

By Senator Villalobos

37-458-01

1 A bill to be entitled
2 An act relating to motor vehicle dealer
3 franchise agreements; amending s. 320.60, F.S.;
4 revising definitions used in ss. 320.61-320.70,
5 F.S.; amending s. 320.61, F.S.; amending
6 procedures to be followed when a complaint of
7 unfair cancellation of a dealer agreement has
8 been made by a motor vehicle dealer against a
9 licensee; defining the term "final decision";
10 amending s. 320.63, F.S.; providing that the
11 terms and conditions of a franchise agreement
12 must comply with ss. 320.60-320.70, F.S., or
13 they are unenforceable; prohibiting licensees
14 from performing certain acts; amending s.
15 320.64, F.S.; providing penalties and remedies
16 for violations; amending s. 320.641, F.S.;
17 providing procedures relating to
18 discontinuations, cancellations, nonrenewals,
19 modifications, and replacements of franchise
20 agreements; amending s. 320.642, F.S.; amending
21 procedures for establishing an additional motor
22 vehicle dealer who deals in a specific
23 line-make in an area that is already served by
24 another such dealer; amending s. 320.643, F.S.;
25 amending provisions relating to the transfer,
26 assignment, or sale of franchise agreements;
27 amending s. 320.645, F.S.; amending provisions
28 relating to restrictions upon a licensee's
29 owning a dealership; providing for "dealer
30 development arrangements"; providing powers of
31 the Department of Highway Safety and Motor

1 Vehicles; amending s. 320.695, F.S.; amending
2 procedures for enjoining any person from acting
3 as a licensee under ss. 320.60-320.70, F.S.,
4 without being properly licensed or from
5 violating those statutes or rules adopted
6 thereunder; amending s. 320.699, F.S.; amending
7 procedures for administrative hearings and
8 adjudications relating to a motor vehicle
9 dealer's allegations of harm due to an
10 applicant's or licensee's violation of ss.
11 320.60-320.70, F.S.; providing for
12 severability; providing an effective date.

13

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

15

16 Section 1. Section 320.60, Florida Statutes, is
17 amended to read:

18 320.60 Definitions for ss. 320.61-320.70.--As whenever
19 used in ss. 320.61-320.70, ~~unless the context otherwise~~
20 ~~requires, the term following words and terms have the~~
21 ~~following meanings:~~

22 (1) "Agreement" or "franchise agreement" means a
23 contract, franchise, new motor vehicle franchise, sales and
24 service agreement, or dealer agreement or any other
25 terminology used to describe the contractual relationship
26 between a manufacturer, factory branch, distributor, or
27 importer, and a motor vehicle dealer, pursuant to which the
28 motor vehicle dealer is authorized to transact business
29 pertaining to motor vehicles of a particular line-make.

30 (2) "Area of responsibility" means the area that the
31 licensee reasonably designates as a motor vehicle dealer's

1 geographic territory for the purpose of evaluation of the
2 motor vehicle dealer for the marketing, promoting, and selling
3 of the licensee's new motor vehicles. In the absence of a
4 licensee designated area, the area of responsibility is that
5 geographical area surrounding a dealer which lies closer to
6 that dealer than to other dealers of the same line-make.

7 (3) "Broker" means a person, firm, company,
8 corporation, or other entity that arranges or offers to
9 arrange a transaction involving the sale or lease of a new
10 motor vehicle and that is not a franchised motor vehicle
11 dealer.

12 (4)(2) "Common entity" means a person:

13 (a) Who is either controlled or owned, beneficially or
14 of record, by one or more persons who also control or own more
15 than 40 percent of the voting equity interests of a
16 manufacturer; or

17 (b) Who shares directors or officers or partners with
18 a manufacturer.

19 (5) "Consumer" means any person, firm, company,
20 corporation, or other entity that purchases, leases, or
21 finances, or expresses an interest in purchasing, leasing, or
22 financing, a motor vehicle, used motor vehicle, or motor
23 vehicle parts or service, other than for resale.

24 (6)(3) "Demonstrator" means any new motor vehicle
25 which is carried on the records of the dealer as a
26 demonstrator and is used by, being inspected or driven by the
27 dealer or his or her employees or prospective customers for
28 the purpose of demonstrating vehicle characteristics in the
29 sale or display of motor vehicles sold by the dealer.

30 (7)(4) "Department" means the Department of Highway
31 Safety and Motor Vehicles.

1 ~~(8)(5)~~ "Distributor" means a person, resident or
2 nonresident, who, in whole or in part, sells or distributes
3 motor vehicles to motor vehicle dealers or who maintains
4 distributor representatives.

5 ~~(9)(6)~~ "Factory branch" means a branch office
6 maintained by a manufacturer, distributor, or importer for the
7 sale of motor vehicles to distributors or to motor vehicle
8 dealers, or for directing or supervising, in whole or in part,
9 its representatives in this state.

10 ~~(10)(7)~~ "Importer" means any person who imports
11 vehicles from a foreign country into the United States or into
12 this state for the purpose of sale or lease.

13 (11) "Lead means any consumer who, for a purpose other
14 than that of resale, expresses to a licensee an interest in
15 purchasing, leasing, or financing, or in possibly purchasing,
16 leasing, or financing, a motor vehicle, used motor vehicle, or
17 motor vehicle parts or service, or who seeks information from
18 a licensee regarding any such expression of interest.

19 (12) "Line-make vehicles" means those motor vehicles
20 that are offered for sale, lease, or distribution under a
21 common name, trademark, service mark, or brand name of their
22 manufacturer.

23 ~~(13)(8)~~ "Licensee" means any person licensed or
24 required to be licensed under s. 320.61.

25 ~~(14)(9)~~ "Manufacturer" means any person, whether a
26 resident or nonresident of this state, who manufactures or
27 assembles motor vehicles or who manufactures or installs on
28 previously assembled truck chassis special bodies or equipment
29 which, when installed, form an integral part of the motor
30 vehicle and which constitute a major manufacturing alteration.
31 The term "manufacturer" includes a central or principal sales

1 corporation or other entity through which, by contractual
2 agreement or otherwise, it distributes its products.

3 (15)~~(10)~~ "Motor vehicle" means any new automobile,
4 motorcycle, or truck the equitable or legal title to which has
5 never been transferred by a manufacturer, distributor,
6 importer, or dealer to an ultimate purchaser; however, when
7 legal title is not transferred but possession of a motor
8 vehicle is transferred pursuant to a conditional sales
9 contract or lease and the conditions are not satisfied and the
10 vehicle is returned to the motor vehicle dealer, the motor
11 vehicle may be resold by the motor vehicle dealer as a new
12 motor vehicle, provided the selling motor vehicle dealer gives
13 the following written notice to the purchaser: "THIS VEHICLE
14 WAS DELIVERED TO A PREVIOUS PURCHASER." The purchaser shall
15 sign an acknowledgment, a copy of which is kept in the selling
16 dealer's file.

17 (16)~~(11)~~(a) "Motor vehicle dealer" means any person,
18 firm, company, or corporation, or other entity who is licensed
19 under s. 320.27 as a "franchised motor vehicle dealer" and
20 who, for commission, money, or other things of value, repairs
21 or services motor vehicles or used motor vehicles pursuant to
22 an agreement as defined in subsection (1), or who sells,
23 exchanges, buys, leases, or rents, or offers, or attempts to
24 negotiate a sale or exchange of any interest in, motor
25 vehicles or who is engaged wholly or in part in the business
26 of selling motor vehicles, whether or not such motor vehicles
27 are owned by such person, firm, company, or corporation.

28 (b) Any person who repairs or services three or more
29 motor vehicles or used motor vehicles as set forth in
30 paragraph (a), or who buys, sells, or deals in three or more
31 motor vehicles in any 12-month period or who offers or

1 displays for sale three or more motor vehicles in any 12-month
2 period shall be prima facie presumed to be a motor vehicle
3 dealer. The terms "selling" and "sale" include lease-purchase
4 transactions.

5 (c) The term "motor vehicle dealer" does not include:

- 6 1. Public officers while performing their official
7 duties;
- 8 2. Receivers, trustees, administrators, executors,
9 guardians, or other persons appointed by, or acting under the
10 judgment or order of, any court;
- 11 3. Banks, finance companies, or other loan agencies
12 that acquire motor vehicles as an incident to their regular
13 business; or
- 14 4. Motor vehicle rental and leasing companies that
15 sell motor vehicles to motor vehicle dealers licensed under s.
16 320.27.

17 ~~(17)(12)~~ "Person" means any natural person,
18 partnership, firm, corporation, association, joint venture,
19 trust, or other legal entity.

20 (18) "Sell", "selling", "sold", "exchange", "retail
21 sales", or "leases" includes any transaction in which the
22 title of a motor vehicle or used motor vehicle is transferred
23 to a retail consumer and also includes any retail lease
24 transaction in which a retail customer leases a vehicle for a
25 period of at least 12 months.

26 (19) "Service" means any service that, for any
27 compensation, is sold, leased, or provided to retail consumers
28 and that directly relates to the ownership or leasing of a
29 motor vehicle or used motor vehicle, including extended
30 service contracts and motor vehicle warranty and nonwarranty
31 repairs or maintenance, including both parts and labor.

1 ~~(20)(13)~~ "Used motor vehicle" means any motor vehicle
2 title to or possession of which has been transferred from the
3 person who first acquired it from the manufacturer,
4 distributor, importer, or dealer and which is commonly known
5 as "secondhand" within the ordinary meaning thereof.

6 ~~(14) "Line-make vehicles" are those motor vehicles~~
7 ~~which are offered for sale, lease, or distribution under a~~
8 ~~common name, trademark, service mark, or brand name of the~~
9 ~~manufacturer of same.~~

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

12 320.61 Licenses required of motor vehicle
13 manufacturers, distributors, importers, etc.--

14 (4) When a complaint of unfair cancellation of a
15 dealer agreement is made by a motor vehicle dealer against a
16 licensee and the complaint is pending ~~is in the process of~~
17 ~~being heard~~ pursuant to ss. 320.60-320.70 ~~by the department, a~~
18 ~~no~~ replacement application for the such agreement may not
19 ~~shall~~ be granted and a license may not be issued by the
20 department under s. 320.27 to any replacement dealer until a
21 final decision is rendered ~~by the department~~ on the complaint
22 of unfair cancellation. As used in this subsection, the term
23 "final decision" includes the exhaustion of all appellate
24 remedies by the licensee or motor vehicle dealer.

25 Section 3. Section 320.63, Florida Statutes, is
26 amended to read:

27 320.63 Application for license; contents.--Any person
28 desiring to be licensed pursuant to ss. 320.60-320.70 shall
29 make application therefor to the department upon a form
30 containing such information as the department requires. The
31 department shall require, with such application or otherwise

1 and from time to time, all of the following, which information
2 may be considered by the department in determining the fitness
3 of the applicant or licensee to engage in the business for
4 which the applicant or licensee desires to be licensed:

5 (1) Information relating to the applicant's or
6 licensee's solvency and financial standing.

7 (2) A certified copy of the applicant's or licensee's
8 new motor vehicle warranty or warranties in any way connected
9 with a motor vehicle or any component thereof, accompanied by
10 a detailed explanation thereof.

11 (3) From each manufacturer, distributor, or importer
12 which utilizes an identical blanket basic agreement for its
13 dealers or distributors in this state, which agreement
14 comprises all or any part of the applicant's or licensee's
15 agreements with motor vehicle dealers in this state, a copy of
16 the written agreement and all supplements thereto, together
17 with a list of the applicant's or licensee's authorized
18 dealers or distributors and their addresses. The applicant or
19 licensee shall further notify the department immediately of
20 the appointment of any additional dealer or distributor. The
21 applicant or licensee shall annually report to the department
22 on its efforts to add new minority dealer points, including
23 difficulties encountered under ss. 320.61-320.70. For
24 purposes of this section "minority" shall have the same
25 meaning as that given it in the definition of "minority
26 person" in s. 288.703(3). Not later than 60 days prior to the
27 date a revision or modification to a franchise agreement is
28 offered uniformly to a licensee's motor vehicle dealers in
29 this state, the licensee shall notify the department of such
30 revision, modification, or addition to the franchise agreement
31 on file with the department. In no event may a franchise

1 agreement, or any addendum or supplement thereto, be offered
2 to a motor vehicle dealer in this state until the applicant or
3 licensee files an affidavit with the department acknowledging
4 that the terms or provisions of the agreement, or any related
5 document, are not inconsistent with, prohibited by, or
6 contrary to the provisions contained in ss. 320.60-320.70.
7 Any franchise agreement offered to a motor vehicle dealer in
8 this state shall provide that all terms and conditions in such
9 agreement inconsistent with the law and rules of this state
10 are of no force and effect.

11 (4) A certified copy of the delivery and preparation
12 obligations of its motor vehicle dealers.

13 (5) An affidavit stating the rates which the applicant
14 or licensee pays or agrees to pay any authorized motor vehicle
15 dealer licensed in this state for the parts and labor advanced
16 or incurred by such authorized motor vehicle dealer for or on
17 account of any delivery and preparation obligations imposed by
18 the applicant or the licensee on its dealers or relating to
19 warranty obligations which the applicant or licensee or its
20 principle is obligated to perform.

21 (6) The fee for the annual license.

22 (7) Any other pertinent matter commensurate with the
23 safeguarding of the public interest which the department, by
24 rule, prescribes.

25
26 The terms and conditions of a franchise agreement are subject
27 to ss. 320.60-320.70. A term or condition of a franchise
28 agreement which is inconsistent with or in violation of ss.
29 320.60-320.70 is not enforceable by a licensee.

30 Section 4. Section 320.64, Florida Statutes, is
31 amended to read:

1 320.64 Prohibited acts by licensee ~~Denial, suspension,~~
2 ~~or revocation of license; grounds.--~~A licensee or applicant is
3 subject to claims and remedies provided in ss. 320.695 and
4 320.697 for violating any provision of this section. Any of
5 the following acts on the part of a licensee constitutes a
6 violation:A license may be denied, suspended, or revoked
7 ~~within the entire state or at any specific location or~~
8 ~~locations within the state at which the applicant or licensee~~
9 ~~engages or proposes to engage in business, upon proof that an~~
10 ~~applicant or licensee has failed to comply with any of the~~
11 ~~following provisions with sufficient frequency so as to~~
12 ~~establish a pattern of wrongdoing on the part of the~~
13 ~~applicant:~~

14 (1) The applicant or licensee is determined to be
15 unable to carry out contractual obligations with its motor
16 vehicle dealers.

17 (2) The applicant or licensee has knowingly made a
18 material misstatement in its application for a license.

19 (3) The applicant or licensee willfully has failed to
20 comply with significant provisions of ss. 320.60-320.70 or
21 with any lawful rule or regulation adopted or promulgated by
22 the department.

23 (4) The applicant or licensee has performed ~~indulged~~
24 ~~in~~ any illegal act relating to his or her business.

25 (5) The applicant or licensee has coerced or attempted
26 to coerce any motor vehicle dealer into accepting delivery of
27 any motor vehicle or vehicles or parts or accessories therefor
28 or any other commodities that ~~which~~ have not been ordered by
29 the dealer.

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1 (6) The applicant or licensee has coerced or attempted
2 to coerce any motor vehicle dealer to enter into any agreement
3 with the licensee.

4 (7) The applicant or licensee has threatened to
5 discontinue, cancel, or not to renew a franchise agreement of
6 a licensed motor vehicle dealer, where the threatened
7 discontinuation, cancellation, or nonrenewal, if implemented,
8 would be in violation of any of the provisions of s. 320.641.

9 (8) The applicant or licensee discontinued, canceled,
10 or failed to renew, a franchise agreement of a licensed motor
11 vehicle dealer in violation of any of the provisions of s.
12 320.641.

13 (9) The applicant or licensee has threatened to modify
14 or replace, or has modified or replaced, a franchise agreement
15 with a succeeding franchise agreement, or has implemented or
16 threatened to implement a policy, program, procedure,
17 standard, addendum, or requirement, that ~~which~~ would adversely
18 alter the rights or obligations of a motor vehicle dealer
19 under an existing franchise agreement or that may ~~which~~
20 substantially impair ~~impairs~~ the sales, service obligations,
21 or investment of the motor vehicle dealer, without complying
22 with s. 320.641.

23 (10) The applicant or licensee has attempted to enter,
24 or has entered, into a franchise agreement with a motor
25 vehicle dealer who does not, at the time of the franchise
26 agreement, have proper facilities to provide ~~the services~~ to
27 his or her purchasers of new motor vehicles the services that
28 ~~which~~ are covered by the new motor vehicle warranty issued by
29 the applicant or licensee.

30 (11) The applicant or licensee has coerced a motor
31 vehicle dealer to provide installment financing for the motor

1 vehicle dealer's purchasers with a specified financial
2 institution.

3 (12) The applicant or licensee has advertised,
4 printed, displayed, published, distributed, broadcast, or
5 televised, or caused or permitted to be advertised, printed,
6 displayed, published, distributed, broadcast, or televised, in
7 any manner whatsoever, any statement or representation with
8 regard to the sale or financing of motor vehicles which is
9 false, deceptive, or misleading.

10 (13) The applicant or licensee has refused to deliver,
11 in reasonable quantities and within a reasonable time, new
12 motor vehicles and parts for motor vehicles to any duly
13 licensed motor vehicle dealer who has an agreement with the
14 ~~such~~ applicant or licensee for the retail sale of those new
15 motor vehicles or ~~and~~ parts for motor vehicles sold or
16 ~~distributed by the applicant or licensee, any such motor~~
17 ~~vehicles or parts as are covered by such agreement~~
18 ~~specifically publicly advertised by such applicant or licensee~~
19 ~~to be available for immediate delivery.~~ Such a refusal
20 includes:

21 (a) The failure to offer to sell to all motor vehicle
22 dealers in this state of the same line-make, all motor vehicle
23 models manufactured for that line-make; such vehicles shall be
24 offered at the same price with no discount based on the
25 quantity being purchased;

26 (b) Requiring a motor vehicle dealer to pay any extra
27 fee; to purchase unreasonable advertising displays, signs, or
28 other materials; to remodel, renovate, or recondition the
29 motor vehicle dealer's existing facilities; or to provide
30 exclusive facilities, as a prerequisite to receiving any model
31 or series of motor vehicle; or

1 (c) Requiring a motor vehicle dealer of a line-make to
2 enter into a separate franchise agreement for any model or
3 series of motor vehicle manufactured for that line-make.

4
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, national product
9 shortage, or other cause over which the applicant or licensee
10 has no control. The failure to deliver parts or components for
11 the current and 5 preceding years' models within 60 days after
12 the ~~from~~ date of order is considered to ~~shall be deemed~~ prima
13 facie unreasonable. Notwithstanding any other provision of
14 this subsection, this subsection does not prohibit a licensee
15 from requiring motor vehicle dealers located in this state to
16 purchase special tools or equipment, to stock reasonable
17 quantities of certain parts or accessories, or to participate
18 in training programs that are reasonably necessary to enable
19 the motor vehicle dealer to sell or service any model or
20 series of motor vehicles if such requirements are reasonable,
21 are in writing, and are uniformly applied to all of the
22 licensee's motor vehicle dealers of the same line-make.

23 (14) The applicant or licensee has sold, exchanged, or
24 rented a motorcycle that ~~which~~ produces in excess of 5 brake
25 horsepower, knowing the use thereof to be by, or intended for,
26 the holder of a restricted Florida driver's license.

27 (15) The applicant or licensee has engaged in previous
28 conduct that ~~which~~ would have been a ground for revocation or
29 suspension of a license if the applicant or licensee had been
30 licensed.

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1 (16) Notwithstanding the terms of any franchise
2 agreement, and unless it can be shown that the licensee's
3 franchised dealer is actively negligent, the applicant or
4 licensee has failed to indemnify and hold harmless its
5 franchised motor vehicle dealer against any judgment for
6 damages or settlement agreed to in writing by the applicant or
7 licensee, including, but not limited to, court costs and
8 reasonable attorney's fees of the motor vehicle dealer, which
9 judgment or settlement arose out of complaints, claims, or
10 lawsuits based upon such grounds as strict liability;
11 negligence; misrepresentation; warranty, express or implied;
12 or rescission of the sale as described in s. 672.608, less any
13 offset for use recovered by the licensee's franchised motor
14 vehicle dealer, and only to the extent that the judgment or
15 settlement relates to the alleged defective or negligent
16 manufacture, assembly, or design of new motor vehicles, parts,
17 or accessories or other functions of the manufacturer.

18 (17) The applicant or licensee, directly or
19 indirectly, through the actions of any parent of the licensee,
20 subsidiary of the licensee, or common entity causes a
21 termination, cancellation, or nonrenewal of a franchise
22 agreement by a present or previous distributor or importer
23 unless, by the effective date of such action, the applicant or
24 licensee offers the motor vehicle dealer whose franchise
25 agreement is terminated, canceled, or not renewed a franchise
26 agreement containing substantially the same provisions
27 contained in the previous franchise agreement or files an
28 affidavit with the department acknowledging its undertaking to
29 assume and fulfill the rights, duties, and obligations of its
30 predecessor distributor or importer under the terminated,
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1 canceled, or nonrenewed franchise agreement and the same is
2 reinstated.

3 (18) Notwithstanding the terms of any franchise
4 agreement, the applicant or licensee prevents or refuses to
5 accept the succession to any interest in a franchise agreement
6 by any legal heir or devisee under the will of a motor vehicle
7 dealer or under the laws of descent and distribution of this
8 state; however provided, the applicant or licensee is not
9 required to accept a succession if the ~~where such~~ heir or
10 devisee does not meet licensee's written, reasonable, and
11 uniformly applied minimal standard qualifications for dealer
12 applicants or if which, after notice and administrative
13 hearing pursuant to chapter 120, succession by that heir or
14 devisee is demonstrated to be detrimental to the public
15 interest or to the representation of the applicant or
16 licensee. ~~Nothing contained herein,~~ However, this subsection
17 does not shall prevent a motor vehicle dealer, during his or
18 her lifetime, from designating any person as his or her
19 successor in interest by written instrument filed with and
20 accepted by the applicant or licensee. A licensee who rejects
21 the successor transferee under this subsection has shall have
22 the burden of establishing in any proceeding in which ~~where~~
23 such a rejection is in issue that the rejection of the
24 successor transferee complies with this subsection.

25 (19) The applicant or licensee has included in any
26 franchise agreement with a motor vehicle dealer terms or
27 provisions that are contrary to, prohibited by, or otherwise
28 inconsistent with ~~the provisions contained in~~ ss.
29 320.60-320.70, or has failed to include in such a franchise
30 agreement a provision conforming to the requirements of s.
31 320.63(3).

1 (20) The applicant or licensee has established a
2 system of motor vehicle allocation or distribution or has
3 implemented a system of allocation or distribution of motor
4 vehicles to one or more of its franchised motor vehicle
5 dealers which is unfair, inequitable, unreasonably
6 discriminatory, or not supportable by reason and good cause
7 after considering the equities of the affected motor vehicles
8 dealer or dealers. A licensee shall maintain for 3 years
9 records that fully describe its method or formula of
10 allocation and distribution of its motor vehicles, records of
11 its actual allocation and distribution of each model of its
12 motor vehicles, and all other records that directly or
13 indirectly affect the allocation or distribution of motor
14 vehicles to its motor vehicle dealers. At the request of a
15 motor vehicle dealer who has a franchise agreement with the
16 licensee for that line-make, these records must be made
17 available to the dealer, free of charge, within 30 days after
18 the date of the request. Any such request by a motor vehicle
19 dealer must be in writing, and a copy of the request must be
20 filed with the Department of Highway Safety and Motor
21 Vehicles.

22 (21) The applicant or licensee, without good and fair
23 cause, has delayed, refused, or failed to provide a supply of
24 motor vehicles by series in reasonable quantities, including
25 the models publicly advertised by the applicant or licensee as
26 being available, or has delayed, refused, or failed to deliver
27 motor vehicle parts and accessories within a reasonable time
28 after receipt of an order by a franchised dealer. However,
29 this subsection is not violated if such failure is caused by
30 acts or causes beyond the control of the applicant or
31 licensee.

1 (22) The applicant or licensee has required, or
2 threatened to require, a motor vehicle dealer to prospectively
3 assent to a release, assignment, novation, waiver, or
4 estoppel, which instrument or document operates, or is
5 intended by the applicant or licensee to operate, to relieve
6 any person from any liability or obligation under the
7 provisions of ss. 320.60-320.70.

8 (23) The applicant or licensee has threatened or
9 coerced a motor vehicle dealer toward conduct or action
10 whereby the dealer would waive or forego its right to protest
11 the establishment or relocation of a motor vehicle dealer in
12 the community or territory serviced by the threatened or
13 coerced dealer.

14 (24) The applicant or licensee, or its parent,
15 subsidiary, or common entity, has sold or leased, or offered
16 to sell or lease, directly or indirectly, any service, motor
17 vehicle, or product to a retail consumer in this state, except
18 through a motor vehicle dealer that holds a franchise for the
19 line-make. This subsection does not apply to an applicant or
20 licensee exempted under s. 320.645(3), or to a replacement
21 vehicle provided by the licensee under chapter 681. Moreover,
22 this subsection does not prohibit:

23 (a) A licensee from providing the use of motor
24 vehicles for occasional general promotional or charitable
25 uses.

26 (b) A licensee from providing financing directly to
27 any person, firm, company, corporation, or other entity if the
28 financing is for any product or service that is not sold by a
29 motor vehicle dealer under its franchise agreement.

30 (c) A licensee from providing loans directly to motor
31 vehicle dealers of any line-make, for any purpose, including

1 working capital, real estate, construction, or inventories of
2 motor vehicles, used motor vehicles, or parts.

3 (d) A licensee from providing directly to a retail
4 consumer services and products that are incidental to the
5 ownership or leasing of a motor vehicle or used motor vehicle
6 and are not for purposes of resale and that constitute
7 services or products that the retail customer is owed as a
8 result of purchasing or leasing a motor vehicle or used motor
9 vehicle from a motor vehicle dealer, such as replacement keys
10 and emergency roadside service.

11 (25) Notwithstanding the terms of any franchise
12 agreement, any warranty procedure manual, or any warranty
13 reimbursement instructions or policy of any applicant or
14 licensee:

15 (a) The applicant or licensee has charged back a motor
16 vehicle dealer for any warranty payment or any portion of such
17 a payment made to the dealer for, or has failed to properly
18 reimburse a motor vehicle dealer for, any service or repair
19 claimed by the motor vehicle dealer under the licensee's
20 warranty to correct a defective condition of that motor
21 vehicle which correction was desirable to prevent a
22 deterioration of any part of or the value of the motor
23 vehicle, or to correct a potential safety hazard, unless the
24 licensee proves by clear and convincing evidence that the
25 service or repair of the motor vehicle was not necessary at
26 the time of the service or repair or was not actually
27 performed, that the warranty claim was fraudulent when made,
28 or that the motor vehicle dealer failed to reasonably
29 substantiate or justify the claim either substantially in the
30 manner provided by the licensee's warranty procedure manual or

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1 in some other reasonable manner. As used in this paragraph,
2 the terms "service" and "repair" include parts and labor;

3 (b) The applicant or licensee has required a motor
4 vehicle dealer to file a statement of actual time spent in
5 performance of labor on any service or repair to a motor
6 vehicle covered under the licensee's warranty, or has
7 considered actual labor time spent in any service or repair to
8 a motor vehicle covered under the licensee's warranty when
9 evaluating a motor vehicle dealer's claim for reimbursement,
10 when actual labor time spent was not the basis for
11 reimbursement to the dealer for the service or repair;

12 (c) The applicant or licensee has performed an audit
13 for warranty parts and service compensation for payments made
14 more than 12 months before the date of commencement of the
15 audit;

16 (d) The applicant or licensee, for any reason, has
17 sought to charge back or otherwise recover warranty payments
18 18 months or more after the date of payment; or

19 (e) The applicant or licensee has charged back a
20 warranty payment, failed to pay a warranty claim, or rejected
21 a warranty claim without providing the motor vehicle dealer
22 with a detailed written description of the reasons for the
23 chargeback, failure to pay, or rejection for each warranty
24 claim, and of the facts known to the applicant or licensee
25 which show that the service or repair was not necessary, was
26 not actually performed, was fraudulent, or was not reasonably
27 substantiated. A motor vehicle dealer has 60 days after the
28 date of receipt of such a detailed written description to file
29 with a court of competent jurisdiction a complaint alleging
30 that the applicant or licensee has violated this section by
31 making a chargeback of, failing to pay, or rejecting a

1 warranty payment or any part thereof in violation of this
2 section. During the 60-day period, and the pendency of any
3 action filed under this paragraph, including the exhaustion of
4 all appellate remedies, all potential chargebacks are stayed.
5 If a final determination of any potential chargeback is in the
6 favor of the motor vehicle dealer, the applicant or licensee
7 is liable to the motor vehicle dealer for twice the amount of
8 any alleged chargeback or unpaid or rejected warranty claim,
9 plus reasonable attorney's fees and court costs.

10 (26) Notwithstanding the terms of any franchise
11 agreement, the applicant or licensee has failed or refused to
12 indemnify and hold harmless any motor vehicle dealer against
13 any judgment for damages, or settlements agreed to by the
14 applicant or licensee, including, without limitation, court
15 costs and reasonable attorney's fees, arising out of
16 complaints, claims, or lawsuits, including, without
17 limitation, actions based on strict liability, negligence,
18 misrepresentation, express or implied warranty, or revocation
19 or rescission of acceptance of the sale of a motor vehicle, to
20 the extent that the judgment or settlement relates to the
21 alleged negligent manufacture, design, or assembly of motor
22 vehicles, parts, accessories, or other functions of the
23 applicant or licensee or its parents, subsidiaries,
24 affiliates, or a common entity, beyond the reasonable control
25 of the motor vehicle dealer. Failure of a motor vehicle dealer
26 to inspect a motor vehicle prior to its sale by the dealer
27 does not affect the obligations of an applicant or licensee,
28 its parents, subsidiaries, affiliates, or a common entity
29 under this section or under other applicable law.

30 (27)(a) Notwithstanding the terms of any franchise
31 agreement, or any procedures manual, program, or other

1 instructions or policy of an applicant or licensee, the
2 applicant or licensee has denied a motor vehicle dealer's
3 claim for sales incentives, service incentives, rebates, or
4 other forms of incentive compensation available to it, has
5 reduced the amount of incentive to be paid to a motor vehicle
6 dealer after the dealer has earned that incentive, or has
7 charged back a motor vehicle dealer subsequent to the payment
8 of an incentive claim, unless the licensee proves by clear and
9 convincing evidence that the claim was fraudulent or that the
10 dealer failed, after written notice and a reasonable
11 opportunity to cure of not less than 60 days, to reasonably
12 substantiate the claim, as required by the licensee or in some
13 other reasonable manner.

14 (b) The applicant or licensee has performed an audit
15 of sales incentives, sales rebates, service incentives,
16 service rebates, parts incentives, parts rebates, or other
17 forms of incentive compensation for any payment made more than
18 12 months before the date of the commencement of the audit.

19 (c) The applicant or licensee has charged back an
20 incentive payment, failed to pay an incentive claim, or
21 rejected an incentive claim without providing the motor
22 vehicle dealer with a detailed written description of the
23 reasons for the chargeback, failure to pay, or rejection of
24 each claim and of the facts known to the applicant or licensee
25 which show that the claim was fraudulent or unsubstantiated. A
26 motor vehicle dealer has 60 days after the date of receipt of
27 such a written detailed description to file with a court of
28 competent jurisdiction a complaint alleging that the applicant
29 or licensee has violated this section by making a chargeback
30 or rejecting the claim in violation of this section. During
31 the 60-day period and the pendency of any action filed under

1 this paragraph, including the exhaustion of all appellate
2 remedies, all potential chargebacks are stayed. If the court
3 finds for the motor vehicle dealer, the applicant or licensee
4 is liable to the motor vehicle dealer for twice the amount of
5 any alleged chargeback or claim that the applicant or licensee
6 failed to pay or rejected, plus reasonable attorney's fees and
7 court costs.

8 (28) The applicant or licensee has conducted or
9 threatened to conduct any audit of a motor vehicle dealer in
10 order to pressure or attempt to pressure the dealer to forego
11 any rights granted to the dealer under ss. 320.60-320.70 or
12 under the agreement between the licensee and the motor vehicle
13 dealer.

14 (29) Notwithstanding the terms of any franchise
15 agreement, the applicant or licensee, by contract, policy, or
16 otherwise, has in any way restricted, conditioned, or
17 threatened or attempted to restrict or condition, a motor
18 vehicle dealer from selling new or used motor vehicles,
19 replacement parts, or accessories to any retail customer
20 domiciled in another state or foreign country. As used in this
21 paragraph, the terms "restricted" and "conditioned" include,
22 but are not limited to, refusing to allocate, sell, or deliver
23 motor vehicles in compliance with applicable law; refusing or
24 withholding payment of money or other things of value or
25 charging back moneys otherwise available to the motor vehicle
26 dealer under a sales promotion, program, or contest, or
27 excluding any motor vehicle or motor vehicle dealer from
28 participation in any such promotion, policy, program, or
29 contest offered by the applicant or licensee for sales or
30 leases of new or used motor vehicles within the area of
31 responsibility of a motor vehicle dealer.

1 (30) Notwithstanding the terms of any franchise
2 agreement, the applicant or licensee has wrongfully or
3 unreasonably rejected or withheld approval of any proposed
4 transfer made pursuant to s. 320.643(1) or s. 320.643(2) or a
5 proposed change of executive management pursuant to s.
6 320.644. Reasonableness is to be determined on an objective
7 basis or standard.

8 (31) The applicant or licensee has imposed or
9 attempted to impose any conditions upon the approval of a
10 proposed transfer made pursuant to s. 320.643(1) or s.
11 320.643(2) other than the transferee's compliance with the
12 requirements of s. 320.643. A transfer made pursuant to s.
13 320.643 (1) or s. 320.643(2) may not be refused or denied
14 because of a simultaneous proposal for a change of executive
15 management pursuant to s. 320.644.

16 (32) The applicant or licensee has published,
17 disclosed, or otherwise made available any information,
18 including composite information, obtained from any motor
19 vehicle dealer or dealers, including, without limitation,
20 selling or leasing prices of motor vehicles or profit per
21 motor vehicles sold or leased.

22 (33) After June 30, 2001, the applicant or licensee
23 has offered or attempted to introduce a franchise agreement or
24 to enter into any other agreement, release, or waiver with a
25 motor vehicle dealer, which contains any requirement that any
26 motor vehicle dealer participate in arbitration or mediation
27 concerning any issue with the applicant or licensee which is
28 binding on the dealer before the dealer files a complaint with
29 the department or any court of competent jurisdiction as
30 permitted by ss. 320.60-70; which contains a choice-of-venue
31 provision that requires a motor vehicle dealer to bring in a

1 venue outside this state an administrative or legal action or
2 an arbitration or mediation proceeding that is binding on the
3 dealer; which contains a choice-of-law provision that requires
4 or permits the application of the law of any state other than
5 this state; or which requires any motor vehicle dealer to
6 compensate the applicant or licensee for any attorney's fees
7 or court costs or other expenses incurred in any proceeding
8 arising under ss. 320.60-230.70 or any franchise agreement,
9 unless any such provision is voidable at any time at the
10 option of the motor vehicle dealer.

11 (34) The applicant or licensee has directly or
12 indirectly competed with or discriminated against a motor
13 vehicle dealer located in this state with which the applicant
14 or licensee has entered into a franchise agreement, except as
15 permitted by s. 320.645.

16 (35) Notwithstanding the terms of any franchise
17 agreement, or program or policy, an applicant or licensee has
18 offered, or allowed its parent, subsidiary, affiliate, or
19 common entity to offer, any program under which financing or
20 lease rates to retail customers of a motor vehicle dealer are
21 less than rates made available to retail customers of other
22 motor vehicle dealers of the same line-make in this state,
23 regardless of the other provisions of such a program or
24 policy, and regardless of whether a motor vehicle dealer is
25 eligible for or elects to participate in such a program or
26 policy.

27 (36) The applicant or licensee has influenced any
28 aspect of the final amount charged, the final sales price, or
29 the final lease price for any motor vehicle, product,
30 trade-in, service, or financing offered for sale or lease to
31 retail consumers by a motor vehicle dealer without the prior

1 written consent of the dealer, or has charged the dealer more
2 than 90 percent of the manufacturer's suggested retail price
3 for a motor vehicle. Nevertheless, an applicant or licensee is
4 not prohibited from:

5 (a) Establishing a manufacturer's suggested retail
6 price pursuant to 15 United States Code s. 1232, if the motor
7 vehicle dealer is afforded a gross profit of not less than 10
8 percent.

9 (b) Implementing from time to time reasonable sales,
10 lease, or financing promotions of reasonable and limited
11 duration.

12 (c) Implementing reasonable standard feature option
13 packages or vehicle option content in any way.

14 (d) Establishing the terms of any new motor vehicle
15 warranty offered by the licensee.

16 (e) Establishing reasonable sale, lease, or financing
17 terms through motor vehicle dealers to retirees of a licensee.

18 (37) The applicant or licensee has provided or
19 directed less than all leads of prospective retail consumers
20 to the motor vehicle dealer of the applicable line-make in
21 whose assigned area of responsibility the lead resides, or, in
22 the case of a commercial lead, has its primary local business
23 address. An applicant or licensee is not prohibited from
24 providing or directing leads to other motor vehicle dealers of
25 the same line-make in addition to the motor vehicle dealer in
26 whose assigned area of responsibility the lead resides;
27 however, all leads must be provided or directed in a fair,
28 nondiscriminatory, equitable, and timely manner and without
29 charging fees or cost reimbursements for the leads; if the
30 lead resides in a Standard Metropolitan Statistical Area, the
31 lead must be provided to the three closest dealers.

1 (38) The applicant or licensee has a direct or
2 indirect interest (equity, pecuniary, or otherwise) in a
3 broker; offers to sell a new motor vehicle directly to a
4 broker; or funds or offers to fund any operations of a broker,
5 in whole or in part.

6 (39) The applicant or licensee has attempted to vary
7 or varies the price charged to any of its motor vehicle
8 dealers, or offers to any motor vehicle dealer located in this
9 state any refunds, incentives, programs, or other inducements
10 for new or used motor vehicles which are based on:

11 (a) The motor vehicle dealer's purchase of, or
12 establishment of, new facilities, supplies, computers, tools,
13 equipment, or new or used motor vehicles or other merchandise
14 from the licensee or any other person or entity designated,
15 endorsed, or approved by the licensee;

16 (b) The motor vehicle dealer's relocation, remodeling,
17 repair, or renovation of existing motor vehicle dealerships or
18 construction of a new facility;

19 (c) The motor vehicle dealer's willingness or
20 commitment to either establish or maintain exclusive
21 facilities, personnel, or display space;

22 (d) The motor vehicle dealer's willingness to provide
23 loaner vehicles in whole or in part at the motor vehicle
24 dealer's expense to customers who are having a vehicle
25 serviced at the motor vehicle dealership; or

26 (e) The motor vehicle dealer's participation in
27 training programs or employment or association of one or more
28 consultants who are sponsored, endorsed, or recommended by the
29 licensee, the payment for which is in any part the
30 responsibility of the motor vehicle dealer.

31

1 For purposes of this subsection, the price of a motor vehicle
2 includes the licensee's rebates, credits, bonuses, or other
3 consideration that has the effect of causing a variance in the
4 price of new motor vehicles offered to its motor vehicle
5 dealers located in the state. However, this subsection does
6 not preclude a licensee from establishing sales contests or
7 promotions that provide or award rebates or incentives to
8 motor vehicle dealers or consumers. Moreover, this subsection
9 does not prohibit a licensee from providing assistance or
10 encouragement, including reasonable additional allocation, to
11 a motor vehicle dealer to remodel, renovate, recondition, or
12 relocate the motor vehicle dealer's existing facilities if
13 that assistance or encouragement, or those rewards, are not
14 determined on a per-vehicle basis. If, on July 1, 2001, a
15 licensee is currently operating a program or has in effect a
16 policy that would violate this subsection, that program or
17 policy may continue in effect as to the licensee's motor
18 vehicle dealers located in this state through September 30,
19 2001. Whether or not a program operated by a licensee
20 complies with this subsection, a licensee must pay or
21 otherwise compensate any franchised motor vehicle dealer who
22 has earned the right to receive payment or other compensation
23 under a program, in accordance with the licensee's program or
24 policy.

25 (40) The applicant or licensee has failed to reimburse
26 a motor vehicle dealer in full for the actual cost of
27 providing a loaner vehicle to any customer who is having a
28 vehicle serviced at the motor vehicle dealer, if a loaner is
29 required by the licensee or a loaner is part of a licensee's
30 customer satisfaction index, computation, or consideration.

31

1 (41) An applicant or licensee has pressured, required
2 or, coerced, or attempted to require or coerce, a motor
3 vehicle dealer to establish or maintain exclusive facilities,
4 personnel, display space, service areas, or customer areas, if
5 any such requirements would be unreasonable in light of
6 current economic conditions, would not otherwise be justified
7 by reasonable business considerations, or would adversely
8 affect the return on investment of a motor vehicle dealer.
9 This subsection does not prohibit a licensee or applicant from
10 providing assistance, encouragement, or reward to a motor
11 vehicle dealer to remodel, recondition, or relocate its
12 existing facilities if such assistance, encouragement, or
13 reward is not determined on a per-vehicle basis and is
14 available to all motor vehicle dealers of the licensee's
15 line-make in this state.

16
17 A motor vehicle dealer who can demonstrate that a violation
18 of, or failure to comply with, any of the preceding provisions
19 by an applicant or licensee will or can adversely and
20 pecuniarily affect the complaining dealer, shall be entitled
21 to pursue all of the remedies, procedures, and rights of
22 recovery available under ss. 320.695 and 320.697.

23 Section 5. Section 320.641, Florida Statutes, is
24 amended to read:

25 320.641 Discontinuations, cancellations, nonrenewals;
26 modifications, and replacements ~~Unfair cancellation~~ of
27 franchise agreements.--

28 (1)(a) A ~~An applicant or~~ licensee shall give written
29 notice to the motor vehicle dealer and the department of the
30 licensee's intention to discontinue, cancel, or not fail to
31 renew a franchise agreement ~~or of the licensee's intention to~~

1 ~~modify a franchise or replace a franchise with a succeeding~~
2 ~~franchise, which modification or replacement will adversely~~
3 ~~alter the rights or obligations of a motor vehicle dealer~~
4 ~~under an existing franchise agreement or will substantially~~
5 ~~impair the sales, service obligations, or investment of the~~
6 ~~motor vehicle dealer, at least 90 days before the effective~~
7 ~~date thereof, together with the specific grounds for such~~
8 action. Any motor vehicle dealer that receives a notice from
9 the licensee of its intent to discontinue, cancel, or not
10 renew the motor vehicle dealer's franchise agreement may,
11 within 90 days after the notice is given, file a petition or
12 complaint for a determination of whether such action is unfair
13 or prohibited. In any such action, the licensee has the burden
14 of establishing that such action is fair and not prohibited.
15 Agreements and certificates of appointment shall continue in
16 effect until final determination of the issues raised in the
17 dealer's petition or complaint.

18 (b) Final determination must include the exhaustion of
19 all appellate remedies by the licensee or motor vehicle
20 dealer. Until such final determination is made, the franchise
21 agreement remains in full force and effect, and the motor
22 vehicle dealer retains all rights and remedies pursuant to the
23 terms and conditions of the franchise agreement and applicable
24 law, including, but not limited to, full rights of transfer
25 under s. 320.643. If a transfer is approved by the licensee
26 or mandated by law, the termination proceeding shall be
27 dismissed with prejudice as moot. If a transfer is proposed
28 under this section after a notice of intent to discontinue,
29 cancel, or not renew is received but before the final
30 determination is made, including exhaustion of all appellate
31 remedies of a motor dealer's complaint or petition contesting

1 such an action, the termination proceedings must be stayed,
2 without bond, during the period that the transfer is being
3 reviewed by the licensee under s. 320.643. During the period
4 when the transfer is being reviewed by the licensee under s.
5 320.643, the franchise agreement remains in full force and
6 effect, and the motor vehicle dealer retains all rights and
7 remedies pursuant to the terms and conditions of the franchise
8 agreement and applicable law, including all rights of transfer
9 until the licensee has accepted or rejected the proposed
10 transfer. If the proposed transfer is rejected, the motor
11 vehicle dealer retains all its rights under s. 320.643 to an
12 administrative determination as to whether the licensee's
13 rejection is in compliance with s. 320.643, and, during the
14 pendency of any such administrative proceeding and any related
15 appellate proceedings, the termination proceedings remain
16 stayed without bond, the franchise agreement remains in full
17 force and effect, and the motor vehicle dealer retains all
18 rights and remedies pursuant to the terms and conditions of
19 the franchise agreement and applicable law. If a transfer is
20 approved by the licensee or mandated by law, the termination
21 proceedings shall be dismissed with prejudice as moot.

22 (c) A discontinuation, cancellation, or nonrenewal of
23 a franchise agreement is prohibited if compliance by the motor
24 vehicle dealer with the provisions of the franchise agreement
25 upon which the discontinuation, cancellation, or nonrenewal is
26 based would violate applicable law or is based on licensee's
27 conduct that is prohibited by applicable law.

28 (d)1. A discontinuation, cancellation, or nonrenewal
29 of a franchise agreement is unfair unless the licensee proves
30 by clear and convincing evidence all of the following:
31

1 a. The discontinuation, cancellation, or nonrenewal is
2 clearly permitted by the franchise agreement, including the
3 enforceability of the provision from a public policy
4 standpoint, including, without limitation, oppression,
5 adhesion, and relative bargaining power of the parties;

6 b. The discontinuation, cancellation, or nonrenewal is
7 undertaken in good faith;

8 c. The discontinuation, cancellation, or nonrenewal is
9 undertaken for good cause; and

10 d. The discontinuation, cancellation, or nonrenewal is
11 based on a breach of the franchise agreement which is, in
12 fact, a material and substantial breach.

13 2. For the purposes of termination, good faith
14 includes, but is not limited to, all of the existing
15 circumstances and proof that the provisions or standards
16 relied upon by the licensee to establish grounds for
17 termination are in writing, are reasonable, and have been
18 applied by the licensee in a uniform, consistent, and
19 nondiscriminatory manner, considering action taken by the
20 licensee when similar conduct has been committed by other
21 motor vehicle dealers, and that the licensee has not breached
22 any of its obligations.

23 3. For purposes of discontinuation, cancellation, or
24 nonrenewal, good cause is not established solely by proof of a
25 breach of the franchise agreement, even if material and
26 substantial, or by the desire of the licensee for market
27 penetration; rather, the licensee must establish by clear and
28 convincing evidence that the motor vehicle dealer has caused
29 damage to the licensee through action that is substantially
30 and significantly detrimental to the licensee's business
31 interests, independent of and distinct from the terms and

1 conditions of the franchise agreement. A material and
2 substantial breach must be substantially damaging to the
3 products or services offered by the licensee or to the
4 reputation of the licensee or its products or services.

5 (e) Notwithstanding any other provision of this
6 subsection or the terms of any franchise agreement, if the
7 termination is based on alleged deficient or inadequate sales
8 performance, service performance, or facilities, the licensee
9 must provide to the motor vehicle dealer a reasonable
10 opportunity to cure any such alleged deficiencies. Such a
11 reasonable opportunity must extend not less than 6 months
12 prior to serving a notice of intent to terminate.

13 (f) Notwithstanding any other provision of this
14 subsection or the terms of any franchise agreement, a
15 franchise agreement of any motor vehicle dealer may not be
16 terminated, canceled, discontinued, or not renewed by any
17 licensee on the basis of fraud unless the licensee proves by
18 clear and convincing evidence that the person designated as
19 dealer-operator or dealer-principal in the franchise agreement
20 had actual knowledge of the fraud at the time it was
21 perpetrated on a customer or a licensee, or failed within a
22 reasonable time after being advised of the fraud to take
23 actions reasonably calculated to prevent such fraud from
24 continuing or reoccurring.

25 (g) In any action for discontinuation, cancellation,
26 or nonrenewal of a franchise agreement, evidence of a dealer's
27 conduct, including, but not limited to, any remedial measures
28 taken by the dealer up to the time of commencement of the
29 final hearing, is admissible up to the time of the
30 commencement of hearing.

31

1 (2)(a) A licensee must give written notice to the
2 motor vehicle dealer and the department of the licensee's
3 intention to modify a franchise or replace a franchise with a
4 succeeding franchise when such modification or replacement may
5 adversely alter the rights or obligations of a motor vehicle
6 dealer under an existing franchise agreement or may
7 substantially impair the sales, service obligations, or
8 investment of the motor vehicle dealer. This written notice
9 must be given at least 90 days before the effective date of
10 the modification, together with the specific grounds for the
11 action.

12 (b) Any motor vehicle dealer that receives a notice
13 from the licensee of its intent to modify or replace the motor
14 vehicle dealer's franchise agreement may, within the 90-day
15 notice period, file a petition or complaint for a
16 determination of whether any modification or replacement
17 provision is unfair or prohibited. In any such action, the
18 licensee has the burden of establishing, by clear and
19 convincing evidence, that the action is fair and is not
20 prohibited. In addition to any express changes to a franchise
21 agreement, modifications include, but are not limited to, any
22 attempt by the licensee, by conduct, contract, or otherwise,
23 to implement or enforce or attempt to implement or enforce
24 upon its motor vehicle dealers any policy, procedure,
25 standard, memorandum, addendum, or requirement, other than one
26 required by applicable law, which is a change of the
27 licensee's current practice, policy, or procedure. Agreements
28 and certificates of appointment continue in effect until final
29 determination of the issues raised in such a petition or
30 complaint by the motor vehicle dealer.

31

1 (c) Final determination includes exhaustion of all
2 appellate remedies by the licensee or motor vehicle dealer.
3 Until such final determination is made, the franchise
4 agreement remains in full force and effect, and the terms and
5 conditions of the existing franchise agreement, prior to the
6 attempted modification or replacement, remain in full force
7 and effect. If it is finally determined that a licensee has a
8 right to modify or replace the franchise agreement, the
9 modification or replacement shall take effect prospectively
10 and only after final determination, including exhaustion of
11 all appellate remedies in favor of the licensee.

12 (d) A modification or replacement of a franchise
13 agreement is prohibited if any provision itself or the conduct
14 necessary to comply with the provision would violate
15 applicable law.

16 (e) A modification or replacement provision of a
17 franchise agreement is unfair if it is not clearly permitted
18 by the franchise agreement, is not undertaken in good faith,
19 is not undertaken for good cause, fails to take into account
20 the investment of a motor vehicle dealer in the franchise and
21 will unreasonably adversely affect the return on such
22 investment, is inconsistent with or in violation of any
23 provision of ss. 320.60-320.70, fails to provide that, in any
24 dispute between a licensee and a motor vehicle dealer in any
25 forum, the law of this state applies, both substantively and
26 procedurally, or is undertaken without regard to the equities
27 of the motor vehicle dealer. For purposes of modification or
28 replacement, good faith includes, but is not limited to, proof
29 that the licensee is not taking unwarranted or
30 disproportionate advantage of any of its motor vehicle dealers
31 given the lack of relative bargaining power of the parties.

1 For purposes of modification or replacement, good cause
2 includes, but is not limited to, proof of a material and
3 substantial change in circumstances since the execution of the
4 franchisee agreement which warrants the modification or
5 replacement and does not cause significant detriment to any of
6 the licensee's motor vehicle dealers.

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

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

22 ~~(3) Any motor vehicle dealer whose franchise agreement~~
23 ~~is discontinued, canceled, not renewed, modified, or replaced~~
24 ~~may, within the 90-day notice period, file a petition or~~
25 ~~complaint for a determination of whether such action is an~~
26 ~~unfair or prohibited discontinuation, cancellation,~~
27 ~~nonrenewal, modification, or replacement. Agreements and~~
28 ~~certificates of appointment shall continue in effect until~~
29 ~~final determination of the issues raised in such petition or~~
30 ~~complaint by the motor vehicle dealer. A discontinuation,~~
31 ~~cancellation, or nonrenewal of a franchise agreement is unfair~~

1 ~~if it is not clearly permitted by the franchise agreement; is~~
2 ~~not undertaken in good faith; is not undertaken for good~~
3 ~~cause; or is based on an alleged breach of the franchise~~
4 ~~agreement which is not in fact a material and substantial~~
5 ~~breach.~~

6 (3)~~(4)~~ Notwithstanding any other provision of this
7 section, the failure of a motor vehicle dealer to be engaged
8 in business with the public for 10 consecutive business days
9 constitutes abandonment by the dealer of his or her franchise
10 agreement. If any motor vehicle dealer abandons his or her
11 franchise agreement, he or she has no cause of action under
12 this section. For the purpose of this section, a dealer shall
13 be considered to be engaged in business with the public if a
14 sales and service facility is open and is performing such
15 services 8 hours a day, 5 days a week, excluding holidays.
16 However, it will not be considered abandonment if such a
17 failure to engage in business is due to an act of God, a work
18 stoppage, or a delay due to a strike or labor difficulty, a
19 freight embargo, or other cause over which the motor vehicle
20 dealer has no control, including any violation of ss.
21 320.60-320.70.

22 (4)~~(5)~~ Notwithstanding any other provision of this
23 section, if a motor vehicle dealer has abandoned his or her
24 franchise agreement as provided in subsection(3)~~(4)~~, the
25 licensee may give written notice to the dealer and the
26 department of the licensee's intention to discontinue, cancel,
27 or fail to renew the franchise agreement with the dealer at
28 least 15 days before the effective date thereof, specifying
29 the grounds for such action. A motor vehicle dealer receiving
30 such notice may file a petition or complaint for determination
31

1 of whether in fact there has been an abandonment of the
2 franchise.

3 (5)~~(6)~~ If the complainant motor vehicle dealer
4 prevails, he or she shall have a cause of action against the
5 licensee for reasonable attorneys' fees and costs incurred by
6 him or her in such proceeding, and he or she shall have a
7 cause of action under s. 320.697.

8 (6)~~(7)~~ Except as provided in s. 320.643, no
9 replacement motor vehicle dealer shall be named for this point
10 or location to engage in business prior to the final
11 adjudication by the department on the petition or complaint
12 and the exhaustion of all appellate remedies by the canceled
13 or discontinued dealer, if a stay is issued by either the
14 department or an appellate court.

15 Section 6. Subsections (2) and (3) of section 320.642,
16 Florida Statutes, are amended to read:

17 320.642 Dealer licenses in areas previously served;
18 procedure.--

19 (2)(a) An application for a motor vehicle dealer
20 license in any community or territory shall be denied when:

21 1. A timely protest is filed by a presently existing
22 franchised motor vehicle dealer with standing to protest as
23 defined in subsection (3); and

24 2. The licensee fails to show that the existing
25 franchised dealer or dealers who register new motor vehicle
26 retail sales or retail leases of the same line-make in the
27 community or territory of the proposed dealership are not
28 providing adequate representation of such line-make motor
29 vehicles in such community or territory. The burden of proof
30 in establishing inadequate representation shall be on the
31 licensee.

1 (b) In determining whether the existing franchised
2 motor vehicle dealer or dealers are providing adequate
3 representation in the community or territory for the
4 line-make, the department may consider evidence which may
5 include, but is not limited to:

6 1. The impact of the establishment of the proposed or
7 relocated dealer on the consumers, public interest, existing
8 dealers, and the licensee; provided, however, that financial
9 impact may only be considered with respect to the protesting
10 dealer or dealers.

11 2. The size and permanency of investment reasonably
12 made and reasonable obligations incurred by the existing
13 dealer or dealers to perform their obligations under the
14 dealer agreement.

15 3. The reasonably expected market penetration of the
16 line-make motor vehicle for the community or territory
17 involved, after consideration of all factors which may affect
18 said penetration, including, but not limited to, demographic
19 factors such as age, income, import penetration, education,
20 size class preference, product popularity, retail lease
21 transactions, or other factors affecting sales to consumers of
22 the community or territory. Furthermore, with respect to
23 evaluating the performance of the line-make within the
24 community or territory, a geographic area used for making
25 comparisons must be reasonably similar in demographic traits
26 to the community or territory, including age, income, import
27 penetration, education, size class preference, and product
28 popularity, and such comparison areas may not be smaller than
29 an entire county. Reasonably expected market penetration must
30 be measured with respect to the community or territory as a
31

1 whole and not with respect to any part thereof or identifiable
2 plot therein.

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

10 5. Any attempts by the licensee to coerce the existing
11 dealer or dealers into consenting to additional or relocated
12 franchises of the same line-make in the community or
13 territory.

14 6. Distance, travel time, traffic patterns, and
15 accessibility between the existing dealer or dealers of the
16 same line-make and the location of the proposed additional or
17 relocated dealer.

18 7. Whether benefits to consumers will likely occur
19 from the establishment or relocation of the dealership which
20 the protesting dealer or dealers prove cannot be obtained by
21 other geographic or demographic changes or expected changes in
22 the community or territory.

23 8. Whether the protesting dealer or dealers are in
24 substantial compliance with their dealer agreement.

25 9. Whether there is adequate interbrand and intrabrand
26 competition with respect to said line-make in the community or
27 territory and adequately convenient consumer care for the
28 motor vehicles of the line-make, including the adequacy of
29 sales and service facilities.

30 10. Whether the establishment or relocation of the
31 proposed dealership appears to be warranted and justified

1 based on economic and marketing conditions pertinent to
2 dealers competing in the community or territory, including
3 anticipated future changes.

4 11. The volume of registrations and service business
5 transacted by the existing dealer or dealers of the same
6 line-make in the relevant community or territory of the
7 proposed dealership.

8 (3) An existing franchised motor vehicle dealer or
9 dealers shall have standing to protest a proposed additional
10 or relocated motor vehicle dealer where the existing motor
11 vehicle dealer or dealers have a franchise agreement for the
12 same line-make vehicle to be sold or serviced by the proposed
13 additional or relocated motor vehicle dealer and are
14 physically located so as to meet or satisfy any of the
15 following requirements or conditions:

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

21 1. The proposed additional or relocated motor vehicle
22 dealer is to be located in the area designated or described as
23 the area of responsibility, or such similarly designated area,
24 including the entire area designated as a multiple-point area,
25 in the franchise agreement or in any related document or
26 commitment with the existing motor vehicle dealer or dealers
27 of the same line-make as such agreement existed upon October
28 1, 1988;

29 2. The existing motor vehicle dealer or dealers of the
30 same line-make have a licensed franchise location within a
31

1 radius of 20 miles of the location of the proposed additional
2 or relocated motor vehicle dealer; or

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

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

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

23 2. Any existing motor vehicle dealer or dealers of the
24 same line-make can establish that during any 12-month period
25 of the 36-month period preceding the filing of the licensee's
26 application for the proposed dealership, such dealer or its
27 predecessor made 25 percent of its retail sales of new motor
28 vehicles to persons whose registered household addresses were
29 located within a radius of 12.5 miles of the location of the
30 proposed additional or relocated motor vehicle dealer;
31 provided such existing dealer is located in the same county or

1 any county contiguous to the county where the additional or
2 relocated dealer is proposed to be located.

3 Section 7. Section 320.643, Florida Statutes, is
4 amended to read:

5 320.643 Transfer, assignment, or sale of franchise
6 agreements.--

7 (1) A motor vehicle dealer shall not transfer, assign,
8 or sell a franchise agreement to another person unless the
9 dealer first notifies the licensee of the dealer's decision to
10 make such transfer, by written notice setting forth the
11 prospective transferee's name, address, and financial
12 qualifications ~~qualification, and business experience during~~
13 ~~the previous 5 years~~. The licensee shall, in writing, within
14 60 days after receipt of such notice, inform the dealer either
15 of the licensee's approval of the transfer, assignment, or
16 sale or of the unacceptability of the proposed transferee,
17 setting forth the material reasons for the rejection. If the
18 licensee does not so inform the dealer within the 60-day
19 period, its approval of the proposed transfer is deemed
20 granted. ~~No~~ Such a transfer, assignment, or sale is invalid
21 ~~will be valid~~ unless the transferee agrees in writing to
22 comply with all requirements of the franchise then in effect;
23 however, proposing to relocate or change executive management,
24 or to do both, in conjunction with the proposed transfer, does
25 not constitute a failure to agree to comply with all the
26 requirements of the franchise then in effect. Notwithstanding
27 the terms of any franchise agreement, the acceptance by the
28 licensee of the proposed transferee shall not be unreasonably
29 withheld. For the purposes of this section, the refusal by the
30 licensee to accept a proposed transferee who is of good moral
31 character and who otherwise meets the written, reasonable, and

1 uniformly applied standards or qualifications, if any, of the
2 licensee relating to financial qualifications ~~the business~~
3 ~~experience of executive management~~ required by the licensee of
4 its motor vehicle dealers is presumed to be unreasonable. A
5 licensee who receives such notice may, within 60 days
6 following such receipt, file with the department a verified
7 complaint for a determination that the proposed transferee is
8 not a person qualified to be a transferee under this section.
9 The licensee has the burden of proof with respect to all
10 issues raised by such verified complaint. The department
11 shall determine, and enter an order providing, that the
12 proposed transferee is either qualified or is not and cannot
13 be qualified for specified reasons, or the order may provide
14 the conditions under which a proposed transferee would be
15 qualified. If the licensee fails to file such verified
16 complaint within such 60-day period or if the department,
17 after a hearing, dismisses the complaint or renders a decision
18 other than one disqualifying the proposed transferee, the
19 franchise agreement between the motor vehicle dealer and the
20 licensee shall be deemed amended to incorporate such transfer
21 or amended in accordance with the determination and order
22 rendered, effective upon compliance by the proposed transferee
23 with any conditions set forth in the determination or order.

24 (2)(a) Notwithstanding the terms of any franchise
25 agreement, a licensee shall not, by contract or otherwise,
26 fail or refuse to give effect to, prevent, prohibit, or
27 penalize, or attempt to refuse to give effect to, prevent,
28 prohibit, or penalize, any motor vehicle dealer or any
29 proprietor, partner, stockholder, owner, or other person who
30 holds or otherwise owns an interest therein from selling,
31 assigning, transferring, alienating, or otherwise disposing

1 of, in whole or in part, the equity interest of any of them in
2 such motor vehicle dealer to any other person or persons,
3 including a corporation established or existing for the
4 purpose of owning or holding the stock or ownership interests
5 of other entities, unless the licensee proves at a hearing
6 pursuant to this section that such sale, transfer, alienation,
7 or other disposition is to a person who is not, ~~or whose~~
8 ~~controlling executive management is not~~, of good moral
9 character. A motor vehicle dealer, or any proprietor,
10 partner, stockholder, owner, or other person who holds or
11 otherwise owns an interest in the motor vehicle dealer, who
12 desires to sell, assign, transfer, alienate, or otherwise
13 dispose of any interest in such motor vehicle dealer shall
14 notify, or cause the proposed transferee to so notify, the
15 licensee, in writing, of the identity and address of the
16 proposed transferee. A licensee who receives such notice may,
17 within 60 days following such receipt, file with the
18 department a verified complaint for a determination that the
19 proposed transferee is not a person qualified to be a
20 transferee under this section. The licensee has the burden of
21 proof with respect to all issues raised by such verified
22 complaint. The department shall determine, and enter an order
23 providing, that the proposed transferee either is qualified or
24 is not and cannot be qualified for specified reasons; or the
25 order may provide the conditions under which a proposed
26 transferee would be qualified. If the licensee fails to file
27 such verified complaint within such 60-day period or if the
28 department, after a hearing, dismisses the complaint or
29 renders a decision other than one disqualifying the proposed
30 transferee, the franchise agreement between the motor vehicle
31 dealer and the licensee shall be deemed amended to incorporate

1 such transfer or amended in accordance with the determination
2 and order rendered, effective upon compliance by the proposed
3 transferee with any conditions set forth in the determination
4 or order.

5 (b) During the pendency of any such hearing, the
6 franchise agreement of the motor vehicle dealer shall continue
7 in effect in accordance with its terms. The department shall
8 expedite any determination requested under this section.

9 (3)(a) When a transfer is proposed which is contingent
10 upon a proposed relocation, the licensee may turn down the
11 proposed transfer only if the proposed relocation would be
12 subject to protest under s. 320.642 or if the proposed
13 facilities do not satisfy the licensee's reasonable, written,
14 and uniformly applied facility guidelines.

15 (b) When a change of executive management is proposed
16 in conjunction with a proposed transfer under this section, a
17 licensee may reject the proposed change in executive
18 management consistent with s. 320.644. The licensee may not
19 turn down a proposed transfer under either s. 320.643 (1) or
20 s. 320.643 (2) because a proposed change of executive
21 management under s. 320.644 is made in conjunction with the
22 proposed transfer.

23 (4) Notwithstanding the terms of a franchise
24 agreement, a licensee does not have and may not exercise a
25 right of first refusal with respect to any proposed transfer
26 of a franchise agreement or the ownership of a motor vehicle
27 dealer governed by ss. 320.60-320.70, and any such right of
28 first refusal set forth in a franchise agreement is null and
29 void and of no force and effect.

30 Section 8. Section 320.645, Florida Statutes, is
31 amended to read:

1 320.645 Restriction upon ownership of dealership by
2 licensee.--

3 (1) A ~~No~~ licensee, including a manufacturer or agent
4 of a manufacturer, or any parent, subsidiary, common entity,
5 or officer or representative of the licensee may not ~~shall~~
6 own, control, or operate, either directly or indirectly, a
7 motor vehicle dealership in this state for the sale or service
8 of motor vehicles that ~~which~~ have been or are offered for sale
9 under a franchise agreement with a motor vehicle dealer in
10 this state, nor is such a licensee eligible for a motor
11 vehicle dealer' license under s. 320.27. Notwithstanding any
12 other provisions of this subsection, a licensee:~~However, no~~
13 ~~such licensee will be deemed to be in violation of this~~
14 ~~section:~~

15 (a) May operate ~~when operating~~ a motor vehicle
16 dealership for a temporary period, not to exceed 1 year,
17 during the transition from one independent owner of the motor
18 vehicle dealership to another independent owner;

19 (b) For the purpose of broadening the diversity of its
20 dealer body and enhancing opportunities for qualified persons
21 who are part of a group who have historically been
22 underrepresented in its dealer body, or to help fund other
23 qualified persons who lack sufficient resources to purchase or
24 capitalize a dealership outright, but for no other purpose, a
25 licensee may temporarily own an interest in a dealership ~~When~~
26 ~~operating a motor vehicle dealership temporarily for a~~
27 ~~reasonable period, not to exceed 1 year, or in a bona fide~~
28 relationship with an independent person, other than a
29 licensee, its parent, subsidiary, or its agent, common entity,
30 or affiliate, who is to be the other equity participant
31 ("dealer development arrangement") and has made a significant

1 investment that is subject to loss in the dealership and who
2 can reasonably expect, and has a bona-fide agreement, to
3 acquire full ownership of the dealership on reasonable terms
4 and conditions; or

5 (c) May own and operate a motor vehicle dealership if
6 the department determines, after a hearing on the matter,
7 pursuant to chapter 120, at the request of any person, that
8 there is no independent person available in the community or
9 territory to own and operate the motor vehicle dealership in a
10 manner consistent with the public interest.

11
12 (2)(a) In any ~~such~~ case described in paragraphs (1)(a) and
13 (c), the licensee must continue to make the motor vehicle
14 dealership available for sale to an independent person at a
15 fair and reasonable price. Approval of the sale of such a
16 motor vehicle dealership to a proposed motor vehicle dealer
17 shall not be unreasonably withheld, delayed, or conditioned.

18 (b) In any case described in paragraph (1)(b), the
19 licensee shall certify, in writing, to the department that the
20 provisions of that paragraph have been satisfied and complied
21 with and that the dealer development arrangement is bona fide
22 and is not an attempt by the licensee to own, operate, or
23 control one or more dealerships in this state.

24 (3) At any time, the department or any person, under
25 s. 320.695, may file an action to determine whether a dealer
26 development arrangement is bona fide and in compliance with
27 paragraphs (1)(b) and (2)(b). If it is determined that the
28 arrangement is not bona fide or otherwise does not meet the
29 statutory requirements, the department shall take such steps
30 as it considers necessary, including, without limitation,
31 subjecting the licensee to sanctions as provided in s. 320.64,

1 and refusing to issue, suspending, or revoking, the dealer
2 license issued to the dealer development arrangement
3 dealership.

4 (4) Notwithstanding the terms of any franchise
5 agreement, a licensee, affiliate, or common entity that
6 temporarily owns, pursuant to paragraph(1)(a), paragraph
7 (1)(b), or paragraph (1)(c), in whole or in part, directly or
8 indirectly, an interest in a motor vehicle dealer, may not, in
9 any manner, discriminate against any other franchised motor
10 vehicle dealer in the same line-make in any matter governed by
11 the franchise agreement or applicable law, including, without
12 limitation, the execution or implementation of all policies,
13 programs, benefits, and incentives, and the sale and
14 allocation of new motor vehicles to its franchised motor
15 vehicle dealers.

16 (5) The department may subpoena and require such
17 documents and information as it considers necessary in
18 determining any issue under this section.

19 (6) As used in paragraph (1)(b), the term:

20 (a) "Independent person" means an individual who is
21 not an officer, director, agent, or employee of the licensee,
22 or of its parent, subsidiary, agent, or common entity, or
23 otherwise associated with the licensee through any agreement
24 or understanding other than the franchise agreement for the
25 "dealer development arrangement," and who has no other direct
26 or indirect equity interest in another "dealer development
27 arrangement" with the licensee.

28 (b) "Significant investment" means a substantial
29 amount of money personally invested by the independent person
30 as part of the initial investment in the dealership, but not
31 less than 6 percent of the investment, considering the fair

1 market value of the dealer development arrangement dealership,
2 which money was acquired and obtained from sources other than
3 the licensee or any of its affiliates or common entities and
4 is not encumbered by the independent person's interest in the
5 dealership. In determining fair market value, if the
6 ownership of the dealership has been transferred within the
7 prior 12 months, that purchase price is evidence of the fair
8 market value; otherwise, one or more independent appraisals
9 must be produced by the licensee. The department may require
10 such documents and information from the licensee and
11 independent person as it considers necessary.

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

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

29 (8) This section does not apply to any dealership that
30 is owned, controlled, or operated by a licensee on July 1,
31 2001.

1 Section 9. Section 320.695, Florida Statutes, is
2 amended to read:

3 320.695 Injunction.--In addition to the remedies
4 provided in this chapter, and notwithstanding the existence of
5 any adequate remedy at law, the department, or any motor
6 vehicle dealer, or any person in the name of the department
7 and state and for the use and benefit of the motor vehicle
8 dealer or person, is authorized to make application to any
9 circuit court of the state for the grant, upon a hearing and
10 for cause shown, of a temporary or permanent injunction, or
11 both, restraining any person from acting as a licensee under
12 the terms of ss. 320.60-320.70 without being properly licensed
13 hereunder, or from violating, ~~or~~ continuing to violate, or
14 threatening to violate any of the provisions of ss.

15 320.60-320.70, or from failing or refusing to comply with the
16 requirements of this law or any rule or regulation adopted
17 hereunder. Such an injunction shall be issued without bond.
18 A single act in violation of the provisions of ss.

19 320.60-320.70 shall be sufficient to authorize the issuance of
20 an injunction, without regard to whether an adequate remedy
21 exists at law or whether irreparable injury will result
22 without an injunction, or whether the likelihood of success on
23 the merits favors the motor vehicle dealer or such person, or
24 whether the balancing of the equities favors the motor vehicle
25 dealer or such person. However, this statutory remedy shall
26 not be applicable to any motor vehicle dealer after final
27 determination by the department under s. 320.641(3). Upon the
28 request of the department, the Attorney General shall
29 institute suit for and represent the department.

30 Section 10. Section 320.699, Florida Statutes, is
31 amended to read:

1 320.699 Administrative hearings and adjudications;
2 procedure.--

3 (1) A motor vehicle dealer, or person with
4 entitlements to or in a motor vehicle dealer, who is directly
5 and adversely affected by the action or conduct of an
6 applicant or licensee which is alleged to be in violation of
7 any provision of ss. 320.60-320.70, may seek a declaration and
8 adjudication of its rights with respect to the alleged action
9 or conduct of the applicant or licensee by:

10 (a) Filing with the department a request for a
11 proceeding and an administrative hearing which conforms
12 substantially with the requirements of ss. 120.569 and 120.57;
13 or

14 (b) Filing with the department a written objection or
15 notice of protest pursuant to s. 320.642.

16 (2) If a written objection or notice of protest is
17 filed with the department under paragraph (1)(b), a hearing
18 must shall be held no sooner than 240 days after ~~within 180~~
19 ~~days~~ of the date of filing of the first objection or notice of
20 protest. This, unless the time may be ~~is~~ extended by the
21 administrative law judge hearing officer for good cause shown.
22 ~~If a hearing is not scheduled within said time, any party may~~
23 ~~request such hearing which shall be held forthwith by the~~
24 ~~hearing officer.~~

25 Section 11. If a provision of this act or its
26 application to any person or circumstance is held invalid, the
27 invalidity does not affect other provisions or applications of
28 the act which can be given effect without the invalid
29 provision or application, and to this end the provisions of
30 this act are declared severable.

31 Section 12. This act shall take effect July 1, 2001.

SENATE SUMMARY

Amends provisions relating to motor vehicle dealer franchise agreements. Revises definitions used in ss. 320.61-320.70, F.S. Amends procedures to be followed when a complaint of unfair cancellation of a dealer agreement has been made by a motor vehicle dealer against a licensee. Defines the term "final decision." Provides that the terms and conditions of a franchise agreement must comply with ss. 320.60-320.70, F.S., or they are unenforceable. Prohibits licensees from performing certain acts and provides penalties for violations. Provides procedures relating to discontinuations, cancellations, nonrenewals, modifications, and replacements of franchise agreements. Amends procedures for establishing an additional motor vehicle dealer who deals in a specific line-make in an area that is already served by another such dealer. Amends provisions relating to the transfer, assignment, or sale of franchise agreements. Amends provisions relating to restrictions upon a licensee's owning a dealership. Provides for "dealer development arrangements." Provides powers of the Department of Highway Safety and Motor Vehicles. Amends procedures for enjoining a person from acting as a licensee under ss. 320.60-320.70, F.S., without being properly licensed or from violating those statutes or rules adopted thereunder. Amends procedures for administrative hearings and adjudications relating to a motor vehicle dealer's allegations of harm due to an applicant's or licensee's violation of ss. 320.60-320.70, F.S. Provides for severability.