

By Representative Sublette

1 A bill to be entitled
2 An act relating to motor vehicle franchise
3 agreements; amending s. 320.642, F.S.;
4 providing that certain actions with respect to
5 the opening or reopening of a motor vehicle
6 dealership are not protestable under certain
7 circumstances; amending s. 320.643, F.S.;
8 providing procedures with respect to the
9 transfer, assignment, or sale of franchise
10 agreements; amending s. 320.697, F.S.; limiting
11 the award of treble damages; providing an
12 effective date.

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

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16 Section 1. Subsections (3) and (5) of section 320.642,
17 Florida Statutes, is amended to read:

18 320.642 Dealer licenses in areas previously served;
19 procedure.--

20 (3) An existing franchised motor vehicle dealer or
21 dealers shall have standing to protest a proposed additional
22 or relocated motor vehicle dealer where the existing motor
23 vehicle dealer or dealers have a franchise agreement for the
24 same line-make vehicle to be sold by the proposed additional
25 or relocated motor vehicle dealer and are physically located
26 so as to meet or satisfy any of the following requirements or
27 conditions:

28 (a) If the proposed additional or relocated motor
29 vehicle dealer is to be located in a county with a population
30 of less than 300,000 according to the most recent data of the
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1 United States Census Bureau or the data of the Bureau of
2 Economic and Business Research of the University of Florida:

3 1. The proposed additional or relocated motor vehicle
4 dealer is to be located in the area designated or described as
5 the area of responsibility, or such similarly designated area,
6 including the entire area designated as a multiple-point area,
7 in the franchise agreement or in any related document or
8 commitment with the existing motor vehicle dealer or dealers
9 of the same line-make as such agreement existed upon October
10 1, 1988; or

11 2. The existing motor vehicle dealer or dealers of the
12 same line-make have a licensed franchise location within a
13 radius of 20 miles of the location of the proposed additional
14 or relocated motor vehicle dealer; or

15 3. Any existing motor vehicle dealer or dealers of the
16 same line-make can establish that during any 12-month period
17 of the 36-month period preceding the filing of the licensee's
18 application for the proposed additional dealership, such
19 dealer or its predecessor made 25 percent of its retail sales
20 of new motor vehicles to persons whose registered household
21 addresses were located within a radius of 20 miles of the
22 location of the proposed additional ~~or-relocated~~ motor vehicle
23 dealer; provided such existing dealer is located in the same
24 county or any county contiguous to the county where the
25 additional ~~or-relocated~~ dealer is proposed to be located.

26 (b) If the proposed additional or relocated motor
27 vehicle dealer is to be located in a county with a population
28 of more than 300,000 according to the most recent data of the
29 United States Census Bureau or the data of the Bureau of
30 Economic and Business Research of the University of Florida:

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1 1. Any existing motor vehicle dealer or dealers of the
2 same line-make have a licensed franchise location within a
3 radius of 12.5 miles of the location of the proposed
4 additional or relocated motor vehicle dealer; or

5 2. Any existing motor vehicle dealer or dealers of the
6 same line-make can establish that during any 12-month period
7 of the 36-month period preceding the filing of the licensee's
8 application for the proposed additional dealership, such
9 dealer or its predecessor made 25 percent of its retail sales
10 of new motor vehicles to persons whose registered household
11 addresses were located within a radius of 12.5 miles of the
12 location of the proposed additional ~~or relocated~~ motor vehicle
13 dealer; provided such existing dealer is located in the same
14 county or any county contiguous to the county where the
15 additional ~~or relocated~~ dealer is proposed to be located.

16 (5) The opening or reopening of the same or a
17 successor motor vehicle dealer within 24 ~~12~~ months shall not
18 be considered an additional or relocated motor vehicle dealer
19 subject to protest within the meaning of this section, if:

20 (a) The opening or reopening is within the same or an
21 adjacent county, is within 2 miles of the former motor vehicle
22 dealer location,

23 (b) The proposed location is further from each
24 existing dealer of the same line-make than the prior location
25 is from each dealer of the same line-make within 25 miles of
26 the new location,

27 (c) The opening or reopening is within 6 miles of the
28 prior location and, if any existing motor vehicle dealer of
29 the same line-make is located within 15 miles of the former
30 location, the proposed location is no closer to any such
31 ~~existing dealer of the same line-make~~, or

1 (d) The opening or reopening is within 6 miles of the
2 prior location and, if all existing motor vehicle dealers of
3 the same line-make are beyond 15 miles of the former location,
4 the proposed location is further than 15 miles from any
5 existing motor vehicle dealer of the same line-make.

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7 Any other such opening or reopening shall constitute an
8 additional or relocated motor vehicle dealer within the
9 meaning of this section, except that the opening or reopening
10 of the same or successor motor vehicle dealer within 6 miles
11 of the former location is not protestable under this section
12 by an existing motor vehicle dealer of the same line-make who
13 is further away from the proposed location than the former
14 location.

15 Section 2. Section 320.643, Florida Statutes, is
16 amended to read:

17 320.643 Transfer, assignment, or sale of franchise
18 agreements.--

19 ~~(1)~~ A motor vehicle dealer shall not transfer, assign,
20 or sell a franchise agreement or an interest in the dealership
21 to another person unless the dealer first notifies the
22 licensee of the dealer's decision to make such transfer,
23 assignment, or sale by written notice setting forth the
24 prospective transferee's name, address, financial
25 qualification, and business experience during the previous 5
26 years, and provides the licensee with completed application
27 forms and related information generally utilized by the
28 licensee to conduct its review and a copy of all agreements
29 regarding the proposed transfer, assignment, or sale. The
30 licensee shall send a letter by certified mail to the dealer,
31 ~~in writing,~~ within 60 days of ~~after~~ receipt of such

1 ~~information indicating any refusal to approve notice, inform~~
2 ~~the dealer either of the licensee's approval of the transfer,~~
3 ~~assignment, or sale and or of the unacceptability of the~~
4 ~~proposed transferee,~~ setting forth the material reasons for
5 the rejection. If the licensee does not so respond by letter
6 ~~inform the dealer~~ within the 60-day period, its approval of
7 the proposed transfer, assignment, or sale is deemed granted.
8 No such transfer, assignment, or sale will be valid unless the
9 transferee agrees in writing to comply with all requirements
10 of the franchise then in effect. Notwithstanding the terms of
11 any franchise agreement, the acceptance by the licensee of the
12 proposed transferee shall not be unreasonably withheld. For
13 the purposes of this section, the refusal by the licensee to
14 accept a proposed transferee who is of good moral character
15 and who otherwise meets the written, reasonable, and uniformly
16 applied standards or qualifications, if any, of the licensee
17 relating to business performance and experience, financial
18 qualifications, the ownership structure, and facility
19 requirements ~~the business experience of executive management~~
20 required by the licensee of its motor vehicle dealers is
21 presumed to be unreasonable. If the licensee does not approve
22 the proposed transferee, the motor vehicle dealer may file a
23 complaint with the department within 20 days of receipt of the
24 licensee's written notice. While the complaint is pending, the
25 franchise or ownership interest may not be transferred. The
26 licensee has the burden of proof that it did not unreasonably
27 withhold approval. A licensee who receives such notice may,
28 ~~within 60 days following such receipt, file with the~~
29 ~~department a verified complaint for a determination that the~~
30 ~~proposed transferee is not a person qualified to be a~~
31 ~~transferee under this section. The licensee has the burden of~~

1 ~~proof with respect to all issues raised by such verified~~
2 ~~complaint.~~ The department shall determine, and enter an order
3 providing, that the proposed transferee is either qualified or
4 is not and cannot be qualified for specified reasons, or the
5 order may provide the conditions under which a proposed
6 transferee would be qualified. The department shall conduct a
7 hearing within 60 days of the filing of the complaint, unless
8 extended by the hearing officer for good cause, and the
9 hearing officer shall issue a recommended order within 30 days
10 from the completion of the hearing. The parties may file
11 exceptions to the recommended order within 10 days of its
12 issuance, and the department shall issue a final order within
13 20 days of the issuance of the recommended order. Within 30
14 days from the filing of the complaint, the licensee, the motor
15 vehicle dealer, and the proposed transferee shall mutually
16 select an independent mediator and meet with that mediator for
17 the purpose of attempting to resolve the dispute. The meeting
18 place shall be in Florida at a location selected by the
19 mediator. The department shall encourage dealers and licensees
20 to establish, maintain, and administer a panel of mediators
21 who have the character, ability, and training to serve as
22 mediators and who have knowledge of the vehicle industry. If
23 ~~the licensee fails to file such verified complaint within such~~
24 ~~60-day period or if the department, after a hearing, dismisses~~
25 ~~the complaint or renders a decision other than one~~
26 ~~disqualifying the proposed transferee, the franchise agreement~~
27 ~~between the motor vehicle dealer and the licensee shall be~~
28 ~~deemed amended to incorporate such transfer or amended in~~
29 ~~accordance with the determination and order rendered,~~
30 ~~effective upon compliance by the proposed transferee with any~~
31 ~~conditions set forth in the determination or order.~~

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1 ~~(2)(a) Notwithstanding the terms of any franchise~~
2 ~~agreement, a licensee shall not, by contract or otherwise,~~
3 ~~fail or refuse to give effect to, prevent, prohibit, or~~
4 ~~penalize, or attempt to refuse to give effect to, prevent,~~
5 ~~prohibit, or penalize, any motor vehicle dealer or any~~
6 ~~proprietor, partner, stockholder, owner, or other person who~~
7 ~~holds or otherwise owns an interest therein from selling,~~
8 ~~assigning, transferring, alienating, or otherwise disposing~~
9 ~~of, in whole or in part, the equity interest of any of them in~~
10 ~~such motor vehicle dealer to any other person or persons,~~
11 ~~including a corporation established or existing for the~~
12 ~~purpose of owning or holding the stock or ownership interests~~
13 ~~of other entities, unless the licensee proves at a hearing~~
14 ~~pursuant to this section that such sale, transfer, alienation,~~
15 ~~or other disposition is to a person who is not, or whose~~
16 ~~controlling executive management is not, of good moral~~
17 ~~character. A motor vehicle dealer, or any proprietor,~~
18 ~~partner, stockholder, owner, or other person who holds or~~
19 ~~otherwise owns an interest in the motor vehicle dealer, who~~
20 ~~desires to sell, assign, transfer, alienate, or otherwise~~
21 ~~dispose of any interest in such motor vehicle dealer shall~~
22 ~~notify, or cause the proposed transferee to so notify, the~~
23 ~~licensee, in writing, of the identity and address of the~~
24 ~~proposed transferee. A licensee who receives such notice may,~~
25 ~~within 60 days following such receipt, file with the~~
26 ~~department a verified complaint for a determination that the~~
27 ~~proposed transferee is not a person qualified to be a~~
28 ~~transferee under this section. The licensee has the burden of~~
29 ~~proof with respect to all issues raised by such verified~~
30 ~~complaint. The department shall determine, and enter an order~~
31 ~~providing, that the proposed transferee either is qualified or~~

1 ~~is not and cannot be qualified for specified reasons; or the~~
2 ~~order may provide the conditions under which a proposed~~
3 ~~transferee would be qualified. If the licensee fails to file~~
4 ~~such verified complaint within such 60-day period or if the~~
5 ~~department, after a hearing, dismisses the complaint or~~
6 ~~renders a decision other than one disqualifying the proposed~~
7 ~~transferee, the franchise agreement between the motor vehicle~~
8 ~~dealer and the licensee shall be deemed amended to incorporate~~
9 ~~such transfer or amended in accordance with the determination~~
10 ~~and order rendered, effective upon compliance by the proposed~~
11 ~~transferee with any conditions set forth in the determination~~
12 ~~or order.~~

13 ~~(b) During the pendency of any such hearing, the~~
14 ~~franchise agreement of the motor vehicle dealer shall continue~~
15 ~~in effect in accordance with its terms. The department shall~~
16 ~~expedite any determination requested under this section.~~

17 Section 3. Section 320.697, Florida Statutes, is
18 amended to read:

19 320.697 Civil damages.--Any person who has suffered
20 pecuniary loss or who has been otherwise adversely affected
21 because of a violation by a licensee of ss. 320.60-320.70,
22 notwithstanding the existence of any other remedies under ss.
23 320.60-320.70, has a cause of action against the licensee for
24 damages and may recover damages therefor in any court of
25 competent jurisdiction in an amount equal to ~~3 times~~ the
26 pecuniary loss, together with costs and a reasonable
27 attorney's fee to be assessed by the court. When the
28 misconduct is willful or wanton the court may award damages
29 equal to three time the pecuniary loss. Upon a prima facie
30 showing by the person bringing the action that such a
31 violation by the licensee has occurred, the burden of proof

1 shall then be upon the licensee to prove that such violation
2 or unfair practice did not occur.

3 Section 4. This act shall take effect October 1, 1997.

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HOUSE SUMMARY

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8 Revises a provision of law governing motor vehicle dealer
9 licenses in areas previously served to provide that the
10 opening or reopening of the same or successor motor
11 vehicle dealer within 6 miles of the former dealership
location shall not be protestable under the law by an
existing motor vehicle dealer of the same line-make who
is further away from the proposed location than the
former location.

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13 Revises a provision of law governing the transfer,
assignment, or sale of motor vehicle franchise agreements
to:

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15 1. Prohibit a motor vehicle dealer from
16 transferring, assigning, or selling a franchise agreement
or an interest in the dealership to another person unless
17 the dealer first notifies the licensee of the dealers
18 decision to make the transfer, assignment, or sale by
written notice and provides the licensee with completed
application forms and related information generally
utilized by the licensee to conduct its review and a copy
of all agreements regarding the proposed transfer,
assignment, or sale.

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20 2. Provide a procedure and timeframes with respect
to the proposed transfer, assignment, or sale.

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22 3. Provide that, if the licensee does not approve
the proposed transferee, the motor vehicle dealer may
file a complaint with the Department of Highway Safety
and Motor Vehicles and to provide a procedure for the
handling of such complaint, including mediation.

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24 Provides for the award of damages equal to three times
25 the pecuniary loss with respect to violations by a
franchise licensee only when the conduct is willful or
wanton.

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27 See bill for details.

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