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2016 Legislature

1
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; revising
7 provisions for certain audits of service-related
8 payments or incentive payments to a dealer by an
9 applicant or licensee and the timeframe for the
10 performance of such audits; defining the term
11 "incentive"; revising provisions for denial or
12 chargeback of claims; revising provisions that
13 prohibit certain adverse actions against a dealer that
14 sold or leased a motor vehicle to a customer who
15 exported the vehicle to a foreign country or who
16 resold the vehicle; revising conditions for taking
17 such adverse actions; prohibiting failure to make
18 certain payments to a motor vehicle dealer for
19 temporary replacement vehicles under certain
20 circumstances; prohibiting requiring or coercing a
21 dealer to purchase goods or services from a vendor
22 designated by the applicant or licensee unless certain
23 conditions are met; providing procedures for approval
24 of a dealer to purchase goods or services from a
25 vendor not designated by the applicant or licensee;
26 defining the term "goods or services"; creating s.



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27 | 320.646, F.S.; defining the terms "consumer data" and
28 | "data management system"; requiring that a licensee or
29 | a third party comply with certain restrictions on
30 | reuse or disclosure of consumer data received from a
31 | motor vehicle dealer; requiring that such person
32 | provide a written statement to the motor vehicle
33 | dealer delineating the established procedures adopted
34 | by the person which meet or exceed certain
35 | requirements to safeguard consumer data; requiring
36 | that upon request of a motor vehicle dealer a licensee
37 | provide a list of the consumer data obtained and all
38 | persons to whom any of the data has been disclosed,
39 | subject to certain requirements; prohibiting a
40 | licensee from requiring a motor vehicle dealer to
41 | grant the licensee or third party access to the
42 | dealer's data management system; requiring a licensee
43 | to permit a motor vehicle dealer to furnish consumer
44 | data in a widely accepted file format and through a
45 | third-party vendor selected by the motor vehicle
46 | dealer; authorizing a licensee to access or obtain
47 | consumer data from a motor vehicle dealer's data
48 | management system with the dealer's express written
49 | consent, subject to certain requirements; requiring
50 | the licensee to indemnify the motor vehicle dealer for
51 | certain claims or damages; providing that a person
52 | bringing a specified cause of action for certain



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53 | violations must meet certain requirements; reenacting
54 | s. 320.6992, F.S., relating to the provisions that
55 | apply to established systems of distribution of motor
56 | vehicles in this state, to incorporate s. 320.646,
57 | F.S., as created by the act, in a reference thereto;
58 | providing an effective date.

59

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

61

62 | Section 1. Subsections (25) and (26) of section 320.64,
63 | Florida Statutes, are amended, and subsections (39) and (40) are
64 | added to that section, to read:

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

76 | (25) The applicant or licensee has undertaken or engaged
77 | in an audit of warranty, maintenance, and other service-related
78 | payments or incentive payments, including payments to a motor



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79 | vehicle dealer under any licensee-issued program, policy, or
80 | other benefit, which were previously ~~have been~~ paid to a motor
81 | vehicle dealer in violation of this section or has failed to
82 | comply with any of its obligations under s. 320.696. An
83 | applicant or licensee may reasonably and periodically audit a
84 | motor vehicle dealer to determine the validity of paid claims as
85 | provided in s. 320.696. Audits of warranty, maintenance, and
86 | other service-related payments shall be performed by an
87 | applicant or licensee only during the 12-month ~~1-year~~ period
88 | immediately following the date the claim was paid. Audits ~~Audit~~
89 | of incentive payments shall ~~only~~ be performed only during the
90 | 12-month ~~for an 18-month~~ period immediately following the date
91 | the incentive was paid. As used in this section, the term
92 | "incentive" includes any bonus, incentive, or other monetary or
93 | nonmonetary consideration. After such time periods have elapsed,
94 | all warranty, maintenance, and other service-related payments
95 | and incentive payments shall be deemed final and
96 | incontrovertible for any reason notwithstanding any otherwise
97 | applicable law, and the motor vehicle dealer shall not be
98 | subject to any chargeback ~~charge-back~~ or repayment. An applicant
99 | or licensee may deny a claim or, as a result of a timely
100 | conducted audit, impose a chargeback ~~charge-back~~ against a motor
101 | vehicle dealer for warranty, maintenance, or other service-
102 | related payments or incentive payments only if the applicant or
103 | licensee can show that the warranty, maintenance, or other
104 | service-related claim or incentive claim was false or fraudulent



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105 or that the motor vehicle dealer failed to substantially comply
106 with the reasonable written and uniformly applied procedures of
107 the applicant or licensee for such repairs or incentives, but
108 only for that portion of the claim so shown. Notwithstanding the
109 terms of any franchise agreement, guideline, program, policy, or
110 procedure, an applicant or licensee may deny or charge back only
111 that portion of a warranty, maintenance, or other service-
112 related claim or incentive claim which the applicant or licensee
113 has proven to be false or fraudulent or for which the dealer
114 failed to substantially comply with the reasonable written and
115 uniformly applied procedures of the applicant or licensee for
116 such repairs or incentives, as set forth in this subsection. An
117 applicant or licensee may not charge back a motor vehicle dealer
118 ~~back~~ subsequent to the payment of a warranty, maintenance, or
119 service-related claim or incentive claim unless, within 30 days
120 after a timely conducted audit, a representative of the
121 applicant or licensee first meets in person, by telephone, or by
122 video teleconference with an officer or employee of the dealer
123 designated by the motor vehicle dealer. At such meeting the
124 applicant or licensee must provide a detailed explanation, with
125 supporting documentation, as to the basis for each of the claims
126 for which the applicant or licensee proposed a chargeback
127 ~~charge-back~~ to the dealer and a written statement containing the
128 basis upon which the motor vehicle dealer was selected for audit
129 or review. Thereafter, the applicant or licensee must provide
130 the motor vehicle dealer's representative a reasonable period



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131 after the meeting within which to respond to the proposed
132 chargebacks ~~charge-backs~~, with such period to be commensurate
133 with the volume of claims under consideration, but in no case
134 less than 45 days after the meeting. The applicant or licensee
135 is prohibited from changing or altering the basis for each of
136 the proposed chargebacks ~~charge-backs~~ as presented to the motor
137 vehicle dealer's representative following the conclusion of the
138 audit unless the applicant or licensee receives new information
139 affecting the basis for one or more chargebacks ~~charge-backs~~ and
140 that new information is received within 30 days after the
141 conclusion of the timely conducted audit. If the applicant or
142 licensee claims the existence of new information, the dealer
143 must be given the same right to a meeting and right to respond
144 as when the chargeback ~~charge-back~~ was originally presented.
145 After all internal dispute resolution processes provided through
146 the applicant or licensee have been completed, the applicant or
147 licensee shall give written notice to the motor vehicle dealer
148 of the final amount of its proposed chargeback ~~charge-back~~. If
149 the dealer disputes that amount, the dealer may file a protest
150 with the department within 30 days after receipt of the notice.
151 If a protest is timely filed, the department shall notify the
152 applicant or licensee of the filing of the protest, and the
153 applicant or licensee may not take any action to recover the
154 amount of the proposed chargeback ~~charge-back~~ until the
155 department renders a final determination, which is not subject
156 to further appeal, that the chargeback ~~charge-back~~ is in



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157 compliance with the provisions of this section. In any hearing
158 pursuant to this subsection, the applicant or licensee has the
159 burden of proof that its audit and resulting chargeback ~~charge-~~
160 ~~back~~ are in compliance with this subsection.

161 (26) Notwithstanding the terms of any franchise agreement,
162 including any licensee's program, policy, or procedure, the
163 applicant or licensee has refused to allocate, sell, or deliver
164 motor vehicles; charged back or withheld payments or other
165 things of value for which the dealer is otherwise eligible under
166 a sales promotion, program, or contest; prevented a motor
167 vehicle dealer from participating in any promotion, program, or
168 contest; or has taken or threatened to take any adverse action
169 against a dealer, including chargebacks ~~charge-backs~~, reducing
170 vehicle allocations, or terminating or threatening to terminate
171 a franchise because the dealer sold or leased a motor vehicle to
172 a customer who exported the vehicle to a foreign country or who
173 resold the vehicle, unless the licensee proves that the dealer
174 knew or reasonably should have known that the customer intended
175 to export or resell the motor vehicle. There is a rebuttable
176 presumption that the dealer neither knew nor reasonably should
177 have known of its customer's intent to export or resell the
178 vehicle if the vehicle is titled or registered in any state in
179 this country. A licensee may not take any action against a motor
180 vehicle dealer, including reducing its allocations or supply of
181 motor vehicles to the dealer, or charging back to a dealer any
182 ~~for an~~ incentive payment previously paid, unless the licensee



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183 first meets in person, by telephone, or video conference with an
184 officer or other designated employee of the dealer. At such
185 meeting, the licensee must provide a detailed explanation, with
186 supporting documentation, as to the basis for its claim that the
187 dealer knew or reasonably should have known of the customer's
188 intent to export or resell the motor vehicle. Thereafter, the
189 motor vehicle dealer shall have a reasonable period,
190 commensurate with the number of motor vehicles at issue, but not
191 less than 15 days, to respond to the licensee's claims. If,
192 following the dealer's response and completion of all internal
193 dispute resolution processes provided through the applicant or
194 licensee, the dispute remains unresolved, the dealer may file a
195 protest with the department within 30 days after receipt of a
196 written notice from the licensee that it still intends to take
197 adverse action against the dealer with respect to the motor
198 vehicles still at issue. If a protest is timely filed, the
199 department shall notify the applicant or licensee of the filing
200 of the protest, and the applicant or licensee may not take any
201 action adverse to the dealer until the department renders a
202 final determination, which is not subject to further appeal,
203 that the licensee's proposed action is in compliance with the
204 provisions of this subsection. In any hearing pursuant to this
205 subsection, the applicant or licensee has the burden of proof on
206 all issues raised by this subsection. An applicant or licensee
207 may not take any adverse action against a motor vehicle dealer
208 because the dealer sold or leased a motor vehicle to a customer



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209 who exported the vehicle to a foreign country or who resold the
210 vehicle unless the applicant or licensee provides written
211 notification to the motor vehicle dealer of such resale or
212 export within 12 months after the date the dealer sold or leased
213 the vehicle to the customer.

214 (39) Notwithstanding any agreement, program, incentive,
215 bonus, policy, or rule, an applicant or licensee may not fail to
216 make any payment pursuant to any agreement, program, incentive,
217 bonus, policy, or rule for any temporary replacement motor
218 vehicle loaned, rented, or provided by a motor vehicle dealer to
219 or for its service or repair customers, even if the temporary
220 replacement motor vehicle has been leased, rented, titled, or
221 registered to the motor vehicle dealer's rental or leasing
222 division or an entity that is owned or controlled by the motor
223 vehicle dealer, provided that the motor vehicle dealer or its
224 rental or leasing division or entity complies with the written
225 and uniformly enforced vehicle eligibility, use, and reporting
226 requirements specified by the applicant or licensee in its
227 agreement, program, policy, bonus, incentive, or rule relating
228 to loaner vehicles.

229 (40) Notwithstanding the terms of any franchise agreement,
230 the applicant or licensee may not require or coerce, or attempt
231 to require or coerce, a motor vehicle dealer to purchase goods
232 or services from a vendor selected, identified, or designated by
233 the applicant or licensee, or one of its parents, subsidiaries,
234 divisions, or affiliates, by agreement, standard, policy,



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235 program, incentive provision, or otherwise, without making
236 available to the motor vehicle dealer the option to obtain the
237 goods or services of substantially similar design and quality
238 from a vendor chosen by the motor vehicle dealer. If the motor
239 vehicle dealer exercises such option, the dealer must provide
240 written notice of its desire to use the alternative goods or
241 services to the applicant or licensee, along with samples or
242 clear descriptions of the alternative goods or services that the
243 dealer desires to use. The licensee or applicant shall have the
244 opportunity to evaluate the alternative goods or services for up
245 to 30 days to determine whether it will provide a written
246 approval to the motor vehicle dealer to use said alternative
247 goods or services. Approval may not be unreasonably withheld by
248 the applicant or licensee. If the motor vehicle dealer does not
249 receive a response from the applicant or licensee within 30
250 days, approval to use the alternative goods or services is
251 deemed granted. If a dealer using alternative goods or services
252 complies with this subsection and has received approval from the
253 licensee or applicant, the dealer is not ineligible for all
254 benefits described in the agreement, standard, policy, program,
255 incentive provision, or otherwise solely for having used such
256 alternative goods or services. As used in this subsection, the
257 term "goods or services" is limited to such goods and services
258 used to construct or renovate dealership facilities or furniture
259 and fixtures at the dealership facilities. The term does not
260 include:



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261 (a) Any materials subject to the applicant's or licensee's
 262 intellectual property rights, including copyright, trademark, or
 263 trade dress rights;

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

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

268 (d) Any good or service paid for entirely by the applicant
 269 or licensee; or

270 (e) Any applicant's or licensee's design or architectural
 271 review service.

272
 273 A motor vehicle dealer who can demonstrate that a violation of,
 274 or failure to comply with, any of the preceding provisions by an
 275 applicant or licensee will or can adversely and pecuniarily
 276 affect the complaining dealer, shall be entitled to pursue all
 277 of the remedies, procedures, and rights of recovery available
 278 under ss. 320.695 and 320.697.

279 Section 2. Section 320.646, Florida Statutes, is created
 280 to read:

281 320.646 Consumer data protection.—

282 (1) As used in this section, the term:

283 (a) "Consumer data" means "nonpublic personal information"
 284 as such term is defined in 15 U.S.C. s. 6809(4) collected by a
 285 motor vehicle dealer and which is provided by the motor vehicle
 286 dealer directly to a licensee or third party acting on behalf of



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287 a licensee. Consumer data does not include the same or similar
 288 data which is obtained by a licensee from any other source.

289 (b) "Data management system" means a computer hardware or
 290 software system that is owned, leased, or licensed by a motor
 291 vehicle dealer, including a system of web-based applications,
 292 computer software, or computer hardware, whether located at the
 293 motor vehicle dealership or hosted remotely, and that stores and
 294 provides access to consumer data collected or stored by a motor
 295 vehicle dealer. The term includes, but is not limited to,
 296 dealership management systems and customer relations management
 297 systems.

298 (2) Notwithstanding the provisions of any franchise
 299 agreement, with respect to consumer data a licensee or a third
 300 party acting on behalf of a licensee:

301 (a) Shall comply with all, and not knowingly cause a motor
 302 vehicle dealer to violate any, applicable restrictions on reuse
 303 or disclosure of the consumer data established by federal or
 304 state law and must provide a written statement to the motor
 305 vehicle dealer upon request describing the established
 306 procedures adopted by the licensee or third party acting on
 307 behalf of the licensee which meet or exceed any federal or state
 308 requirements to safeguard the consumer data, including, but not
 309 limited to, those established in the Gramm-Leach-Bliley Act, 15
 310 U.S.C. ss. 6801 et seq.

311 (b) Shall, upon the written request of the motor vehicle
 312 dealer, provide a written list of the consumer data obtained



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313 from the motor vehicle dealer and all persons to whom any
314 consumer data has been provided by the licensee or a third party
315 acting on behalf of a licensee during the preceding 6 months.
316 The dealer may make such a request no more than once every 6
317 months. The list must indicate the specific fields of consumer
318 data which were provided to each person. Notwithstanding the
319 foregoing, such a list need not include:

320 1. A person to whom consumer data was provided, or the
321 specific consumer data provided to such person, if the person
322 was, at the time the consumer data was provided, one of the
323 licensee's service providers, subcontractors or consultants
324 acting in the course of such person's performance of services on
325 behalf of or for the benefit of the licensee or motor vehicle
326 dealer, provided that the licensee has entered into an agreement
327 with such person requiring that the person comply with the
328 safeguard requirements of applicable state and federal law,
329 including, but not limited to, those established in the Gramm-
330 Leach-Bliley Act, 15 U.S.C. ss. 6801 et seq.; or

331 2. A person to whom consumer data was provided, or the
332 specific consumer data provided to such person, if the motor
333 vehicle dealer has previously consented in writing to such
334 person receiving the consumer data provided and the motor
335 vehicle dealer has not withdrawn such consent in writing.

336 (c) May not require that a motor vehicle dealer grant the
337 licensee or a third party direct or indirect access to the
338 dealer's data management system to obtain consumer data. A



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339 licensee must permit a motor vehicle dealer to furnish consumer
340 data in a widely accepted file format, such as comma delimited,
341 and through a third-party vendor selected by the motor vehicle
342 dealer. However, a licensee may access or obtain consumer data
343 directly from a motor vehicle dealer's data management system
344 with the express consent of the dealer. The consent must be in
345 the form of a written document that is separate from the
346 parties' franchise agreement, is executed by the motor vehicle
347 dealer, and may be withdrawn by the dealer upon 30 days' written
348 notice to the licensee.

349 (d) Must indemnify the motor vehicle dealer for any third-
350 party claims asserted against or damages incurred by the motor
351 vehicle dealer to the extent caused by access to, use of, or
352 disclosure of consumer data in violation of this section by the
353 licensee, a third party acting on behalf of the licensee, or a
354 third party to whom the licensee has provided consumer data.

355 (3) In any cause of action against a licensee pursuant to
356 s. 320.697 for a violation of paragraph (2) (a), paragraph
357 (2) (b), or paragraph (2) (c), the person bringing the action has
358 the burden of proving that the violation was willful or with
359 sufficient frequency to establish a pattern of wrongdoing with
360 respect to such person's consumer data.

361 Section 3. For the purpose of incorporating section
362 320.646, Florida Statutes, as created by this act, in a
363 reference thereto, section 320.6992, Florida Statutes, is
364 reenacted to read:



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365 320.6992 Application.—Sections 320.60–320.70, including
366 amendments to ss. 320.60–320.70, apply to all presently existing
367 or hereafter established systems of distribution of motor
368 vehicles in this state, except to the extent that such
369 application would impair valid contractual agreements in
370 violation of the State Constitution or Federal Constitution.
371 Sections 320.60–320.70 do not apply to any judicial or
372 administrative proceeding pending as of October 1, 1988. All
373 agreements renewed, amended, or entered into subsequent to
374 October 1, 1988, shall be governed by ss. 320.60–320.70,
375 including any amendments to ss. 320.60–320.70 which have been or
376 may be from time to time adopted, unless the amendment
377 specifically provides otherwise, and except to the extent that
378 such application would impair valid contractual agreements in
379 violation of the State Constitution or Federal Constitution.
380 Section 4. This act shall take effect upon becoming a law.