

By the Committee on Transportation and Senator Latvala

306-1969-00

1                                   A bill to be entitled  
2           An act relating to motor vehicle dealers;  
3           amending s. 320.61, F.S.; prohibiting the  
4           granting of a replacement application until the  
5           exhaustion of appellate remedies with respect  
6           to certain complaints against licensees;  
7           amending s. 320.64, F.S.; providing grounds for  
8           denying, suspending, or revoking a license;  
9           requiring the maintenance of certain records;  
10          amending s. 320.641, F.S.; revising provisions  
11          relating to the unfair cancellation of  
12          franchise agreements; providing clarification  
13          regarding when a complaint may be filed;  
14          establishing a burden of proof standard;  
15          providing standards for determining when an  
16          agreement is unfair; amending s. 320.643, F.S.;  
17          prohibiting certain rights of first refusal;  
18          amending s. 320.645, F.S.; restricting the  
19          ownership of dealerships by licensees;  
20          prohibiting licensees from receiving a motor  
21          vehicle dealer's license; defining terms;  
22          providing exceptions; amending s. 320.695,  
23          F.S.; providing additional grounds for issuing  
24          injunctions; providing an effective date.

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

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28           Section 1. Subsection (4) of section 320.61, Florida  
29   Statutes, is amended to read:

30           320.61 Licenses required of motor vehicle  
31   manufacturers, distributors, importers, etc.--

1           (4) When a complaint of unfair cancellation of a  
2 dealer agreement is made by a motor vehicle dealer against a  
3 licensee and is in the process of being heard pursuant to ss.  
4 320.60-320.70 by the department, a no replacement application  
5 for such agreement may not ~~shall~~ be granted until a final  
6 decision is rendered ~~by the department~~ on the complaint and  
7 all appellate remedies have been exhausted by the licensee or  
8 motor dealer of unfair cancellation.

9           Section 2. Subsections (13) and (20) of section  
10 320.64, Florida Statutes, are amended and subsections (24) and  
11 (25) are added to that section to read:

12           320.64 Denial, suspension, or revocation of license;  
13 grounds.--A license may be denied, suspended, or revoked  
14 within the entire state or at any specific location or  
15 locations within the state at which the applicant or licensee  
16 engages or proposes to engage in business, upon proof that an  
17 applicant or licensee has failed to comply with any of the  
18 following provisions with sufficient frequency so as to  
19 establish a pattern of wrongdoing on the part of the  
20 applicant:

21           (13) The applicant or licensee has refused to deliver,  
22 in reasonable quantities and within a reasonable time, to any  
23 duly licensed motor vehicle dealer who has an agreement with  
24 such applicant or licensee for the retail sale of new motor  
25 vehicles and parts for motor vehicles sold or distributed by  
26 the applicant or licensee, any such motor vehicles or parts as  
27 are covered by such agreement specifically publicly advertised  
28 by such applicant or licensee to be available for immediate  
29 delivery. Such refusal includes the failure to offer to its  
30 same line-make franchised motor vehicle dealers all models  
31 manufactured for that line-make, or requiring a dealer to pay

1 any extra fee, purchase unreasonable advertising displays or  
2 other materials, or remodel, renovate, or recondition the  
3 dealer's existing facilities, or provide exclusive facilities  
4 as a prerequisite to receiving a model or series of vehicles.

5 However, the failure to deliver any motor vehicle or part will  
6 not be considered a violation of this section if the failure  
7 is due to act of God, work stoppage, or delay due to a strike  
8 or labor difficulty, a freight embargo, product shortage, or  
9 other cause over which the applicant or licensee has no  
10 control. The failure to deliver parts or components for the  
11 current and 5 preceding years' models within 60 days from date  
12 of order shall be deemed prima facie unreasonable.

13 (20) The applicant or licensee has established a  
14 system of motor vehicle allocation or distribution or has  
15 implemented a system of allocation or distribution of motor  
16 vehicles to one or more of its franchised motor vehicle  
17 dealers which is unfair, inequitable, unreasonably  
18 discriminatory, or not supportable by reason and good cause  
19 after considering the equities of the affected motor vehicles  
20 dealer or dealers.

21 (a) A licensee must maintain for 3 years records that  
22 fully describe the method of allocation or distribution of  
23 motor vehicles and records of the actual allocation or  
24 distribution of mother vehicles which directly or indirectly  
25 affect the allocation or distribution of motor vehicles to  
26 motor vehicle dealers located within this state.

27 (b) The records must be made available at no cost to a  
28 motor vehicle dealer who has a franchise agreement with the  
29 licensee and who has filed a complaint, pertinent to the  
30 allocation or distribution of motor vehicles, with the  
31 department within 30 days after the date requested.

1           (24) The applicant or licensee has conducted, or  
2 attempted to conduct, an audit of a motor vehicle dealer for a  
3 period in excess of 12 months prior to the date of the audit  
4 with respect to a new vehicle or service warranty audit or to  
5 a rebate or dealer incentive audit or has threatened to  
6 conduct an audit in an attempt to coerce a motor vehicle  
7 dealer to forego any rights granted under ss. 320.60-320.70.  
8 These time limitations do not apply in the case of fraud that  
9 has been proven in a court of competent jurisdiction.

10           (25) The applicant or licensee has offered any  
11 refunds, incentives, or other inducements to any person to  
12 purchase new motor vehicles of a certain line-make to be sold  
13 to the state or any political subdivision thereof or to any  
14 other person without making the same offer to all motor  
15 vehicle dealers in the state with the same line-make. Nothing  
16 in this subsection prohibits a licensee from offering uniform  
17 discounts, rebates, or incentives to all of its motor vehicle  
18 dealers or from implementing reasonable regional marketing  
19 programs. A regional marketing program is reasonable only if  
20 it provides equal and measurable ability, based on credible  
21 criteria, for all of the licensee's line-make dealers in the  
22 state to qualify for participation. In instances of sales to a  
23 commercial fleet account or motor vehicle leasing entity, any  
24 subsidy, discount, incentive, or other inducement must be  
25 uniformly available to all of the licensee's line-make motor  
26 vehicle dealers in this state.

27           Section 3. Subsection (3) of section 320.641, Florida  
28 Statutes, is amended to read:

29           320.641 Unfair cancellation of franchise agreements.--

30           (3) Any motor vehicle dealer who receives a notice  
31 from the licensee of its intent to discontinue, cancel, not

1 renew, modify, or replace the dealer's franchise agreement  
2 ~~whose franchise agreement is discontinued, canceled, not~~  
3 ~~renewed, modified, or replaced~~ may, within the 90-day notice  
4 period, file a petition or complaint for a determination of  
5 whether such action is an unfair or prohibited  
6 discontinuation, cancellation, nonrenewal, modification, or  
7 replacement. In such action, the licensee has the burden of  
8 proving that the action is fair and not prohibited. Agreements  
9 and certificates of appointment shall continue in effect until  
10 final determination of the issues raised in such petition or  
11 complaint by the motor vehicle dealer, including the  
12 exhaustion of all appellate remedies by the licensee or motor  
13 vehicle dealer. A discontinuation, cancellation, or  
14 nonrenewal of a franchise agreement is unfair if it is not  
15 clearly permitted by the franchise agreement; is not  
16 undertaken in good faith; is not undertaken for good cause; or  
17 is based on an alleged breach of the franchise agreement which  
18 is not in fact a material and substantial breach. A  
19 modification or replacement of a franchise agreement is unfair  
20 if it is not clearly permitted by the franchise agreement; is  
21 not undertaken in good faith; or is not undertaken for good  
22 cause. The termination or threat of termination of a motor  
23 vehicle dealer's franchise agreement, or any adverse action  
24 against a dealer based in whole or in part on the failure of  
25 the dealer to meet the performance goals of the manufacturer  
26 when that failure is due to the failure of the franchisor to  
27 supply, within a reasonable period of time, new motor vehicles  
28 ordered by or allocated to the dealer, is unfair. As used in  
29 this subsection, the term "good faith" means that the  
30 provisions or standards relied upon by the licensee to  
31 establish grounds for termination are reasonable and have been

1 applied by the licensee in a uniform, consistent, and  
2 nondiscriminatory manner, considering action taken by the  
3 licensee when similar conduct was committed by other motor  
4 vehicle dealers; and the term "good cause" means a material  
5 and substantial breach of the franchise agreement which is  
6 significantly detrimental to the licensee's business interest.

7 Section 4. Subsection (3) is added to section 320.643,  
8 Florida Statutes, to read:

9 320.643 Transfer, assignment, or sale of franchise  
10 agreements.--

11 (3) Notwithstanding the terms of a franchise  
12 agreement, a licensee does not have and may not exercise a  
13 right of first refusal with respect to any proposed transfer  
14 of ownership governed by ss. 320.60-320.70. Any such right of  
15 first refusal in a franchise agreement is void.

16 Section 5. Section 320.645, Florida Statutes, is  
17 amended to read:

18 320.645 Restriction upon ownership of dealership by  
19 licensee.--

20 (1) A ~~No~~ licensee, including a manufacturer or agent  
21 of a manufacturer, or any parent, subsidiary, common entity,  
22 or officer or representative of the licensee may not ~~shall~~ own  
23 any interest in, control, or operate, either directly or  
24 indirectly, a motor vehicle dealership in this state for the  
25 sale or service of motor vehicles that ~~which~~ have been or are  
26 offered for sale under a franchise agreement with a motor  
27 vehicle dealer in this state. A licensee may not be issued a  
28 motor vehicle dealer license pursuant to s. 320.27. However, a  
29 ~~no such~~ licensee will not be deemed to be in violation of this  
30 section:  
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1 (a) When operating a motor vehicle dealership for a  
2 temporary period, not to exceed 1 year, during the transition  
3 from one owner of the motor vehicle dealership to another;

4 (b) When operating a motor vehicle dealership  
5 temporarily for the exclusive purpose of broadening the  
6 diversity of its dealer body and enhancing opportunities for  
7 qualified persons who are part of a group that has  
8 historically been underrepresented in its dealer body, or for  
9 other qualified persons who lack the resources to purchase or  
10 capitalize a dealership outright, ~~for a reasonable period, not~~  
11 to exceed 1 year, or in a bona fide relationship with an  
12 independent person, other than a licensee or its agent or  
13 affiliate, who has made a significant investment that is  
14 subject to loss in the dealership and who can reasonably  
15 expect to acquire full ownership of the dealership on  
16 reasonable terms and conditions; or

17 (c) If the department determines, after a hearing on  
18 the matter, pursuant to chapter 120, at the request of any  
19 person, that there is no independent person available in the  
20 community or territory to own and operate the motor vehicle  
21 dealership in a manner consistent with the public interest.

22  
23 In any ~~such~~ case in which paragraph (a) or paragraph (c)  
24 applies, the licensee must continue to make the motor vehicle  
25 dealership available for sale to an independent person at a  
26 fair and reasonable price. Approval of the sale of such a  
27 motor vehicle dealership to a proposed motor vehicle dealer  
28 must shall not be unreasonably withheld. The licensee must  
29 certify, in writing, to the department that the provisions of  
30 paragraph (b) have been satisfied for the purpose of complying

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1 with this section and that the relationship is not an attempt  
2 to own, operate, or control one or more dealerships.

3 (2) As used in the section, the term:

4 (a) "Agent" means a person who is employed by or  
5 affiliated with a licensee or who directly or through an  
6 intermediary is controlled by or under common control of a  
7 licensee.

8 (b) "Control" means the direct or indirect possession  
9 of the power to direct or cause the direction of the  
10 management or policies of a person, whether through the  
11 ownership of voting securities, by contract, or otherwise.

12 (c) "Independent person" means a person who is not an  
13 officer, director, or employee of the licensee or otherwise  
14 associated with the licensee through agreements or  
15 understanding, other than the franchise agreement.

16 (d) "Reasonable terms and conditions" requires that  
17 profits from dealership operation will be sufficient to allow  
18 full ownership of the dealership by the independent person  
19 within a reasonable time period not to exceed 10 years, absent  
20 exceptional circumstances demonstrated by the independent  
21 person or the licensee; that the independent person has  
22 sufficient control to permit acquisition of ownership; and  
23 that the relationship cannot be terminated to avoid full  
24 ownership. The terms and conditions are not reasonable if they  
25 preclude the independent person from an expedited purchase of  
26 the dealership using a monetary source other than profits from  
27 dealership operation.

28 (e) "Significant investment" means a reasonable  
29 amount, considering the fair market value of the dealership,  
30 acquired and obtained from sources other than the licensee or  
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1 any of its affiliates and not encumbered by the person's  
2 interest in the dealership.

3 (3)(2) This section does not apply to any dealership  
4 that is owned, controlled, or operated by a licensee on July  
5 1, 2000.~~This section shall not be construed to prohibit any~~  
6 ~~licensee from owning or operating a motor vehicle dealership~~  
7 ~~in this state if such dealership was owned or operated by the~~  
8 ~~licensee on May 31, 1984.~~

9 Section 6. Section 320.695, Florida Statutes, is  
10 amended to read:

11 320.695 Injunction.--In addition to the remedies  
12 provided in this chapter, and notwithstanding the existence of  
13 any adequate remedy at law, the department, ~~or~~ any motor  
14 vehicle dealer, association of motor vehicle dealers,  
15 licensee, or association of licensees in the name of the  
16 department and state and for the use and benefit of a the  
17 motor vehicle dealer or licensee, may apply ~~is authorized to~~  
18 ~~make application~~ to any circuit court of the state for the  
19 grant, upon a hearing and for cause shown, of a temporary or  
20 permanent injunction, or both, restraining any person from  
21 acting as a licensee under the terms of ss. 320.60-320.70  
22 without being properly licensed hereunder, or from violating  
23 or continuing to violate any of the provisions of ss.  
24 320.60-320.70, or from failing or refusing to comply with the  
25 requirements of this law or any rule or regulation adopted  
26 hereunder. Such injunction shall be issued without bond. A  
27 single act in violation of the provisions of ss. 320.60-320.70  
28 shall be sufficient to authorize the issuance of an  
29 injunction. However, this statutory remedy shall not be  
30 applicable to any motor vehicle dealer after final  
31 determination by the department under s. 320.641(3).

1           Section 7. This act shall take effect July 1, 2000.

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3                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
4                                   COMMITTEE SUBSTITUTE FOR  
5   SB 1916

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6   The CS deletes a provision providing for the denial,  
7   suspension, or revocation of a manufacturer's license if the  
8   manufacturer has sold or offered to sell any motor vehicle to  
9   a purchaser in this state, except through a franchise motor  
10  vehicle dealer.

9   The CS deletes a provision providing for the denial,  
10  suspension, or revocation of a manufacturer's license if the  
11  manufacturer restricts or threatens a franchise dealer from  
12  selling motor vehicles, replacement parts, or accessories to  
13  customers domiciled in other states or countries on a retail  
14  basis.

13  The CS deletes a provision revising the factors DHSMV is to  
14  consider in determining whether a new franchise motor vehicle  
15  dealer may be located in an area where an existing franchise  
16  dealer in the same line-make is located.

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