

By Senator Burt

16-1541-02

1 A bill to be entitled
2 An act relating to motor vehicle dealers;
3 amending s. 320.643, F.S.; prohibiting
4 licensees from withholding a proposed transfer
5 of a motor vehicle dealer's franchise agreement
6 under certain circumstances; amending s.
7 320.644, F.S.; providing conditions and
8 guidelines under which a licensee may
9 disapprove a proposed change in executive
10 management by a motor vehicle dealer;
11 prohibiting the unreasonable withholding of
12 such approval; providing an effective date.

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

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16 Section 1. Subsection (4) is added to section 320.643,
17 Florida Statutes, to read:

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

20 (4) A licensee may not reject or withhold approval of
21 a proposed transfer unless the licensee can prove in a legal
22 proceeding, including a departmental hearing or claim pursuant
23 to s. 320.697, that the proposed transferee is not qualified.
24 Alleging the permitted statutory grounds in a written
25 rejection of the proposed transfer does not protect the
26 licensee from liability for violating this section unless the
27 licensee can prove such allegations are true.

28 Section 2. Section 320.644, Florida Statutes, is
29 amended to read:

30 320.644 Change of executive management control;
31 objection by licensee; procedure.--

1 (1) ~~No licensee shall prohibit or prevent, or attempt~~
2 ~~to prohibit or prevent, any motor vehicle dealer from changing~~
3 ~~the executive management control of the motor vehicle dealer~~
4 ~~unless the proposed change of executive management control of~~
5 ~~the motor vehicle dealer is to a person or persons not of good~~
6 ~~moral character or who do not meet the written, reasonable,~~
7 ~~and uniformly applied standards of the licensee relating to~~
8 ~~the business experience of executive management required by~~
9 ~~the licensee of its motor vehicle dealers.~~A motor vehicle
10 dealer who desires to change its executive management control
11 shall notify the licensee by written notice, setting forth the
12 name, address, and business experience of the proposed
13 executive management. A licensee who receives such notice
14 may, within 60 days following such receipt, inform the dealer
15 in writing of the approval or disapproval of the proposed
16 change. If the licensee does not inform the dealer within 60
17 days, its approval of the proposed change is deemed granted.
18 For the purposes of this section a licensee's refusal to
19 accept a person of good moral character who otherwise meets
20 written, reasonable, and uniformly applied standards of the
21 licensee relating to the business experience of the executive
22 management of its dealers is presumed to be unreasonable. A
23 motor vehicle dealer whose proposed change is rejected may,
24 within 60 days after receipt of such rejection, file with the
25 department a complaint for a determination that the proposed
26 management change was rejected in violation of this section.
27 The licensee has the burden of proof with respect to all
28 issues raised by such complaint. The department shall
29 determine, and enter an order providing, that the person
30 proposed for the change is qualified, or is not qualified and
31 cannot be qualified for specific reasons, or the order may

1 provide the conditions under which a proposed executive
2 manager may be qualified. If the licensee fails to file a
3 response to the complaint within 30 days after receipt of the
4 complaint, unless the parties agree in writing to an
5 extension, or if the department, after a hearing, renders a
6 decision other than one disqualifying the person proposed for
7 the change, the franchise agreement is deemed amended to
8 incorporate the change or amended to conform to the order,
9 effective upon compliance by the person proposed for the
10 change with any conditions in the order.

11 (2) For the purposes of this section, the term,
12 "executive management" means any person designated as the
13 dealer/operator or executive manager, and includes similarly
14 designated persons under the franchise agreement. A motor
15 vehicle dealer may change all other dealership personnel
16 without seeking approval from the licensee.~~file with the~~
17 ~~department a verified complaint for a determination that the~~
18 ~~proposed change of executive management will result in~~
19 ~~executive management control by persons who are not of good~~
20 ~~moral character or who do not meet such licensee's standards.~~
21 ~~The licensee has the burden of proof with respect to all~~
22 ~~issues raised by such verified complaint. If the licensee~~
23 ~~fails to file such verified complaint within such 60-day~~
24 ~~period or if the department, after a hearing, dismisses the~~
25 ~~complaint, the franchise agreement between the motor vehicle~~
26 ~~dealer and the licensee shall be deemed amended to incorporate~~
27 ~~such change or amended in accordance with the decision~~
28 ~~rendered.~~

29 (3) For the purpose of this section, the mere
30 termination of employment of executive management is
31 ~~including the dealer/operator or such similarly designated~~

1 ~~person or persons, shall~~ not be deemed to be a change in
2 executive management or a transfer of the franchise.

3 ~~Provided, However, the proposed designation of replacement~~
4 executive management is ~~shall be~~ subject to this section.

5 ~~(4)(2)~~ 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 (5) A licensee may not reject or withhold approval of
10 a proposed change of executive management unless the licensee
11 can prove in a legal proceeding, including a departmental
12 hearing or claim pursuant to s. 320.697, that the person
13 proposed for executive management is not qualified. Alleging
14 the permitted statutory grounds in a written rejection of the
15 proposed change of executive management does not protect the
16 licensee from liability for violating this section unless the
17 licensee can prove such allegations are true.

18 Section 3. This act shall take effect July 1, 2002.

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21 SENATE SUMMARY

22 Revises provisions relating to approval by a motor
23 vehicle licensee of a dealer's request to transfer the
24 franchise agreement or change the executive management of
the dealership. (See bill for details.)