44 certain circumstances; providing for retroactive
45 applicability; providing for severability; providing
46 an effective date.

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

49
50 Section 1. Paragraph (h) of subsection (10) of section
51 320.64, Florida Statutes, is amended and redesignated as
52 paragraph (i), a new paragraph (h) is added to that subsection,

53 subsections (25) and (26) are amended, and subsections (39),
 54 (40), and (41) are added to that section, to read:

55 320.64 Denial, suspension, or revocation of license;
 56 grounds.—A license of a licensee under s. 320.61 may be denied,
 57 suspended, or revoked within the entire state or at any specific
 58 location or locations within the state at which the applicant or
 59 licensee engages or proposes to engage in business, upon proof
 60 that the section was violated with sufficient frequency to
 61 establish a pattern of wrongdoing, and a licensee or applicant
 62 shall be liable for claims and remedies provided in ss. 320.695
 63 and 320.697 for any violation of any of the following
 64 provisions. A licensee is prohibited from committing the
 65 following acts:

66 (10)

67 (h) If an applicant or licensee establishes a program,
 68 standard, or policy that offers a bonus, incentive, rebate, or
 69 other benefit that is available to a motor vehicle dealer in
 70 this state and that is premised, wholly or in part, on dealer
 71 facility improvements, renovations, expansions, remodeling, or
 72 alterations or installation of signs or other image elements, a
 73 motor vehicle dealer who completes an approved change to or
 74 installation on the facility in reliance upon such program,
 75 standard, or policy is deemed to be in full compliance with all
 76 of the applicant's or licensee's requirements related to the
 77 facility, sign, and image for a 10-year period following such
 78 completion. If, during the 10-year period, the applicant or

79 licensee establishes a new program, standard, or policy related
 80 to facility, sign, or image requirements that offers a new
 81 bonus, incentive, rebate, or other benefit, a motor vehicle
 82 dealer that completed an approved facility in reliance upon the
 83 prior program, standard, or policy but does not comply with the
 84 new program, standard, or policy is not eligible for benefits
 85 under provisions related to the facility, sign, or image of the
 86 new program, standard, or policy but shall remain entitled to
 87 all benefits under the older program, standard, or policy, in
 88 addition to any increase in benefits between the old and new
 89 programs, standards, or policies during the remainder of the 10-
 90 year period. This subsection does not obviate, affect, or alter
 91 the any provision of subsection (38).

92 (i)~~(h)~~ A violation of paragraphs (b)-(h) ~~(b) through (g)~~
 93 is not a violation of s. 320.70 and does not subject any
 94 licensee to any criminal penalty under s. 320.70.

95 (25) The applicant or licensee has undertaken or engaged
 96 in an audit of warranty, maintenance, and other service-related
 97 payments or incentive payments, including payments to a motor
 98 vehicle dealer under any licensee-issued program, policy, or
 99 other benefit, which were previously ~~have been~~ paid to a motor
 100 vehicle dealer in violation of this section or has failed to
 101 comply with any of its obligations under s. 320.696. An
 102 applicant or licensee may reasonably and periodically audit a
 103 motor vehicle dealer to determine the validity of paid claims as
 104 provided in s. 320.696. Audits of warranty, maintenance, and

105 other service-related payments shall be performed by an
 106 applicant or licensee only during the 12-month ~~1-year~~ period
 107 immediately following the date the claim was paid. ~~Audits~~ Audit
 108 of incentive payments shall ~~only~~ be performed only during the
 109 12-month ~~for an 18-month~~ period immediately following the date
 110 the incentive was paid. As used in this section, the term
 111 "incentive" includes any bonus, incentive, or other monetary or
 112 nonmonetary consideration. After such time periods have elapsed,
 113 all warranty, maintenance, and other service-related payments
 114 and incentive payments shall be deemed final and
 115 incontrovertible for any reason notwithstanding any otherwise
 116 applicable law, and the motor vehicle dealer shall not be
 117 subject to any chargeback ~~charge-back~~ or repayment. An applicant
 118 or licensee may deny a claim or, as a result of a timely
 119 conducted audit, impose a chargeback ~~charge-back~~ against a motor
 120 vehicle dealer for warranty, maintenance, or other service-
 121 related payments or incentive payments only if the applicant or
 122 licensee can show that the warranty, maintenance, or other
 123 service-related claim or incentive claim was false or fraudulent
 124 or that the motor vehicle dealer failed to substantially comply
 125 with the reasonable written and uniformly applied procedures of
 126 the applicant or licensee for such repairs or incentives, but
 127 only for that portion of the claim so shown. Notwithstanding the
 128 terms of any franchise agreement, guideline, program, policy, or
 129 procedure, an applicant or licensee may deny or charge back only
 130 that portion of a warranty, maintenance, or other service-

131 related claim or incentive claim which the applicant or licensee
 132 has proven to be false or fraudulent or for which the dealer
 133 failed to substantially comply with the reasonable written and
 134 uniformly applied procedures of the applicant or licensee for
 135 such repairs or incentives, as set forth in this subsection. An
 136 applicant or licensee may not charge back a motor vehicle dealer
 137 ~~back~~ subsequent to the payment of a warranty, maintenance, or
 138 service-related claim or incentive claim unless, within 30 days
 139 after a timely conducted audit, a representative of the
 140 applicant or licensee first meets in person, by telephone, or by
 141 video teleconference with an officer or employee of the dealer
 142 designated by the motor vehicle dealer. At such meeting the
 143 applicant or licensee must provide a detailed explanation, with
 144 supporting documentation, as to the basis for each of the claims
 145 for which the applicant or licensee proposed a chargeback
 146 ~~charge-back~~ to the dealer and a written statement containing the
 147 basis upon which the motor vehicle dealer was selected for audit
 148 or review. Thereafter, the applicant or licensee must provide
 149 the motor vehicle dealer's representative a reasonable period
 150 after the meeting within which to respond to the proposed
 151 chargebacks ~~charge-backs~~, with such period to be commensurate
 152 with the volume of claims under consideration, but in no case
 153 less than 45 days after the meeting. The applicant or licensee
 154 is prohibited from changing or altering the basis for each of
 155 the proposed chargebacks ~~charge-backs~~ as presented to the motor
 156 vehicle dealer's representative following the conclusion of the

157 | audit unless the applicant or licensee receives new information
158 | affecting the basis for one or more chargebacks ~~charge-backs~~ and
159 | that new information is received within 30 days after the
160 | conclusion of the timely conducted audit. If the applicant or
161 | licensee claims the existence of new information, the dealer
162 | must be given the same right to a meeting and right to respond
163 | as when the chargeback ~~charge-back~~ was originally presented.
164 | After all internal dispute resolution processes provided through
165 | the applicant or licensee have been completed, the applicant or
166 | licensee shall give written notice to the motor vehicle dealer
167 | of the final amount of its proposed chargeback ~~charge-back~~. If
168 | the dealer disputes that amount, the dealer may file a protest
169 | with the department within 30 days after receipt of the notice.
170 | If a protest is timely filed, the department shall notify the
171 | applicant or licensee of the filing of the protest, and the
172 | applicant or licensee may not take any action to recover the
173 | amount of the proposed chargeback ~~charge-back~~ until the
174 | department renders a final determination, which is not subject
175 | to further appeal, that the chargeback ~~charge-back~~ is in
176 | compliance with the provisions of this section. In any hearing
177 | pursuant to this subsection, the applicant or licensee has the
178 | burden of proof that its audit and resulting chargeback ~~charge-~~
179 | ~~back~~ are in compliance with this subsection.

180 | (26) Notwithstanding the terms of any franchise agreement,
181 | including any licensee's program, policy, or procedure, the
182 | applicant or licensee has refused to allocate, sell, or deliver

183 motor vehicles; charged back or withheld payments or other
184 things of value for which the dealer is otherwise eligible under
185 a sales promotion, program, or contest; prevented a motor
186 vehicle dealer from participating in any promotion, program, or
187 contest; or has taken or threatened to take any adverse action
188 against a dealer, including chargebacks ~~charge-backs~~, reducing
189 vehicle allocations, or terminating or threatening to terminate
190 a franchise because the dealer sold or leased a motor vehicle to
191 a customer who exported the vehicle to a foreign country or who
192 resold the vehicle, unless the licensee proves that the dealer
193 knew or reasonably should have known that the customer intended
194 to export or resell the motor vehicle. There is a rebuttable
195 presumption that the dealer neither knew nor reasonably should
196 have known of its customer's intent to export or resell the
197 vehicle if the vehicle is titled or registered in any state in
198 this country. A licensee may not take any action against a motor
199 vehicle dealer, including reducing its allocations or supply of
200 motor vehicles to the dealer, ~~or charging back to a dealer~~ any
201 ~~for an~~ incentive payment previously paid, unless the licensee
202 first meets in person, by telephone, or video conference with an
203 officer or other designated employee of the dealer. At such
204 meeting, the licensee must provide a detailed explanation, with
205 supporting documentation, as to the basis for its claim that the
206 dealer knew or reasonably should have known of the customer's
207 intent to export or resell the motor vehicle. Thereafter, the
208 motor vehicle dealer shall have a reasonable period,

209 commensurate with the number of motor vehicles at issue, but not
210 less than 15 days, to respond to the licensee's claims. If,
211 following the dealer's response and completion of all internal
212 dispute resolution processes provided through the applicant or
213 licensee, the dispute remains unresolved, the dealer may file a
214 protest with the department within 30 days after receipt of a
215 written notice from the licensee that it still intends to take
216 adverse action against the dealer with respect to the motor
217 vehicles still at issue. If a protest is timely filed, the
218 department shall notify the applicant or licensee of the filing
219 of the protest, and the applicant or licensee may not take any
220 action adverse to the dealer until the department renders a
221 final determination, which is not subject to further appeal,
222 that the licensee's proposed action is in compliance with the
223 provisions of this subsection. In any hearing pursuant to this
224 subsection, the applicant or licensee has the burden of proof on
225 all issues raised by this subsection. An applicant or licensee
226 may not take any adverse action against a motor vehicle dealer
227 because the dealer sold or leased a motor vehicle to a customer
228 who exported the vehicle to a foreign country or who resold the
229 vehicle unless the applicant or licensee provides written
230 notification to the motor vehicle dealer of such resale or
231 export within 12 months after the date the dealer sold or leased
232 the vehicle to the customer.

233 (39) Notwithstanding any agreement, program, incentive,
234 bonus, policy, or rule, an applicant or licensee may not fail to

235 make any payment pursuant to any agreement, program, incentive,
236 bonus, policy, or rule for any temporary replacement motor
237 vehicle loaned, rented, or provided by a motor vehicle dealer to
238 or for its service or repair customers, even if the temporary
239 replacement motor vehicle has been leased, rented, titled, or
240 registered to the motor vehicle dealer's rental or leasing
241 division or an entity that is owned or controlled by the motor
242 vehicle dealer, provided that the motor vehicle dealer or its
243 rental or leasing division or entity complies with the written
244 and uniformly enforced vehicle eligibility, use, and reporting
245 requirements specified by the applicant or licensee in its
246 agreement, program, policy, bonus, incentive, or rule relating
247 to loaner vehicles.

248 (40) Notwithstanding the terms of any franchise agreement,
249 the applicant or licensee may not require or coerce, or attempt
250 to require or coerce, a motor vehicle dealer to purchase goods
251 or services from a vendor selected, identified, or designated by
252 the applicant or licensee, or one of its parents, subsidiaries,
253 divisions, or affiliates, by agreement, standard, policy,
254 program, incentive provision, or otherwise, without making
255 available to the motor vehicle dealer the option to obtain the
256 goods or services of substantially similar design and quality
257 from a vendor chosen by the motor vehicle dealer. If the motor
258 vehicle dealer exercises such option, the dealer must provide
259 written notice of its desire to use the alternative goods or
260 services to the applicant or licensee, along with samples or

261 clear descriptions of the alternative goods or services that the
262 dealer desires to use. The licensee or applicant shall have the
263 opportunity to evaluate the alternative goods or services for up
264 to 30 days to determine whether it will provide a written
265 approval to the motor vehicle dealer to use said alternative
266 goods or services. Approval may not be unreasonably withheld by
267 the applicant or licensee. If the motor vehicle dealer does not
268 receive a response from the applicant or licensee within 30
269 days, approval to use the alternative goods or services is
270 deemed granted. If a dealer using alternative goods or services
271 complies with this subsection and has received approval from the
272 licensee or applicant, the dealer is not ineligible for all
273 benefits described in the agreement, standard, policy, program,
274 incentive provision, or otherwise solely for having used such
275 alternative goods or services. As used in this subsection, the
276 term "goods or services" is limited to such goods and services
277 used to construct or renovate dealership facilities or furniture
278 and fixtures at the dealership facilities. The term does not
279 include:

280 (a) Any intellectual property of the applicant or
281 licensee, including signage incorporating the applicant's or
282 licensee's trademark or copyright, or facility or building
283 materials to the extent that the applicant's or licensee's
284 trademark is displayed thereon;

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

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

289 (d) Any good or service paid for entirely by the applicant
 290 or licensee; or

291 (e) Any applicant's or licensee's design or architectural
 292 review service.

293 (41) (a) The applicant or licensee, by agreement, policy,
 294 program, standard, or otherwise, may not require a motor vehicle
 295 dealer, directly or indirectly, to advance or pay or reimburse
 296 the applicant or licensee for any costs related to the creation,
 297 development, showing, placement, or publication in any media of
 298 any advertisement for a motor vehicle; require a motor vehicle
 299 dealer to participate in, contribute to, affiliate with, or join
 300 a dealer advertising or marketing group, fund, pool,
 301 association, or other entity; or take or threaten to take any
 302 adverse action against a motor vehicle dealer that refuses to
 303 join or participate in such group, fund, pool, association, or
 304 other entity. As used in this subsection, the term "adverse
 305 action" includes, but is not limited to, reducing allocations,
 306 charging fees for a licensee's or dealer's advertising or a
 307 marketing group's advertising or marketing, terminating or
 308 threatening to terminate the motor vehicle dealer's franchise
 309 agreement, reducing any incentive for which the motor vehicle
 310 dealer is eligible, or engaging in any action that fails to take
 311 into account the equities of the motor vehicle dealer.

312 (b) The applicant or licensee may not require a dealer to

313 participate in or preclude a number of its motor vehicle dealers
314 in a designated market area from establishing a voluntary motor
315 vehicle dealer advertising or marketing group, fund, pool,
316 association, or other entity. Except as provided in an
317 agreement, if a motor vehicle dealer chooses to form an
318 independent advertising or marketing group, the applicant or
319 licensee is not required to fund such group.

320 (c) This subsection does not prohibit an applicant or
321 licensee from offering advertising or promotional materials to a
322 motor vehicle dealer for a fee or charge, if the use of such
323 advertising or promotional materials is voluntary for the motor
324 vehicle dealer.

325
326 A motor vehicle dealer who can demonstrate that a violation of,
327 or failure to comply with, any of the preceding provisions by an
328 applicant or licensee will or can adversely and pecuniarily
329 affect the complaining dealer, shall be entitled to pursue all
330 of the remedies, procedures, and rights of recovery available
331 under ss. 320.695 and 320.697.

332 Section 2. This act applies to all franchise agreements
333 entered into, renewed, or amended after October 1, 1988, except
334 to the extent that such application would impair valid
335 contractual agreements in violation of the State Constitution or
336 the United States Constitution.

337 Section 3. If any provision of this act or its application
338 to any person or circumstance is held invalid, the invalidity

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339 | does not affect other provisions or applications of this act
340 | which can be given effect without the invalid provision or
341 | application, and to this end the provisions of this act are
342 | severable.

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