

By Representative Fuller

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. 320.642, F.S.;
 17 providing geographic area performance
 18 standards; amending s. 320.643, F.S.;
 19 prohibiting certain rights of first refusal;
 20 amending s. 320.645, F.S.; restricting the
 21 ownership of dealerships by licensees;
 22 prohibiting licensees from receiving a motor
 23 vehicle dealer's license; defining terms;
 24 providing exceptions; amending s. 320.695,
 25 F.S.; providing additional grounds for issuing
 26 injunctions; providing an effective date.

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

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

1 320.61 Licenses required of motor vehicle
2 manufacturers, distributors, importers, etc.--

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

11 Section 2. Subsections (13) and (20) of section
12 320.64, Florida Statutes, are amended and subsections (24),
13 (25), (26), and (27) are added to that section to read:

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

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

1 same line-make franchised motor vehicle dealers all models
2 manufactured for that line-make, or requiring a dealer to pay
3 any extra fee, purchase unreasonable advertising displays or
4 other materials, or remodel, renovate, or recondition the
5 dealer's existing facilities, or provide exclusive facilities
6 as a prerequisite to receiving a model or series of vehicles.
7 However, the failure to deliver any motor vehicle or part will
8 not be considered a violation of this section if the failure
9 is due to act of God, work stoppage, or delay due to a strike
10 or labor difficulty, a freight embargo, product shortage, or
11 other cause over which the applicant or licensee has no
12 control. The failure to deliver parts or components for the
13 current and 5 preceding years' models within 60 days from date
14 of order shall be deemed prima facie unreasonable.

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

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

29 (b) The records must be made available at no cost to a
30 motor vehicle dealer who has a franchise agreement with the
31 licensee and who has filed a complaint, pertinent to the

1 allocation or distribution of motor vehicles, with the
2 department within 30 days after the date requested.

3 (24) The applicant or licensee has sold, or offered to
4 sell, directly or indirectly, any motor vehicle to a purchaser
5 in this state, except through a motor vehicle dealer who holds
6 a franchise for the line-make of the motor vehicle. This
7 subsection does not apply to an applicant or licensee exempted
8 under s. 320.645(3).

9 (25) The applicant or licensee has conducted, or
10 attempted to conduct, an audit of a motor vehicle dealer for a
11 period in excess of 12 months prior to the date of the audit
12 with respect to a new vehicle or service warranty audit or to
13 a rebate or dealer incentive audit or has threatened to
14 conduct an audit in an attempt to coerce a motor vehicle
15 dealer to forego any rights granted under ss. 320.60-320.70.
16 These time limitations do not apply in the case of fraud that
17 has been proven in a court of competent jurisdiction.

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

1 subsidy, discount, incentive, or other inducement must be
2 uniformly available to all of the licensee's line-make motor
3 vehicle dealers in this state.

4 (27) Notwithstanding the terms of any franchise
5 agreement, the applicant or licensee, by contract or
6 otherwise, has in any way restricted, threatened, or attempted
7 to restrict, a motor vehicle dealer from selling motor
8 vehicles, replacement parts, or accessories to customers
9 domiciled in another state or foreign country on a retail
10 basis. As used in this subsection, the term:

11 (a) "Restricted" includes refusing to allocate, sell,
12 or deliver motor vehicles; refusing or withholding the payment
13 of money or other things of value or charging back to the
14 dealer under a sales promotion, program, or contest; or
15 preventing the motor vehicle dealer from participating in any
16 promotion, program, or contest offered by the licensee.

17 (b) "Customer" is limited to domestic and foreign
18 residents who are the ultimate users of motor vehicles and who
19 are present at the dealership when the vehicle is purchased.

20 (c) "Foreign" includes other states, districts,
21 territories, and possessions of the United States and
22 countries other than the United States.

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

25 320.641 Unfair cancellation of franchise agreements.--

26 (3) Any motor vehicle dealer who receives a notice
27 from the licensee of its intent to discontinue, cancel, not
28 renew, modify, or replace the dealer's franchise agreement
29 ~~whose franchise agreement is discontinued, canceled, not~~
30 ~~renewed, modified, or replaced~~ may, within the 90-day notice
31 period, file a petition or complaint for a determination of

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

1 and substantial breach of the franchise agreement which is
2 significantly detrimental to the licensee's business interest.

3 Section 4. Paragraph (b) of subsection (2) of section
4 320.642, Florida Statutes, is amended to read:

5 320.642 Dealer licenses in areas previously served;
6 procedure.--

7 (2)

8 (b) In determining whether the existing franchised
9 motor vehicle dealer or dealers are providing adequate
10 representation in the community or territory for the
11 line-make, the department may consider evidence which may
12 include, but is not limited to:

13 1. The impact of the establishment of the proposed or
14 relocated dealer on the consumers, public interest, existing
15 dealers, and the licensee; provided, however, that financial
16 impact may only be considered with respect to the protesting
17 dealer or dealers.

18 2. The size and permanency of investment reasonably
19 made and reasonable obligations incurred by the existing
20 dealer or dealers to perform their obligations under the
21 dealer agreement.

22 3. The reasonably expected market penetration of the
23 line-make motor vehicle for the community or territory
24 involved, after consideration of all factors that ~~which~~ may
25 affect the ~~said~~ penetration, including, but not limited to,
26 demographic factors such as age, income, import vehicle
27 penetration, education, size class preference, product
28 popularity, retail lease transactions, or other factors
29 affecting sales to consumers of the community or territory.
30 Furthermore, with respect to any geographic comparison area
31 used to evaluate the performance of the line-make for the

1 community or territory involved, or any part thereof, the
2 comparison area must be reasonably similar demographically to
3 the community or territory, including age, income, import
4 vehicle penetration, education, size class preference, and
5 product popularity. The comparison areas may not be smaller
6 than a county. An identifiable plot within a community or
7 territory may not be smaller than a county.

8 4. Any actions by the licensees in denying its
9 existing dealer or dealers of the same line-make the
10 opportunity for reasonable growth, market expansion, or
11 relocation, including the availability of line-make vehicles
12 in keeping with the reasonable expectations of the licensee in
13 providing an adequate number of dealers in the community or
14 territory.

15 5. Any attempts by the licensee to coerce the existing
16 dealer or dealers into consenting to additional or relocated
17 franchises of the same line-make in the community or
18 territory.

19 6. Distance, travel time, traffic patterns, and
20 accessibility between the existing dealer or dealers of the
21 same line-make and the location of the proposed additional or
22 relocated dealer.

23 7. Whether benefits to consumers will likely occur
24 from the establishment or relocation of the dealership which
25 the protesting dealer or dealers prove cannot be obtained by
26 other geographic or demographic changes or expected changes in
27 the community or territory.

28 8. Whether the protesting dealer or dealers are in
29 substantial compliance with their dealer agreement.

30 9. Whether there is adequate interbrand and intrabrand
31 competition with respect to said line-make in the community or

1 territory and adequately convenient consumer care for the
2 motor vehicles of the line-make, including the adequacy of
3 sales and service facilities.

4 10. Whether the establishment or relocation of the
5 proposed dealership appears to be warranted and justified
6 based on economic and marketing conditions pertinent to
7 dealers competing in the community or territory, including
8 anticipated future changes.

9 11. The volume of registrations and service business
10 transacted by the existing dealer or dealers of the same
11 line-make in the relevant community or territory of the
12 proposed dealership.

13 Section 5. Subsection (3) is added to section 320.643,
14 Florida Statutes, to read:

15 320.643 Transfer, assignment, or sale of franchise
16 agreements.--

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

22 Section 6. Section 320.645, Florida Statutes, is
23 amended to read:

24 320.645 Restriction upon ownership of dealership by
25 licensee.--

26 (1) A ~~No~~ licensee, including a manufacturer or agent
27 of a manufacturer, or any parent, subsidiary, common entity,
28 or officer or representative of the licensee may not ~~shall~~ own
29 any interest in, control, or operate, either directly or
30 indirectly, a motor vehicle dealership in this state for the
31 sale or service of motor vehicles that ~~which~~ have been or are

1 offered for sale under a franchise agreement with a motor
2 vehicle dealer in this state. A licensee may not be issued a
3 motor vehicle dealer license pursuant to s. 320.27. However, a
4 ~~no such~~ licensee will not be deemed to be in violation of this
5 section:

6 (a) When operating a motor vehicle dealership for a
7 temporary period, not to exceed 1 year, during the transition
8 from one owner of the motor vehicle dealership to another;

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

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

27
28 In any ~~such~~ case in which paragraph (a) or paragraph (c)
29 applies, the licensee must continue to make the motor vehicle
30 dealership available for sale to an independent person at a
31 fair and reasonable price. Approval of the sale of such a

1 motor vehicle dealership to a proposed motor vehicle dealer
2 must ~~shall~~ not be unreasonably withheld. The licensee must
3 certify, in writing, to the department that the provisions of
4 paragraph (b) have been satisfied for the purpose of complying
5 with this section and that the relationship is not an attempt
6 to own, operate, or control one or more dealerships.

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

8 (a) "Agent" means a person who is employed by or
9 affiliated with a licensee or who directly or through an
10 intermediary is controlled by or under common control of a
11 licensee.

12 (b) "Control" means the direct or indirect possession
13 of the power to direct or cause the direction of the
14 management or policies of a person, whether through the
15 ownership of voting securities, by contract, or otherwise.

16 (c) "Independent person" means a person who is not an
17 officer, director, or employee of the licensee or otherwise
18 associated with the licensee through agreements or
19 understanding, other than the franchise agreement.

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

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

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

12 Section 7. Section 320.695, Florida Statutes, is
13 amended to read:

14 320.695 Injunction.--In addition to the remedies
15 provided in this chapter, and notwithstanding the existence of
16 any adequate remedy at law, the department, ~~or~~ any motor
17 vehicle dealer, association of motor vehicle dealers,
18 licensee, or association of licensees in the name of the
19 department and state and for the use and benefit of a ~~the~~
20 motor vehicle dealer or licensee, may apply ~~is authorized to~~
21 ~~make application~~ to any circuit court of the state for the
22 grant, upon a hearing and for cause shown, of a temporary or
23 permanent injunction, or both, restraining any person from
24 acting as a licensee under the terms of ss. 320.60-320.70
25 without being properly licensed hereunder, or from violating
26 or continuing to violate any of the provisions of ss.
27 320.60-320.70, or from failing or refusing to comply with the
28 requirements of this law or any rule or regulation adopted
29 hereunder. Such injunction shall be issued without bond. A
30 single act in violation of the provisions of ss. 320.60-320.70
31 shall be sufficient to authorize the issuance of an

1 injunction. However, this statutory remedy shall not be
2 applicable to any motor vehicle dealer after final
3 determination by the department under s. 320.641(3).

4 Section 8. This act shall take effect July 1, 2000.

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7 SENATE SUMMARY

8 Revises provisions regarding the rights and remedies of
9 motor vehicle dealers regarding their relationship with
10 licensees. Establishes conduct standards for the
11 licensees in such relationships. (See bill for details.)

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