

ENROLLED

CS/CS/HB 775, Engrossed 1

2017 Legislature

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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.

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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

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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.

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 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

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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 retail
81 | consumer trade-in or a lease return to the dealer inventory in
82 | accordance with an applicable lease contract;

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

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

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

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101 information unnecessary for the payment.

102 (3) Compensation under this section must be the greater
 103 of:

104 (a) Payment at a rate of at least 1.5 percent per month of
 105 the motor vehicle value, as determined by the average Black Book
 106 value of the corresponding model year vehicle of average
 107 condition, of each eligible used motor vehicle in the motor
 108 vehicle dealer's inventory for each month that the dealer does
 109 not receive a remedy and parts to complete the required recall
 110 repair. Such payment must be prorated for any period less than 1
 111 month based on the number of days during the month each eligible
 112 used motor vehicle is in the motor vehicle dealer's inventory.
 113 Payment shall be calculated from the 31st day after the recall
 114 was issued, the 31st day after the vehicle was acquired, or July
 115 1, 2017, whichever is latest.

116 (b) Payment under a national program applicable to all
 117 motor vehicle dealers holding a franchise agreement with the
 118 licensee for the motor vehicle dealer's costs associated with
 119 holding the eligible used motor vehicles.

120 (4) For purposes of this section, a licensee does not
 121 include a motorcycle manufacturer, distributor, or importer.

122 Section 3. For the purpose of incorporating section
 123 320.6407, Florida Statutes, as created by this act, in
 124 references thereto, section 320.6992, Florida Statutes, is
 125 reenacted to read:

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126 320.6992 Application.—Sections 320.60-320.70, including
127 amendments to ss. 320.60-320.70, apply to all presently existing
128 or hereafter established systems of distribution of motor
129 vehicles in this state, except to the extent that such
130 application would impair valid contractual agreements in
131 violation of the State Constitution or Federal Constitution.
132 Sections 320.60-320.70 do not apply to any judicial or
133 administrative proceeding pending as of October 1, 1988. All
134 agreements renewed, amended, or entered into subsequent to
135 October 1, 1988, shall be governed by ss. 320.60-320.70,
136 including any amendments to ss. 320.60-320.70 which have been or
137 may be from time to time adopted, unless the amendment
138 specifically provides otherwise, and except to the extent that
139 such application would impair valid contractual agreements in
140 violation of the State Constitution or Federal Constitution.
141 Section 4. This act shall take effect July 1, 2017.