

1                   A bill to be entitled  
2           An act relating to motor vehicle warranty repairs and  
3           recall repairs; amending s. 320.64, F.S.; prohibiting  
4           a manufacturer, factory branch, distributor, or  
5           importer from denying a claim of a motor vehicle  
6           dealer, reducing compensation to a motor vehicle  
7           dealer, or processing a chargeback to a motor vehicle  
8           dealer because of specified circumstances; creating s.  
9           320.6407, F.S.; requiring a manufacturer, factory  
10          branch, distributor, or importer to compensate a motor  
11          vehicle dealer for a used motor vehicle under  
12          specified circumstances; requiring the manufacturer,  
13          factory branch, distributor, or importer to pay the  
14          compensation within a specified timeframe after the  
15          motor vehicle dealer's application for payment;  
16          requiring such application to be made through the  
17          manufacturer's, factory branch's, distributor's, or  
18          importer's warranty application system or certain  
19          other system or process; providing for calculation of  
20          the amount of compensation; reenacting s. 320.6992,  
21          F.S., relating to applicability of specified  
22          provisions to systems of distribution of motor  
23          vehicles in this state, to incorporate s. 320.6407,  
24          F.S., as created by the act, in references thereto;  
25          providing an effective date.

26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50

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

Section 1. Subsection (41) is added to section 320.64, Florida Statutes, to read:

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

(41) Notwithstanding the terms of any franchise agreement, and except as authorized under subsection (25), a licensee may not deny a claim of a motor vehicle dealer, reduce the amount of compensation to a motor vehicle dealer, or process a chargeback to a motor vehicle dealer for performing covered warranty repairs or required recall repairs on a used motor vehicle due to either of the following circumstances:

(a) Discovery by the motor vehicle dealer of the need for warranty or recall repairs during the course of a separate

51 repair requested by the consumer.

52 (b) Notification by the motor vehicle dealer to the  
 53 consumer of the need for recall repairs after the licensee or an  
 54 authorized governmental agency issues a notice of an outstanding  
 55 recall for a safety-related defect.

56  
 57 A motor vehicle dealer who can demonstrate that a violation of,  
 58 or failure to comply with, any of the preceding provisions by an  
 59 applicant or licensee will or can adversely and pecuniarily  
 60 affect the complaining dealer, shall be entitled to pursue all  
 61 of the remedies, procedures, and rights of recovery available  
 62 under ss. 320.695 and 320.697.

63 Section 2. Section 320.6407, Florida Statutes, is created  
 64 to read:

65 320.6407 Recall notices under franchise agreements;  
 66 compensation.—

67 (1) As provided in subsection (3), a licensee that has  
 68 entered into a franchise agreement with a motor vehicle dealer  
 69 must compensate the motor vehicle dealer for a used motor  
 70 vehicle:

71 (a) That is of the same make and model manufactured,  
 72 imported, or distributed by the licensee;

73 (b) That is subject to a recall notice issued by the  
 74 licensee or an authorized governmental agency, including a  
 75 recall notice issued before July 1, 2017, regardless of whether

76 | the vehicle is identified by its vehicle identification number;

77 | (c) That is held by the motor vehicle dealer in the  
78 | dealer's inventory at the time the recall notice is issued or  
79 | that is taken by the motor vehicle dealer into the dealer's  
80 | inventory after the recall notice as a result of a trade-in,  
81 | lease return, or otherwise;

82 | (d) That cannot be repaired due to the unavailability,  
83 | within 30 days after issuance of the recall notice, of a remedy  
84 | or parts necessary for the motor vehicle dealer to make the  
85 | recall repair; and

86 | (e) For which the licensee has not issued a written  
87 | statement to the motor vehicle dealer indicating that the used  
88 | motor vehicle may be sold or delivered to a retail customer  
89 | before completion of the recall repair. The purpose of such  
90 | written statement is to provide notice to the motor vehicle  
91 | dealer that the vehicle may be sold or delivered based solely on  
92 | the specific recall notice and may not address a vehicle  
93 | condition not covered by the recall notice.

94 | (2) The licensee shall pay the required compensation  
95 | within 30 days after the motor vehicle dealer's application for  
96 | payment. Applications for payment must be submitted monthly, as  
97 | necessary, through the licensee's existing warranty application  
98 | system or another system or process established by the licensee  
99 | which is not unduly burdensome or which does not require  
100 | information unnecessary for the payment.

101        (3) Compensation under this section must be the greater  
 102 of:  
 103        (a) Payment at a rate of at least 1.5 percent per month of  
 104 the motor vehicle value, as determined by the average Black Book  
 105 value of the corresponding model year vehicle of average  
 106 condition, of each eligible used motor vehicle in the motor  
 107 vehicle dealer's inventory for each month that the dealer does  
 108 not receive a remedy and parts to complete the required recall  
 109 repair. Such payment must be prorated for any period less than 1  
 110 month based on the number of days during the month each eligible  
 111 used motor vehicle is in the motor vehicle dealer's inventory.  
 112 Payment shall be calculated from the date the recall was issued,  
 113 the date the vehicle was acquired, or July 1, 2017, whichever is  
 114 latest.  
 115        (b) Payment under a national program applicable to all  
 116 motor vehicle dealers holding a franchise agreement with the  
 117 licensee for the motor vehicle dealer's costs associated with  
 118 holding the eligible used motor vehicles.  
 119        (4) For purposes of this section, a licensee does not  
 120 include a motorcycle manufacturer, distributor, or importer.  
 121        Section 3. For the purpose of incorporating section  
 122 320.6407, Florida Statutes, as created by this act, in  
 123 references thereto, section 320.6992, Florida Statutes, is  
 124 reenacted to read:  
 125        320.6992 Application.—Sections 320.60–320.70, including

126 amendments to ss. 320.60-320.70, apply to all presently existing  
127 or hereafter established systems of distribution of motor  
128 vehicles in this state, except to the extent that such  
129 application would impair valid contractual agreements in  
130 violation of the State Constitution or Federal Constitution.  
131 Sections 320.60-320.70 do not apply to any judicial or  
132 administrative proceeding pending as of October 1, 1988. All  
133 agreements renewed, amended, or entered into subsequent to  
134 October 1, 1988, shall be governed by ss. 320.60-320.70,  
135 including any amendments to ss. 320.60-320.70 which have been or  
136 may be from time to time adopted, unless the amendment  
137 specifically provides otherwise, and except to the extent that  
138 such application would impair valid contractual agreements in  
139 violation of the State Constitution or Federal Constitution.

140 Section 4. This act shall take effect July 1, 2017.