

By Senator Diaz-Balart

37-1273-00

1 A bill to be entitled
2 An act relating to motor vehicle dealers;
3 amending s. 320.60, F.S.; revising certain
4 definitions; amending s. 320.61, F.S.;
5 prohibiting the granting of a replacement
6 application during the pendency of certain
7 actions alleging the unfair cancellation of a
8 dealer franchise agreement; amending s. 320.64,
9 F.S.; providing additional grounds for the
10 denial, suspension, or revocation of a license;
11 providing for the maintenance and disclosure of
12 certain records; amending s. 320.641, F.S.;
13 revising provisions relating to the unfair
14 cancellation of franchise agreements; adding
15 additional acts that constitute such actions;
16 providing procedural standards during such
17 action; amending s. 320.642, F.S.; establishing
18 certain geographic comparison area standards
19 for use in determining whether dealers are
20 providing adequate representation; amending s.
21 320.643, F.S.; prohibiting licensees from
22 having a right of first refusal regarding
23 franchise agreements; amending s. 320.645,
24 F.S.; providing for a licensee to operate a
25 dealership under special conditions; amending
26 s. 320.695, F.S.; providing additional grounds
27 for injunctive relief by any person; providing
28 an effective date.
29
30 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Paragraph (a) of subsection (11) of section
2 320.60, Florida Statutes, is amended, subsections (13) and
3 (14) of that section are redesignated as subsections (14) and
4 (15) respectively, and a new subsection (13) is added to that
5 section, to read:

6 320.60 Definitions for ss. 320.61-320.70.--Whenever
7 used in ss. 320.61-320.70, unless the context otherwise
8 requires, the following words and terms have the following
9 meanings:

10 (11)(a) "Motor vehicle dealer" means any person, firm,
11 or corporation who is licensed as a franchise motor vehicle
12 dealer and, for commission, money, or other things of value,
13 repairs or services motor vehicles or used motor vehicles
14 pursuant to an agreement as defined in subsection (1), or
15 sells, exchanges, buys, or rents, or offers, or attempts to
16 negotiate a sale or exchange of any interest in, motor
17 vehicles, including retail lease transactions for a period of
18 more than 12 months, or who is engaged wholly or in part in
19 the business of selling motor vehicles, whether or not such
20 motor vehicles are owned by such person, firm, or corporation.

21 (13) "Sell" means a transaction in which the title is
22 transferred to the purchaser, or a retail lease transaction in
23 which a lessee leases a vehicle for a period of more than 12
24 months.

25 Section 2. Subsection (4) of section 320.61, Florida
26 Statutes, is amended to read:

27 320.61 Licenses required of motor vehicle
28 manufacturers, distributors, importers, etc.--

29 (4) When a complaint of unfair cancellation of a
30 dealer agreement is made by a motor vehicle dealer against a
31 licensee and is in the process of being heard pursuant to ss.

1 320.60-320.70 by the department, a no replacement application
2 for such agreement may not ~~shall~~ be granted until a final
3 decision is rendered ~~by the department~~ on the complaint of
4 unfair cancellation, including the exhaustion of all appellate
5 remedies by either party.

6 Section 3. Subsections (13) and (20) of section
7 320.64, Florida Statutes, are amended, and subsections (24),
8 (25), (26), (27), (28), (29), (30), (31), (32), and (33) are
9 added to that section, to read:

10 320.64 Denial, suspension, or revocation of license;
11 grounds.--A license may be denied, suspended, or revoked
12 within the entire state or at any specific location or
13 locations within the state at which the applicant or licensee
14 engages or proposes to engage in business, upon proof that an
15 applicant or licensee has failed to comply with any of the
16 following provisions with sufficient frequency so as to
17 establish a pattern of wrongdoing on the part of the
18 applicant:

19 (13) The applicant or licensee has refused to deliver,
20 in reasonable quantities and within a reasonable time, to any
21 duly licensed motor vehicle dealer who has an agreement with
22 such applicant or licensee for the retail sale of new motor
23 vehicles and parts for motor vehicles sold or distributed by
24 the applicant or licensee, any such motor vehicles or parts as
25 are covered by such agreement, including:

26 (a) The failure to provide to all line-make motor
27 vehicle dealers all models manufactured for that line-make;

28 (b) Requiring a dealer to pay an extra fee, purchase
29 unreasonable advertising displays or other materials, or
30 remodel, renovate, or recondition the dealer's facilities or
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1 provide exclusive facilities as a prerequisite to receiving a
2 model or series of vehicles; or

3 (c) Requiring a dealer to enter into a separate
4 franchise agreement for any model or series.

5
6 However, a licensee or common entity may require its dealers
7 to purchase special tools or equipment, stock reasonable
8 quantities of certain parts or accessories, or participate in
9 training programs that are reasonably necessary to enable the
10 dealers to sell or service any model or series of models if
11 such requirements are reasonable, written, and uniformly
12 applied to all of the dealers in this state ~~specifically~~
13 ~~publicly advertised by such applicant or licensee to be~~
14 ~~available for immediate delivery. However,~~The failure to
15 deliver any motor vehicle or part ~~is~~ will not ~~be considered~~ a
16 violation of this section if the failure is due to act of God,
17 work stoppage, ~~or delay due to a~~ strike or labor difficulty, ~~a~~
18 freight embargo, national product shortage, or other cause
19 over which the applicant or licensee has no control. The
20 failure to deliver parts or components for the current and 5
21 preceding years' models within 60 days from date of order
22 shall be deemed prima facie unreasonable.

23 (20) The applicant or licensee has established a
24 system of motor vehicle allocation or distribution or has
25 implemented a system of allocation or distribution of motor
26 vehicles to one or more of its franchised motor vehicle
27 dealers which is unfair, inequitable, unreasonably
28 discriminatory, or not supportable by reason and good cause
29 after considering the equities of the affected motor vehicles
30 dealer or dealers. A licensee must maintain for 3 years all
31 records that fully describe the method or formula of

1 allocation or distribution of motor vehicles, as well as
2 records of the actual allocation or distribution of motor
3 vehicles, and all other records that directly or indirectly
4 affect the allocation or distribution of motor vehicles to its
5 dealers. These records must be made available, at no cost to a
6 motor vehicle dealer who has a franchise agreement with the
7 licensee, within 30 days after the dealer files a written
8 request with the licensee. The dealer must also file a copy of
9 such request with the department.

10 (24) The applicant or licensee has sold, or offered to
11 sell, any service, vehicle, or product to a retail purchaser
12 in this state, except through a motor vehicle dealer holding a
13 franchise for the line-make vehicle. This subsection does not
14 apply to an applicant or licensee that is exempt pursuant to
15 s. 320.645 or to a replacement vehicle provided by the
16 licensee pursuant to chapter 681.

17 (25)(a) The applicant or licensee has charged back a
18 motor vehicle dealer for a warranty payment or did not
19 reimburse the dealer for any service or repair made to correct
20 a defective condition of a motor vehicle covered under the
21 licensee's warranty which correction was desirable to prevent
22 deterioration of the value of the vehicle, or was necessary to
23 correct a potential safety hazard, unless the licensee proves
24 by clear and convincing evidence that the service or repair
25 was not necessary at the time it was made, was not actually
26 performed, or was fraudulent, or that the dealer did not
27 reasonably substantiate or justify the claim, as required by
28 the warranty procedure manual or in some other reasonable
29 manner.

30 (b) The applicant or licensee has required a dealer to
31 file a statement of actual time spent or consider actual time

1 spent in any repair, unless actual time is the basis for
2 reimbursement; performed an audit for warranty compensation
3 for payments made more than 12 months before the audit, unless
4 the licensee has reasonable grounds to believe that a claim
5 was fraudulent, and waives all claims regarding payments for
6 warranty repairs 18 months after payment.

7 1. If a licensee intends to charge back a warranty
8 payment, or reject a warranty claim, the licensee first must
9 give the dealer a written notice, stating the reasons for the
10 charge back or rejection, detailing the facts showing that the
11 warranty work was not necessary, not actually performed,
12 fraudulent, or not reasonably substantiated. A dealer, within
13 60 days after receipt of the notice, may file a complaint with
14 a court of competent jurisdiction, alleging that the licensee
15 violated this section.

16 2. During the pendency of the action, potential charge
17 backs shall be stayed. If the court finds for the dealer, the
18 licensee is liable to the dealer for two times the amount of
19 any charge back or rejected warranty claim, plus reasonable
20 attorney's fees and court costs.

21 (c) The applicant or licensee has denied a dealer's
22 claim for sales or service incentives, rebates, or other forms
23 of incentive compensation, reduced the amount paid, or charged
24 back a payment, unless the licensee proves by clear and
25 convincing evidence that the claim was fraudulent or that the
26 dealer, after written notice and a reasonable opportunity to
27 cure, of not less than 60 days, did not reasonably
28 substantiate the claim.

29 1. A licensee may not audit sales, service, or parts
30 incentives or rebates, or any other forms of incentive
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1 compensation paid more than 12 months before the commencement
2 of the audit.

3 2. If a licensee intends to charge back a payment, or
4 reject a claim, for any incentive, it must give the dealer a
5 written notice detailing the facts, showing that the claim was
6 fraudulent or unsubstantiated. A dealer, within 60 days after
7 receipt of the notice may file a complaint with a court of
8 competent jurisdiction, alleging that the licensee violated
9 this section.

10 3. During the pendency of the action, potential charge
11 backs shall be stayed. If the court finds for the dealer, the
12 licensee is liable to the dealer for two times the amount of
13 any charge back or rejected claim, plus reasonable attorney's
14 fees and court costs.

15 (d) The applicant or licensee has conducted,
16 attempted, or threatened to conduct an audit to coerce a
17 dealer to forego any rights granted to the dealer under ss.
18 320.60 through 320.70.

19 (26) The applicant or licensee has offered refunds,
20 incentives, or other inducements to any person to influence
21 the purchase of new motor vehicles of a certain line-make
22 without making the same offer to all dealers with the same
23 line-make within the state. A licensee may, however, offer
24 uniform discounts, rebates, or incentives to all of its
25 dealers or may implement reasonable regional marketing
26 programs that provide equal and measurable ability, based on
27 credible criteria, for all of the licensee's line-make dealers
28 in this state to qualify for participation. In sales to
29 commercial fleet accounts or motor vehicle leasing entities,
30 any subsidy, discount, incentive, or other inducement must be
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1 uniformly available to all of the licensee's line-make motor
2 vehicle dealers in this state.

3 (27) The applicant or licensee, by contract or
4 otherwise, has restricted, threatened, or attempted to
5 restrict, a dealer from selling vehicles, parts or accessories
6 to any retail customer, who is the ultimate user of the
7 vehicle, domiciled in another state or foreign country,
8 including refusing to provide motor vehicles in compliance
9 with applicable law, withholding payment, or charging back
10 monies otherwise available to the dealer under a sales
11 promotion, program, or contest, or excluding a vehicle or
12 dealer from participation in a promotion, program, or contest
13 offered by the licensee.

14 (28) The applicant or licensee has wrongfully or
15 unreasonably rejected or withheld approval of a proposed
16 transfer of a franchise agreement, pursuant to s. 320.643.

17 (29) The applicant or licensee has published,
18 disclosed, or otherwise made available information, including
19 composite information, obtained from a motor vehicle dealer.

20 (30) The applicant or licensee has introduced a
21 franchise agreement containing a requirement that a dealer
22 arbitrate or mediate any issue with the licensee before filing
23 a complaint with the department or a court, as permitted by s.
24 320.60 through s. 320.70, unless the requirement is voidable
25 by the dealer, and the provisions require that the arbitrator
26 must apply s. 320.60 through s. 320.70 in resolving the matter
27 and that either party may appeal the decision of the
28 arbitrator to the District Court of Appeal for the district in
29 which the dealer's principal place of business is located.

30 (31) The applicant or licensee has competed with one
31 of its franchised motor vehicle dealers in this state.

1 (32) The applicant or licensee has required that in
2 any arbitration, mediation, or civil or administrative
3 proceeding in which the dealer asserts any claims, rights, or
4 defenses arising under s. 320.60 through s. 320.70 or a
5 franchise agreement, that the dealer or any non-prevailing
6 party compensate the licensee or any common entity for
7 attorney's fees, court costs, or other expenses.

8 (33) The applicant or licensee has offered, or allowed
9 a parent, subsidiary, affiliate, or common entity to offer, a
10 program under which financing or lease rates to customers of
11 one dealer are less than rates made available to customers of
12 all other dealers of the same line-make in this state,
13 regardless of the other provisions of such a program, and
14 regardless of whether a motor vehicle dealer is eligible for
15 or elects to participate in such a program.

16 Section 4. Subsections (1), (2), (3), and (4) of
17 section 320.641, Florida Statutes, are amended to read:

18 320.641 Unfair cancellation of franchise agreements.--

19 (1)(a) An applicant or licensee shall give written
20 notice to the motor vehicle dealer and the department of the
21 licensee's intention to discontinue, cancel, or fail to renew
22 a franchise agreement or of the licensee's intention to modify
23 a franchise or replace a franchise with a succeeding
24 franchise, which modification or replacement may ~~will~~
25 adversely alter the rights or obligations of a motor vehicle
26 dealer under an existing franchise agreement or may ~~will~~
27 substantially impair the sales, service obligations, or
28 investment of the motor vehicle dealer, at least 90 days
29 before the effective date thereof, together with the specific
30 grounds for such action.

1 (b) The failure by the licensee to comply with the
2 90-day notice period and procedure prescribed herein shall
3 render voidable, at the option of the motor vehicle dealer,
4 any discontinuation, cancellation, nonrenewal, modification,
5 or replacement of any franchise agreement. Designation of a
6 franchise agreement at a specific location as a "nondesignated
7 point" shall be deemed an evasion of this section and
8 constitutes an unfair cancellation.

9 (2) Franchise agreements are deemed to be continuing
10 unless the applicant or licensee has notified the department
11 of the discontinuation of, cancellation of, failure to renew,
12 modification of, or replacement of the agreement of any of its
13 motor vehicle dealers; and annual renewal of the license
14 provided for under ss. 320.60-320.70 is not necessary for any
15 cause of action against the licensee.

16 (3) Any motor vehicle dealer that is notified by the
17 licensee that the dealer's ~~whose~~ franchise agreement will be
18 ~~is~~ discontinued, canceled, not renewed, modified, or replaced
19 may, within the 90-day notice period, file a petition or
20 complaint for a determination of whether such action is an
21 unfair or prohibited discontinuation, cancellation,
22 nonrenewal, modification, or replacement. The licensee has the
23 burden of establishing that such action is fair and not
24 prohibited. In addition to any express changes to a franchise
25 agreement, modifications covered by this subsection include
26 any attempt by the licensee to implement or enforce any
27 policy, procedure, standard, memorandum, addendum, or
28 requirement other than one required by applicable law, which
29 changes current practices or procedures and is not part of the
30 franchise agreement. Agreements and certificates of
31 appointment shall continue in effect until final determination

1 of the issues raised in such petition or complaint by the
2 motor vehicle dealer.

3 (a) Until a final determination, including exhaustion
4 of all appellate remedies, is made, a franchise agreement
5 shall remain in force and the dealer shall retain all rights
6 and remedies provided by the franchise agreement and law. If a
7 transfer is approved by the licensee or mandated by law, the
8 termination proceeding shall be dismissed with prejudice. If a
9 dealer proposes a transfer, pursuant to s. 320.643, of the
10 franchise agreement or a majority equity interest, prior to a
11 final determination of the termination proceeding, supersedeas
12 shall be granted without bond in the termination proceeding,
13 pending a final determination. If the first transfer proposed
14 pursuant to this subsection is rejected by the licensee and
15 not mandated by law, and the dealer proposes additional
16 transfers, the dealer may obtain a supersedeas, without bond,
17 of the termination proceeding, pursuant to such proposed
18 transfer, if additional transfers are proposed in good faith
19 and not for purposes of delay.

20 (b) To discontinue, cancel, or refuse to renew a
21 franchise agreement, a licensee must prove that such action is
22 permitted by the franchise agreement; undertaken in good faith
23 and for good cause; and based on a material and substantial
24 breach of the franchise agreement. "Good cause," as used in
25 this paragraph means conduct by the dealer, which causes
26 damage to the licensee and is substantially and significantly
27 detrimental to the licensee's business interests so as to
28 constitute a basis for action by the licensee that is
29 independent of and distinct from the franchise agreement. If
30 the termination is based on alleged deficient or inadequate
31 sales, service performance, or facilities, the licensee must

1 give the dealer a reasonable opportunity to cure the
2 deficiencies before taking action against the dealer. A
3 licensee may not terminate, discontinue, or refuse to renew a
4 franchise agreement on the basis of fraud unless the licensee
5 proves by clear and convincing evidence that the person
6 designated as dealer-operator or dealer-principal in the
7 franchise agreement had actual knowledge of the fraud at the
8 time it occurred or failed, within a reasonable time after
9 being advised of the fraud, to take action reasonably
10 necessary to prevent it from continuing or reoccurring. A
11 modification or replacement of a franchise agreement is unfair
12 if it is not clearly permitted by the franchise agreement, is
13 not undertaken in good faith and for good cause, fails to
14 consider the dealer's investment in the franchise, will
15 adversely affect the return on such investment, or is
16 undertaken without regard to the equities of the dealer. A
17 ~~discontinuation, cancellation, or nonrenewal of a franchise~~
18 ~~agreement is unfair if it is not clearly permitted by the~~
19 ~~franchise agreement; is not undertaken in good faith; is not~~
20 ~~undertaken for good cause; or is based on an alleged breach of~~
21 ~~the franchise agreement which is not in fact a material and~~
22 ~~substantial breach.~~

23 (4) Notwithstanding any other provision of this
24 section, the failure of a motor vehicle dealer to be engaged
25 in business ~~with the public~~ for 10 consecutive business days
26 constitutes abandonment by the dealer of his or her franchise
27 agreement. If any motor vehicle dealer abandons his or her
28 franchise agreement, he or she has no cause of action under
29 this section. For the purpose of this section, a dealer shall
30 be considered to be engaged in business ~~with the public~~ if a
31 sales and service facility is open and is performing such

1 services 8 hours a day, 5 days a week, excluding holidays.
2 However, it will not be considered abandonment if such failure
3 to engage in business is due to an act of God, a work
4 stoppage, or a delay due to a strike or labor difficulty, a
5 freight embargo, or other cause over which the motor vehicle
6 dealer has no control, including any violation of ss.
7 320.60-320.70.

8 Section 5. Paragraph (b) of subsection (2) and
9 subsection (3) of section 320.642, Florida Statutes, are
10 amended to read:

11 320.642 Dealer licenses in areas previously served;
12 procedure.--

13 (2)

14 (b) In determining whether the existing franchised
15 motor vehicle dealer or dealers are providing adequate
16 representation in the community or territory for the
17 line-make, the department may consider evidence which may
18 include, but is not limited to:

19 1. The impact of the establishment of the proposed or
20 relocated dealer on the consumers, public interest, existing
21 dealers, and the licensee; provided, however, that financial
22 impact may only be considered with respect to the protesting
23 dealer or dealers.

24 2. The size and permanency of investment reasonably
25 made and reasonable obligations incurred by the existing
26 dealer or dealers to perform their obligations under the
27 dealer agreement.

28 3. The reasonably expected market penetration of the
29 line-make motor vehicle for the community or territory
30 involved, after consideration of all factors which may affect
31 said penetration, including, but not limited to, demographic

1 factors such as age, income, education, size class preference,
2 product popularity, retail lease transactions, import
3 penetration, or other factors affecting sales to consumers of
4 the community or territory. Any geographic comparison area
5 used to evaluate the performance of the line-make must be
6 reasonably similar in demographic factors to the community or
7 territory, including age, income, import penetration,
8 education, size class preference, and product popularity, and
9 may not be smaller than a county. Reasonably expected market
10 penetration must be measured with respect to the community or
11 territory as a whole.

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

19 5. Any attempts by the licensee to coerce the existing
20 dealer or dealers into consenting to additional or relocated
21 franchises of the same line-make in the community or
22 territory.

23 6. Distance, travel time, traffic patterns, and
24 accessibility between the existing dealer or dealers of the
25 same line-make and the location of the proposed additional or
26 relocated dealer.

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

1 8. Whether the protesting dealer or dealers are in
2 substantial compliance with their dealer agreement.

3 9. Whether there is adequate interbrand and intrabrand
4 competition with respect to said line-make in the community or
5 territory and adequately convenient consumer care for the
6 motor vehicles of the line-make, including the adequacy of
7 sales and service facilities.

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

13 11. The volume of registrations and service business
14 transacted by the existing dealer or dealers of the same
15 line-make in the relevant community or territory of the
16 proposed dealership.

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

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

30 1. The proposed additional or relocated motor vehicle
31 dealer is to be located in the area designated or described as

1 the area of responsibility, or such similarly designated area,
2 including the entire area designated as a multiple-point area,
3 in the franchise agreement or in any related document or
4 commitment with the existing motor vehicle dealer or dealers
5 of the same line-make as such agreement existed upon October
6 1, 1988;

7 2. The existing motor vehicle dealer or dealers of the
8 same line-make have a licensed franchise location within a
9 radius of 20 miles of the location of the proposed additional
10 or relocated motor vehicle dealer; or

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

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

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

12 Section 6. Subsection (3) is added to section 320.643,
13 Florida Statutes, to read:

14 320.643 Transfer, assignment, or sale of franchise
15 agreements.--

16 (3) Notwithstanding the terms of a franchise
17 agreement, a licensee does not have a right of first refusal
18 regarding any proposed transfer of a franchise agreement or
19 ownership of a motor vehicle dealership.

20 Section 7. Section 320.645, Florida Statutes, is
21 amended to read:

22 320.645 Restriction upon ownership of dealership by
23 licensee.--

24 (1) A ~~No~~ licensee, including a manufacturer or agent
25 of a manufacturer, or any parent, subsidiary, common entity,
26 or officer or representative of the licensee may not ~~shall~~
27 own, control, or operate, either directly or indirectly, a
28 motor vehicle dealership in this state for the sale or service
29 of motor vehicles that ~~which~~ have been or are offered for sale
30 under a franchise agreement with a motor vehicle dealer in
31 this state, nor may a licensee be issued a dealer license

1 under s. 320.27. However, a ~~no such licensee will be deemed to~~
2 ~~be in violation of this section:~~

3 (a) May operate ~~When operating~~ a motor vehicle
4 dealership for a temporary period, not to exceed 1 year,
5 during the transition from one owner of the motor vehicle
6 dealership to another;

7 (b) May, to broaden the diversity of its dealer body
8 and enhance opportunities for qualified persons who are
9 members of a group that has historically been underrepresented
10 in its dealer body or for other qualified persons who lack the
11 resources to buy or capitalize a dealership outright,
12 temporarily own an interest in a motor vehicle dealership ~~When~~
13 ~~operating a motor vehicle dealership temporarily for a~~
14 ~~reasonable period, not to exceed 1 year, or in a bona fide~~
15 ~~relationship with an independent person who is not associated~~
16 ~~with the licensee in any manner other than the franchise~~
17 ~~agreement and who has no equity interest in another dealer~~
18 ~~development arrangement, other than a licensee or its agent,~~
19 ~~common entity, or affiliate, who has a bona fide dealer~~
20 ~~development arrangement and has made a significant investment~~
21 ~~that is subject to loss in the dealership and who can~~
22 ~~reasonably expect to acquire full ownership of the dealership~~
23 ~~on reasonable terms and conditions; or~~

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

30 (2)(a) In any ~~such~~ case under paragraph (1)(a) or
31 paragraph (1)(c), the licensee must continue to make the motor

1 vehicle dealership available for sale to an independent person
2 at a fair and reasonable price. Approval of the sale of such a
3 motor vehicle dealership to a proposed motor vehicle dealer
4 ~~may shall~~ not be unreasonably withheld.

5 (b) In any case, under paragraph (1)(b), the licensee
6 must certify, in writing, to the department that the
7 provisions of paragraph (b) have been complied with and that
8 the dealer development arrangement is bona fide and not an
9 attempt by the licensee to own, operate, or control a
10 dealership in this state.

11 (3) The department or any person, pursuant to s.
12 320.695, may file an action to determine whether a dealer
13 development arrangement is bona fide. If it is determined that
14 the arrangement is not bona fide or otherwise does not meet
15 the statutory requirements, the department shall take
16 appropriate action, including imposing sanctions pursuant to
17 s. 320.64 and withholding or revoking the license issued to
18 the dealership.

19 (4) A licensee, affiliate, or common entity that
20 temporarily owns, pursuant to paragraph (1)(b), an interest in
21 a dealership, may not discriminate against any other
22 franchised dealer in the same line-make in any matter governed
23 by the franchise agreement, including the execution or
24 implementation of policies, programs, benefits, and
25 incentives, and the sale and allocation of vehicles to its
26 dealers.

27 (5) The department may issue subpoenas and require the
28 production of such documents and information as necessary in
29 any action under this section.

30 (6) As used in this section, the term:
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1 (a) "Significant investment" means a substantial
2 amount of personal initial money, but not less than 6 percent
3 of the investment, considering the fair market value of the
4 dealership, which money was acquired and obtained from sources
5 other than the licensee, its affiliates, or common entities
6 and is not encumbered by the person's interest in the
7 dealership. In determining fair market value, if ownership of
8 the dealership has been transferred within the preceding 12
9 months, that purchase price shall be the fair market value.
10 Otherwise one or more independent appraisals must be obtained
11 by the licensee to place a fair market value on the
12 dealership.

13 (b) "Reasonable terms and conditions" means that
14 profits from the dealership operations are sufficient to allow
15 full ownership of the dealership by the independent person
16 within a reasonable time period, not to exceed 10 years,
17 absent exceptional circumstances demonstrated by the
18 independent person or the licensee; that the independent
19 person has sufficient control to permit acquisition of
20 ownership; and that the dealer development arrangement cannot
21 be terminated by the licensee to avoid full ownership by the
22 independent person. The terms and conditions of the agreement
23 must permit the independent person to purchase the dealership
24 at any time without premium or penalty.

25 (7)(2) This section may ~~shall~~ not be construed to
26 prohibit any licensee from owning or operating a motor vehicle
27 dealership in this state if such dealership was owned,
28 controlled, or operated by the licensee on July 1, 2000 ~~May~~
29 ~~31, 1984.~~

30 Section 8. Section 320.695, Florida Statutes, is
31 amended to read:

1 320.695 Injunction.--In addition to the remedies
2 provided in this chapter, and notwithstanding the existence of
3 any adequate remedy at law, the department, any person, or any
4 motor vehicle dealer in the name of the department and state
5 and for the use and benefit of the motor vehicle dealer, is
6 authorized to make application to any circuit court of the
7 state for the grant, upon a hearing and for cause shown, of a
8 temporary or permanent injunction, or both, restraining any
9 person from acting as a licensee under the terms of ss.
10 320.60-320.70 without being properly licensed hereunder, or
11 from violating, threatening to violate, or continuing to
12 violate any of the provisions of ss. 320.60-320.70, or from
13 failing or refusing to comply with the requirements of this
14 law or any rule or regulation adopted hereunder. Such
15 injunction shall be issued without bond. A single act in
16 violation of the provisions of ss. 320.60-320.70 ~~is shall be~~
17 sufficient to authorize the issuance of an injunction, whether
18 or not an adequate remedy at law exists or injury will result
19 without an injunction. However, this statutory remedy shall
20 not be applicable to any motor vehicle dealer after final
21 determination by the department under s. 320.641(3).

22 Section 9. This act shall take effect upon becoming a
23 law.
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SENATE SUMMARY

Revises provisions relating to the relationship between motor vehicle licensees and their dealers. Prohibits the granting of a replacement application during certain actions alleging the unfair cancellation of a dealer agreement. Provides additional grounds for departmental sanctions against a motor vehicle licensee. Provides for the maintenance and disclosure of certain records. Revises provisions relating to the unfair cancellation of franchise agreements. Specifies additional acts that are grounds for actions against licensees. Establishes geographic area comparison area standards for use in determining whether certain dealers are providing adequate representation. Prohibits licensees from having a right of first refusal on the sale or transfer of dealerships and franchise agreements. Provides conditions under which a licensee is permitted to own a dealership. Provides additional grounds for the imposition of injunctive relief. (See bill for details.)