

## CHAPTER 2017-141

### Committee Substitute for Committee Substitute for House Bill No. 775

An act relating to motor vehicle warranty repairs and recall repairs; amending s. 320.64, F.S.; prohibiting a manufacturer, factory branch, distributor, or importer from denying a claim of a motor vehicle dealer, reducing compensation to a motor vehicle dealer, or processing a charge-back to a motor vehicle dealer because of specified circumstances; creating s. 320.6407, F.S.; requiring a manufacturer, factory branch, distributor, or importer to compensate a motor vehicle dealer for a used motor vehicle under specified circumstances; requiring the manufacturer, factory branch, distributor, or importer to pay the compensation within a specified timeframe after the motor vehicle dealer's application for payment; requiring such application to be made through the manufacturer's, factory branch's, distributor's, or importer's warranty application system or certain other system or process; providing for calculation of the amount of compensation; reenacting s. 320.6992, F.S., relating to applicability of specified provisions to systems of distribution of motor vehicles in this state, to incorporate s. 320.6407, F.S., as created by the act, in references thereto; providing an effective date.

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 repair requested by the consumer.

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

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

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

320.6407 Recall notices under franchise agreements; compensation.—

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

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

(b) That is subject to a recall notice issued by the licensee or an authorized governmental agency, including a recall notice issued before July 1, 2017, regardless of whether the vehicle is identified by its vehicle identification number;

(c) That is held by the motor vehicle dealer in the dealer's inventory at the time the recall notice is issued or that is taken by the motor vehicle dealer into the dealer's inventory after the recall notice as a result of a retail consumer trade-in or a lease return to the dealer inventory in accordance with an applicable lease contract;

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

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

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

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

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

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

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

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

320.6992 Application.—Sections 320.60-320.70, including amendments to ss. 320.60-320.70, apply to all presently existing or hereafter established systems of distribution of motor vehicles in this state, except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution. Sections 320.60-320.70 do not apply to any judicial or administrative proceeding pending as of October 1, 1988. All agreements renewed, amended, or entered into subsequent to October 1, 1988, shall be governed by ss. 320.60-320.70, including any amendments to ss. 320.60-320.70 which have been or may be from time to time adopted, unless the amendment specifically provides otherwise, and except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution.

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

Approved by the Governor June 23, 2017.

Filed in Office Secretary of State June 23, 2017.