

By Senator Sebesta

16-1158-03

See HB 1159

1 A bill to be entitled
2 An act relating to motor vehicle manufacturers,
3 distributors, importers, and dealers; amending
4 s. 320.13, F.S.; clarifying provisions for use
5 of dealer license plates; amending s. 320.60,
6 F.S.; clarifying definition of "motor vehicle"
7 and defining the terms "service" and "certified
8 preowned vehicle" for purposes of specified
9 provisions; amending s. 320.64, F.S.;
10 prohibiting certain acts by licensee or
11 applicant; amending s. 320.642, F.S.; revising
12 provisions for evidence that an area is
13 adequately served; expanding grounds for
14 protest of proposed additional or relocated
15 motor vehicle dealer; amending s. 320.643,
16 F.S.; revising provisions relating to transfer,
17 assignment, or sale of franchise agreement;
18 prohibiting rejection or withholding of
19 approval by licensee; requiring condition be
20 met to protect the licensee from liability;
21 amending s. 320.644, F.S., relating to change
22 in executive management; defining "executive
23 management"; revising procedures for approval
24 or rejection of change; specifying that
25 termination of employment is not deemed a
26 change under the section; prohibiting rejection
27 or withholding of approval by licensee;
28 providing conditions for rejection or
29 withholding of approval by licensee; requiring
30 condition be met to protect the licensee from
31 liability; amending s. 320.695, F.S.; revising

1 provisions relating to injunctive relief from
2 violation of specified provisions regulating
3 motor vehicle manufacturers, distributors,
4 importers, and dealers; providing standing for
5 described associations of dealers to seek
6 injunctive relief; amending s. 320.699, F.S.;
7 revising administrative hearing procedures for
8 certain complaints; amending s. 501.976, F.S.,
9 relating to actionable, unfair, or deceptive
10 acts or practices by a motor vehicle dealer;
11 revising specifications for representation by
12 dealer of vehicle as a demonstrator; amending
13 s. 817.7001, F.S.; revising the definition of
14 "credit service organization" to exclude
15 specified motor vehicle dealers for purposes of
16 provisions regulating such organizations;
17 providing an effective date.

18

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

20

21 Section 1. Paragraph (a) of subsection (1) of section
22 320.13, Florida Statutes, is amended to read:

23 320.13 Dealer and manufacturer license plates and
24 alternative method of registration.--

25 (1)(a) Any licensed motor vehicle dealer and any
26 licensed mobile home dealer may, upon payment of the license
27 tax imposed by s. 320.08(12), secure one or more dealer
28 license plates, which are valid for use on motor vehicles or
29 mobile homes owned by the dealer to whom such plates are
30 issued while the motor vehicles are in inventory and for sale,
31 or while being operated in connection with such dealer's

1 business, or while being operated by a dealer owner or
2 executive or a family member of such dealer owner or
3 executive, with the permission of the dealer, or while being
4 operated for demonstration purposes,but are not valid for use
5 for hire. Dealer license plates may not be used on any tow
6 truck or wrecker unless the tow truck or wrecker is being
7 demonstrated for sale, and the dealer license plates may not
8 be used on a vehicle used to transport another motor vehicle
9 for the motor vehicle dealer.

10 Section 2. Subsection (10) of section 320.60, Florida
11 Statutes, is amended, and subsections (16) and (17) are added
12 to that section, to read:

13 320.60 Definitions for ss. 320.61-320.70.--Whenever
14 used in ss. 320.61-320.70, unless the context otherwise
15 requires, the following words and terms have the following
16 meanings:

17 (10) "Motor vehicle" means any new automobile,
18 motorcycle, or truck, including all trucks regardless of
19 weight, heavy trucks as defined in s. 320.01(10), and trucks
20 as defined in s. 320.01(9),the equitable or legal title to
21 which has never been transferred by a manufacturer,
22 distributor, importer, or dealer to an ultimate purchaser;
23 however, when legal title is not transferred but possession of
24 a motor vehicle is transferred pursuant to a conditional sales
25 contract or lease and the conditions are not satisfied and the
26 vehicle is returned to the motor vehicle dealer, the motor
27 vehicle may be resold by the motor vehicle dealer as a new
28 motor vehicle, provided the selling motor vehicle dealer gives
29 the following written notice to the purchaser: "THIS VEHICLE
30 WAS DELIVERED TO A PREVIOUS PURCHASER." The purchaser shall

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1 sign an acknowledgment, a copy of which is kept in the selling
2 dealer's file.

3 (16) "Service" means any maintenance, repair, or
4 replacement of any part of any motor vehicle or used motor
5 vehicle that is sold or provided to an owner, operator, or
6 user pursuant to a service contract or motor vehicle warranty.

7 (17) "Certified preowned vehicle" refers to a used
8 motor vehicle for which a licensee, manufacturer, or common
9 entity has established criteria or standards, including
10 reconditioning, for certification of such used motor vehicle.

11 Section 3. Subsection (33) is added to section 320.64,
12 Florida Statutes, to read:

13 320.64 Denial, suspension, or revocation of license;
14 grounds.--A license of a licensee under s. 320.61 may be
15 denied, suspended, or revoked within the entire state or at
16 any specific location or locations within the state at which
17 the applicant or licensee engages or proposes to engage in
18 business, upon proof that the section was violated with
19 sufficient frequency to establish a pattern of wrongdoing, and
20 a licensee or applicant shall be liable for claims and
21 remedies provided in ss. 320.695 and 320.697 for any violation
22 of any of the following provisions. A licensee is prohibited
23 from committing the following acts:

24 (33) The applicant or licensee attempts to sell or
25 lease or sells or leases used motor vehicles at retail,
26 including certified preowned vehicles, of the line-make that
27 is the subject of any franchise agreement with a motor vehicle
28 dealer in this state.

29 (a) No licensee or common entity, after enactment of
30 this subsection, shall include in any franchise agreement with
31 a motor vehicle dealer any obligation of the motor vehicle

1 dealer with respect to the sale or lease, or offering for sale
2 or lease, of any used motor vehicle, including any certified
3 preowned vehicle; however, a licensee may prescribe
4 requirements for:
5 1. Facility space requirements for used vehicles.
6 2. A number of sales personnel for the sale or lease
7 of used vehicles, provided such requirements are written,
8 reasonable as to the market potential of each similarly sized
9 motor vehicle dealer, and uniformly applied.
10 (b) No licensee, by agreement or otherwise, in
11 connection with a motor vehicle dealer's sale or lease at
12 retail of any used vehicle, including any certified preowned
13 vehicle, shall require a motor vehicle dealer to issue to its
14 customer any extension of any original warranty or extended
15 service contract that overlaps, as to time, mileage, or
16 coverage, with the original warranty if the motor vehicle
17 dealer or customer must pay anything of value for such
18 extension or extended service contract.
19 (c) No licensee, manufacturer, or common entity, after
20 enactment of this subsection, by agreement, program, or
21 otherwise, shall:
22 1. Establish or continue any motor vehicle dealer
23 incentive, bonus, benefit, or other program; or
24 2. Condition a motor vehicle dealer's eligibility for,
25 or receipt of, a bonus, incentive, or benefit
26
27 which is based upon the dealer certifying, selling, or leasing
28 a prescribed or predetermined quantity of used motor vehicles,
29 including certified preowned vehicles.
30 (d) No licensee shall:
31

1 1. Establish any new motor vehicle sales planning
2 volume for any motor vehicle dealer, regardless of the
3 terminology used by a licensee to describe the quantity of new
4 motor vehicles to be made available to the dealer from the
5 licensee in any period;

6 2. Refuse a new motor vehicle dealer its fair share of
7 new motor vehicle allocation; or

8 3. Fail or refuse to sell to a new motor vehicle
9 dealer any new motor vehicles, if such planning volume,
10 allocation, failure, or refusal is based upon a dealer
11 selling, leasing, or certifying a quantity of used motor
12 vehicles, including certified preowned vehicles, prescribed by
13 the licensee.

14
15 A motor vehicle dealer who can demonstrate that a violation
16 of, or failure to comply with, any of the preceding provisions
17 by an applicant or licensee will or can adversely and
18 pecuniarily affect the complaining dealer, shall be entitled
19 to pursue all of the remedies, procedures, and rights of
20 recovery available under ss. 320.695 and 320.697.

21 Section 4. Paragraph (b) of subsection (2) and
22 subsection (3) of section 320.642, Florida Statutes, are
23 amended to read:

24 320.642 Dealer licenses in areas previously served;
25 procedure.--

26 (2)

27 (b) In determining whether the existing franchised
28 motor vehicle dealer or dealers are providing adequate
29 representation in the community or territory for the
30 line-make, the department may consider evidence which may
31 include, but is not limited to:

1 1. The impact of the establishment of the proposed or
2 relocated dealer on the consumers, public interest, existing
3 dealers, and the licensee; provided, however, that financial
4 impact may only be considered with respect to the protesting
5 dealer or dealers.

6 2. The size and permanency of investment reasonably
7 made and reasonable obligations incurred by the existing
8 dealer or dealers to perform their obligations under the
9 dealer agreement.

10 3. The reasonably expected market penetration of the
11 line-make motor vehicle for the community or territory
12 involved, after consideration of all factors which may affect
13 said penetration, including, but not limited to, demographic
14 factors such as age, income, import penetration, education,
15 size class preference, product popularity, retail lease
16 transactions, or other factors affecting sales to consumers of
17 the community or territory. Furthermore, with respect to any
18 geographic comparison area used to evaluate the performance of
19 the line-make within the community or territory, such
20 comparison area shall be reasonably similar in demographic
21 traits to the community or territory, including, but not
22 limited to, age, income, import penetration, education, size
23 class preference, and product popularity, and such comparison
24 area shall not be smaller than an entire county. Reasonably
25 expected market penetration shall be measured with respect to
26 the community or territory as a whole and not with respect to
27 any part thereof or identifiable plot therein.

28 4. Any actions by the licensees in denying its
29 existing dealer or dealers of the same line-make the
30 opportunity for reasonable growth, market expansion, or
31 relocation, including the availability of line-make vehicles

1 in keeping with the reasonable expectations of the licensee in
2 providing an adequate number of dealers in the community or
3 territory.

4 5. Any attempts by the licensee to coerce the existing
5 dealer or dealers into consenting to additional or relocated
6 franchises of the same line-make in the community or
7 territory.

8 6. Distance, travel time, traffic patterns, and
9 accessibility between the existing dealer or dealers of the
10 same line-make and the location of the proposed additional or
11 relocated dealer.

12 7. Whether benefits to consumers will likely occur
13 from the establishment or relocation of the dealership which
14 the protesting dealer or dealers prove cannot be obtained by
15 other geographic or demographic changes or expected changes in
16 the community or territory.

17 8. Whether the protesting dealer or dealers are in
18 substantial compliance with their dealer agreement.

19 9. Whether there is adequate interbrand and intrabrand
20 competition with respect to said line-make in the community or
21 territory and adequately convenient consumer care for the
22 motor vehicles of the line-make, including the adequacy of
23 sales and service facilities.

24 10. Whether the establishment or relocation of the
25 proposed dealership appears to be warranted and justified
26 based on economic and marketing conditions pertinent to
27 dealers competing in the community or territory, including
28 anticipated future changes.

29 11. The volume of registrations and service business
30 transacted by the existing dealer or dealers of the same
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1 line-make in the relevant community or territory of the
2 proposed dealership.

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

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

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

24 2. The existing motor vehicle dealer or dealers of the
25 same line-make have a licensed franchise location within a
26 radius of 20 miles of the location of the proposed additional
27 or relocated motor vehicle dealer; or

28 3. Any existing motor vehicle dealer or dealers of the
29 same line-make can establish that during any 12-month period
30 of the 36-month period preceding the filing of the licensee's
31 application for the proposed dealership, such dealer or its

1 predecessor made 25 percent of its retail sales of new motor
2 vehicles to persons whose registered household addresses were
3 located within a radius of 20 miles of the location of the
4 proposed additional or relocated motor vehicle dealer;
5 provided such existing dealer is located in the same county or
6 any county contiguous to the county where the additional or
7 relocated dealer is proposed to be located.

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

13 1. Any existing motor vehicle dealer or dealers of the
14 same line-make have a licensed franchise location within a
15 radius of 12.5 miles of the location of the proposed
16 additional or relocated motor vehicle dealer; or

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

28 Section 5. Section 320.643, Florida Statutes, is
29 amended to read:

30 320.643 Transfer, assignment, or sale of franchise
31 agreements.--

1 (1) A motor vehicle dealer shall not transfer, assign,
2 or sell a franchise agreement to another person unless the
3 dealer first notifies the licensee of the dealer's decision to
4 make such transfer, by written notice setting forth the
5 prospective transferee's name, address, financial
6 qualification, and business experience during the previous 5
7 years. The licensee shall, in writing, within 60 days after
8 receipt of such notice, inform the dealer either of the
9 licensee's approval of the transfer, assignment, or sale or of
10 the unacceptability of the proposed transferee, setting forth
11 the material reasons for the rejection. If the licensee does
12 not so inform the dealer within the 60-day period, its
13 approval of the proposed transfer is deemed granted. No such
14 transfer, assignment, or sale will be valid unless the
15 transferee agrees in writing to comply with all requirements
16 of the franchise then in effect. For the purposes of this
17 section, the refusal by the licensee to accept a proposed
18 transferee who is of good moral character and who otherwise
19 meets the written, reasonable, and uniformly applied standards
20 or qualifications, if any, of the licensee relating to
21 financial qualifications of the transferee and the business
22 experience of the transferee or the transferee's executive
23 management is presumed to be unreasonable. A motor vehicle
24 dealer whose proposed sale is rejected may, within 60 days
25 following such receipt of such rejection, file with the
26 department a complaint for a determination that the proposed
27 transferee has been rejected in violation of this section. The
28 licensee has the burden of proof with respect to all issues
29 raised by such complaint. The department shall determine, and
30 enter an order providing, that the proposed transferee is
31 either qualified or is not and cannot be qualified for

1 specified reasons, or the order may provide the conditions
2 under which a proposed transferee would be qualified. If the
3 licensee fails to file such a response to the motor vehicle
4 dealer's complaint within 30 days after receipt of the
5 complaint, unless the parties agree in writing to an
6 extension, or if the department, after a hearing, renders a
7 decision other than one disqualifying the proposed transferee,
8 the franchise agreement between the motor vehicle dealer and
9 the licensee shall be deemed amended to incorporate such
10 transfer or amended in accordance with the determination and
11 order rendered, effective upon compliance by the proposed
12 transferee with any conditions set forth in the determination
13 or order.

14 (2)~~(a)~~ Notwithstanding the terms of any franchise
15 agreement, a licensee shall not, by contract or otherwise,
16 fail or refuse to give effect to, prevent, prohibit, or
17 penalize, or attempt to refuse to give effect to, prevent,
18 prohibit, or penalize, any motor vehicle dealer or any
19 proprietor, partner, stockholder, owner, or other person who
20 holds or otherwise owns an interest therein from selling,
21 assigning, transferring, alienating, or otherwise disposing
22 of, in whole or in part, the equity interest of any of them in
23 such motor vehicle dealer to any other person or persons,
24 including a corporation established or existing for the
25 purpose of owning or holding the stock or ownership interests
26 of other entities, unless the licensee proves at a hearing
27 pursuant to this section that such sale, transfer, alienation,
28 or other disposition is to a person who is not, or whose
29 controlling executive management is not, of good moral
30 character. A motor vehicle dealer, or any proprietor, partner,
31 stockholder, owner, or other person who holds or otherwise

1 owns an interest in the motor vehicle dealer, who desires to
2 sell, assign, transfer, alienate, or otherwise dispose of any
3 interest in such motor vehicle dealer shall notify, or cause
4 the proposed transferee to so notify, the licensee, in
5 writing, of the identity and address of the proposed
6 transferee. A licensee who receives such notice may, within 60
7 days following such receipt, notify the motor vehicle dealer
8 in writing that the proposed transferee is not a person
9 qualified to be a transferee under this section and setting
10 forth the material reasons for such rejection. Failure of the
11 licensee to notify the motor vehicle dealer within the 60-day
12 period of such rejection shall be deemed an approval of the
13 transfer. Any person whose proposed sale of stock is rejected
14 may file within 60 days of receipt of such rejection a
15 complaint with the department alleging that the rejection was
16 in violation of the law or the franchise agreement. The
17 licensee has the burden of proof with respect to all issues
18 raised by such complaint. The department shall determine, and
19 enter an order providing, that the proposed transferee either
20 is qualified or is not and cannot be qualified for specified
21 reasons; or the order may provide the conditions under which a
22 proposed transferee would be qualified. If the licensee fails
23 to file a response to the motor vehicle dealer's complaint
24 within 30 days of receipt of the complaint, unless the parties
25 agree in writing to an extension, or if the department, after
26 a hearing, renders a decision on the complaint other than one
27 disqualifying the proposed transferee, the transfer shall be
28 deemed approved in accordance with the determination and order
29 rendered, effective upon compliance by the proposed transferee
30 with any conditions set forth in the determination or order.
31

1 ~~(b) During the pendency of any such hearing, the~~
2 ~~franchise agreement of the motor vehicle dealer shall continue~~
3 ~~in effect in accordance with its terms. The department shall~~
4 ~~expedite any determination requested under this section.~~

5 (3) 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 (4)~~(3)~~ Notwithstanding the terms of any franchise
10 agreement, the acceptance by the licensee of the proposed
11 transferee shall not be unreasonably withheld. For the
12 purposes of this section, the refusal by the licensee to
13 accept a proposed transferee who satisfies the criteria set
14 forth in subsection (1) or subsection (2) is presumed to be
15 unreasonable.

16 (5) It shall be a violation of this section for the
17 licensee to reject or withhold approval of a proposed transfer
18 unless the licensee can prove in any court of competent
19 jurisdiction or in a hearing before the department or in
20 defense of any claim brought pursuant to s. 320.697 that, in
21 fact, the proposed transferee was not qualified as set forth
22 in subsection (1) or subsection (2). Alleging the permitted
23 statutory grounds by the licensee in the written rejection of
24 the proposed transfer shall not protect the licensee from
25 liability for violating this section unless the licensee can
26 prove such allegations are true.

27 Section 6. Section 320.644, Florida Statutes, is
28 amended to read:

29 320.644 Change of executive management control;
30 objection by licensee; procedure.--

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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 shall, in writing may, within 60 days following such receipt,
15 inform the motor vehicle dealer either of the approval of the
16 proposed change in executive management or the unacceptability
17 of the proposed change. If the licensee does not so inform the
18 motor vehicle dealer within the 60-day period, its approval of
19 the proposed change is deemed granted. For the purposes of
20 this section, rejection of a proposed change to a person who
21 is of good moral character and who otherwise meets the
22 written, reasonable, and uniformly applied standards of the
23 licensee relating to the business experience of executive
24 management required by the licensee of its motor vehicles
25 dealers is presumed to be unreasonable. A motor vehicle dealer
26 whose proposed change is rejected may, within 60 days
27 following receipt of such rejection, file with the department
28 a complaint for a determination that the proposed change of
29 executive management has been rejected in violation of this
30 section. The licensee has the burden of proof with respect to
31 all issues raised by such complaint. The department shall

1 determine, and enter an order providing, that the person
2 proposed for the change is either qualified or is not and
3 cannot be qualified for specific reasons, or the order may
4 provide the conditions under which a proposed executive
5 manager would be qualified. If the licensee fails to file a
6 response to the motor vehicle dealer's complaint within 30
7 days after receipt of the complaint, unless the parties agree
8 in writing to an extension, or if the department after a
9 hearing renders a decision other than one disqualifying the
10 person proposed for the change, the franchise agreement
11 between the motor vehicle dealer and the licensee shall be
12 deemed amended to incorporate such change or amended in
13 accordance with the determination or order rendered, effective
14 upon compliance by the person proposed for the change with any
15 conditions set forth in the determination or order ~~file with~~
16 ~~the department a verified complaint for a determination that~~
17 ~~the proposed change of executive management will result in~~
18 ~~executive management control by persons who are not of good~~
19 ~~moral character or who do not meet such licensee's standards.~~
20 ~~The licensee has the burden of proof with respect to all~~
21 ~~issues raised by such verified complaint. If the licensee~~
22 ~~fails to file such verified complaint within such 60-day~~
23 ~~period or if the department, after a hearing, dismisses the~~
24 ~~complaint, the franchise agreement between the motor vehicle~~
25 ~~dealer and the licensee shall be deemed amended to incorporate~~
26 ~~such change or amended in accordance with the decision~~
27 ~~rendered. For the purpose of this section, the mere~~
28 ~~termination of employment of executive management, including~~
29 ~~the dealer/operator or such similarly designated person or~~
30 ~~persons, shall not be deemed to be a change in executive~~
31 ~~management or a transfer of the franchise. Provided, however,~~

1 ~~the designation of replacement executive management shall be~~
2 ~~subject to this section.~~

3 (2) For the purpose of this section, the mere
4 termination of employment of executive management shall not be
5 deemed to be a change in executive management or a transfer of
6 the franchise; however, the proposal of replacement executive
7 management shall be subject to this section ~~During the~~
8 ~~pendency of any such hearing, the franchise agreement of the~~
9 ~~motor vehicle dealer shall continue in effect in accordance~~
10 ~~with its terms. The department shall expedite any~~
11 ~~determination requested under this section.~~

12 (3) For the purpose of this section, the term
13 "executive management" shall mean and be limited to the person
14 or persons designated under the franchise agreement as the
15 dealer-operator, executive manager, or similarly designated
16 persons who are responsible for the overall day-to-day
17 operation of the dealership. A motor vehicle dealer may change
18 all other dealership personnel without seeking approval from
19 the licensee.

20 (4) During the pendency of any such hearing, the
21 franchise agreement of the motor vehicle dealer shall continue
22 in effect in accordance with its terms. The department shall
23 expedite any determination requested under this section.

24 (5) It shall be a violation of this section for the
25 licensee to reject or withhold approval of a proposed change
26 of executive management, unless the licensee can prove in any
27 court of competent jurisdiction or in a hearing before the
28 department or in defense of any claim brought pursuant to s.
29 320.697 that, in fact, the person proposed for executive
30 management was not qualified as set forth in subsection (1).
31 Alleging the permitted statutory grounds by the licensee in

1 the written rejection of the proposed change of executive
2 management shall not protect the licensee from liability for
3 violating this section unless the licensee proves such
4 allegations are true.

5 Section 7. Section 320.695, Florida Statutes, is
6 amended to read:

7 320.695 Injunction.--In addition to the remedies
8 provided in this chapter, and notwithstanding the existence of
9 any adequate remedy at law, the department, or any motor
10 vehicle dealer or any association of 30 or more motor vehicle
11 dealers in the name of the department and state and for the
12 use and benefit of one or more ~~the~~ motor vehicle dealers
13 ~~dealer~~, is authorized to make application to any circuit court
14 of the state for the grant, upon a hearing and for cause
15 shown, of a temporary or permanent injunction, or both,
16 restraining any person from acting as a licensee under the
17 terms of ss. 320.60-320.70 without being properly licensed
18 hereunder, or from violating or continuing to violate or
19 threatening to violate any of the provisions of ss.
20 320.60-320.70, or from failing or refusing to comply with the
21 requirements of this law or any rule or regulation adopted
22 hereunder. Such injunction shall be issued without bond. A
23 single act in violation of the provisions of ss. 320.60-320.70
24 shall be sufficient to authorize the issuance of an
25 injunction. However, this statutory remedy shall not be
26 applicable to any motor vehicle dealer after final
27 determination by the department under s. 320.641(3).

28 Section 8. Subsection (3) is added to section 320.699,
29 Florida Statutes, to read:

30 320.699 Administrative hearings and adjudications;
31 procedure.--

1 (3) If a complaint is filed pursuant to s. 320.6403,
2 s. 320.641, s. 320.643, s. 320.644, or s. 320.696, a hearing
3 shall be held no sooner than 180 days nor later than 240 days
4 after the date of the filing of the complaint unless all
5 parties stipulate to a hearing date sooner than 180 days, or
6 unless the time is extended by the administrative law judge
7 for good cause shown. This subsection shall govern the
8 schedule of hearings in lieu of any other provision of law
9 with respect to administrative hearings conducted by the
10 Department of Highway Safety and Motor Vehicles or the
11 Division of Administrative Hearings, including performance
12 standards of state agencies, which may be included in current
13 and future appropriations acts.

14 Section 9. Subsection (2) of section 501.976, Florida
15 Statutes, is amended to read:

16 501.976 Actionable, unfair, or deceptive acts or
17 practices.--It is an unfair or deceptive act or practice,
18 actionable under the Florida Deceptive and Unfair Trade
19 Practices Act, for a dealer to:

20 (2) Represent directly or indirectly that a vehicle is
21 a demonstrator unless the vehicle ~~was driven by prospective~~
22 ~~customers of a dealership selling the vehicle and such vehicle~~
23 complies with the definition of a demonstrator in s.
24 320.60(3).

25
26 In any civil litigation resulting from a violation of this
27 section, when evaluating the reasonableness of an award of
28 attorney's fees to a private person, the trial court shall
29 consider the amount of actual damages in relation to the time
30 spent.

31

1 Section 10. Paragraph (b) of subsection (2) of section
2 817.7001, Florida Statutes, is amended to read:
3 817.7001 Definitions.--As used in this part:
4 (2)
5 (b) "Credit service organization" does not include:
6 1. Any person authorized to make loans or extensions
7 of credit under the laws of this state or the United States
8 who is subject to regulation and supervision by this state or
9 the United States or a lender approved by the United States
10 Secretary of Housing and Urban Development for participation
11 in any mortgage insurance program under the National Housing
12 Act;
13 2. Any bank, savings bank, or savings and loan
14 association whose deposits or accounts are eligible for
15 insurance by the Federal Deposit Insurance Corporation or the
16 Federal Savings and Loan Insurance Corporation, or a
17 subsidiary of such bank, savings bank, or savings and loan
18 association;
19 3. Any credit union, federal credit union, or
20 out-of-state credit union doing business in this state;
21 4. Any nonprofit organization exempt from taxation
22 under s. 501(c)(3) of the Internal Revenue Code;
23 5. Any person licensed as a real estate broker by this
24 state if the person is acting within the course and scope of
25 that license;
26 6. Any person collecting consumer claims pursuant to
27 s. 559.72;
28 7. Any person licensed to practice law in this state
29 if the person renders services within the course and scope of
30 his or her practice as an attorney and does not engage in the
31 credit service business on a regular and continuing basis;

1 8. Any broker-dealer registered with the Securities
2 and Exchange Commission or the Commodity Futures Trading
3 Commission if the broker-dealer is acting within the course
4 and scope of that regulation; ~~or~~

5 9. Any consumer reporting agency as defined in the
6 Federal Fair Credit Reporting Act, 15 U.S.C. ss. 1681-1681t;
7 or

8 10. Any motor vehicle dealer as defined by s.
9 320.27(1)(c) or s. 320.60(11)(a) and (b).

10 Section 11. This act shall take effect upon becoming a
11 law.

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