

1 A bill to be entitled
2 An act relating to franchised motor vehicle dealers;
3 amending s. 320.60, F.S.; revising the definition of
4 "demonstrator"; defining "existing franchised motor
5 vehicle dealer"; amending s. 320.64, F.S.; prohibiting
6 applicant or licensee failure to pay certain costs and
7 amounts to a dealer after termination of franchise;
8 amending s. 320.641, F.S.; providing for admissibility of
9 certain evidence in a hearing of a complaint or petition
10 filed relating to discontinuations, cancellations,
11 nonrenewals, modifications, or replacement of franchise
12 agreements; amending s. 320.642, F.S.; revising criteria
13 and procedures to establish an additional dealership or
14 relocate an existing dealer in an area where the same
15 line-make vehicle is presently represented; revising
16 provisions excluding certain openings and reopenings from
17 consideration as an additional or relocated motor vehicle
18 dealer; limiting such openings and reopenings; requiring
19 distance between sites to be measured from the geometric
20 centroid of each site; amending s. 320.643, F.S.;
21 exempting a transferee proposing to simultaneously
22 relocate dealership operations in conjunction with the
23 purchase from location requirements in the franchise
24 agreement under certain circumstances; providing
25 requirements for such proposals; amending s. 320.699,
26 F.S.; revising procedures for administrative hearings;
27 requiring a certain schedule unless extended by the
28 administrative law judge under certain conditions;

29 | amending ss. 320.645, 681.102, and 681.113, F.S. ;
 30 | correcting cross references; providing an effective date.
 31 |

32 | Be It Enacted by the Legislature of the State of Florida:
 33 |

34 | Section 1. Subsection (3) of section 320.60, Florida
 35 | Statutes, is amended, subsections (6) through (16) are
 36 | renumbered as subsections (7) through (17), respectively, and a
 37 | new subsection (6) is added to said section, to read:

38 | 320.60 Definitions for ss. 320.61-320.70.--Whenever used
 39 | in ss. 320.61-320.70, unless the context otherwise requires, the
 40 | following words and terms have the following meanings:

41 | (3) "Demonstrator" means any new motor vehicle which is
 42 | carried on the records of the dealer as a demonstrator and is
 43 | used by or~~7~~ being inspected or driven by the dealer or his or
 44 | her employees~~7~~ or driven by prospective customers for the
 45 | purpose of demonstrating vehicle characteristics in the sale or
 46 | display of motor vehicles sold by the dealer.

47 | (6) "Existing franchised motor vehicle dealer" means any
 48 | motor vehicle dealer that has a franchise agreement with a
 49 | licensee in effect or that is the subject of a final order
 50 | permitting the establishment of additional representation or a
 51 | relocation, even if not yet opened for business.

52 | Section 2. Subsection (36) is added to section 320.64,
 53 | Florida Statutes, to read:

54 | 320.64 Denial, suspension, or revocation of license;
 55 | grounds.--A license of a licensee under s. 320.61 may be denied,
 56 | suspended, or revoked within the entire state or at any specific

57 location or locations within the state at which the applicant or
 58 licensee engages or proposes to engage in business, upon proof
 59 that the section was violated with sufficient frequency to
 60 establish a pattern of wrongdoing, and a licensee or applicant
 61 shall be liable for claims and remedies provided in ss. 320.695
 62 and 320.697 for any violation of any of the following
 63 provisions. A licensee is prohibited from committing the
 64 following acts:

65 (36) Notwithstanding the terms of any franchise agreement,
 66 after termination of a franchise, voluntarily or involuntarily,
 67 an applicant or licensee has failed to pay to the motor vehicle
 68 dealer, within 90 days after the effective date of the
 69 termination, cancellation, or nonrenewal, the following amounts:

70 (a) The net cost paid by the dealer for each new motor
 71 vehicle in the dealer's inventory with mileage of 6,000 miles or
 72 less, exclusive of mileage placed on the vehicle before it was
 73 delivered to the dealer.

74 (b) The cost paid by the dealer for each new, unused,
 75 undamaged, and unsold part or accessory that:

76 1. Is in the current parts catalog and is still in the
 77 original, resalable merchandising package and in an unbroken
 78 lot, except that, in the case of sheet metal, a comparable
 79 substitute for the original package may be used; and

80 2. Was purchased by the dealer either directly from the
 81 manufacturer or distributor or was purchased from an outgoing
 82 authorized dealer as a part of the dealer's initial inventory.

83 (c) The fair market value of each undamaged sign owned by
 84 the dealer that bears a trademark or trade name used or claimed

85 by the applicant or licensee or a representative of the
 86 applicant or licensee and that was purchased from or at the
 87 request of the applicant or licensee or a representative of the
 88 applicant or licensee.

89 (d) The fair market value of all special tools, data
 90 processing equipment, and automotive service equipment owned by
 91 the dealer that:

92 1. Were recommended in writing by the applicant or
 93 licensee or a representative of the applicant or licensee and
 94 designated as special tools and equipment;

95 2. Were purchased from or at the request of the applicant
 96 or licensee or a representative of the applicant or licensee;
 97 and

98 3. Are in usable and good condition except for reasonable
 99 wear and tear.

100 (e) The cost of transporting, handling, packing, storing,
 101 and loading any property subject to repurchase under this
 102 section.

103
 104 A motor vehicle dealer who can demonstrate that a violation of,
 105 or failure to comply with, any of the preceding provisions by an
 106 applicant or licensee will or can adversely and pecuniarily
 107 affect the complaining dealer, shall be entitled to pursue all
 108 of the remedies, procedures, and rights of recovery available
 109 under ss. 320.695 and 320.697.

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

112 320.641 Discontinuations, cancellations, nonrenewals,
 113 modifications, and replacement of franchise agreements.--

114 (3)(a) Any motor vehicle dealer who receives a notice of
 115 intent to discontinue, cancel, not renew, modify, or replace
 116 may, within the 90-day notice period, file a petition or
 117 complaint for a determination of whether such action is an
 118 unfair or prohibited discontinuation, cancellation, nonrenewal,
 119 modification, or replacement. Agreements and certificates of
 120 appointment shall continue in effect until final determination
 121 of the issues raised in such petition or complaint by the motor
 122 vehicle dealer. A discontinuation, cancellation, or nonrenewal
 123 of a franchise agreement is unfair if it is not clearly
 124 permitted by the franchise agreement; is not undertaken in good
 125 faith; is not undertaken for good cause; or is based on an
 126 alleged breach of the franchise agreement which is not in fact a
 127 material and substantial breach; or, if the grounds relied upon
 128 for termination, cancellation, or nonrenewal have not been
 129 applied in a uniform and consistent manner by the licensee. A
 130 modification or replacement is unfair if it is not clearly
 131 permitted by the franchise agreement; is not undertaken in good
 132 faith; or is not undertaken for good cause. The applicant or
 133 licensee shall have the burden of proof that such action is fair
 134 and not prohibited.

135 (b) In any hearing held pursuant to a complaint or
 136 petition filed pursuant to this subsection, all conduct by the
 137 motor vehicle dealer or licensee until the commencement of the
 138 final hearing shall be admissible in evidence to determine the
 139 issues set forth under this subsection.

140 Section 4. Subsections (2), (3), (5), and (6) of section
141 320.642, Florida Statutes, are amended, and subsection (7) is
142 added to said section, to read:

143 320.642 Dealer licenses in areas previously served;
144 procedure.--

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

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

150 2. The licensee fails to show that the existing franchised
151 dealer or dealers who register new motor vehicle retail sales or
152 retail leases of the same line-make in the community or
153 territory of the proposed dealership are not providing adequate
154 representation of such line-make motor vehicles in such
155 community or territory as a whole and not with respect to any
156 part thereof or identifiable plot therein. The burden of proof
157 in establishing inadequate representation shall be on the
158 licensee.

159 (b) In determining whether the existing franchised motor
160 vehicle dealer or dealers are providing adequate representation
161 in the community or territory for the line-make, the department
162 shall ~~may~~ consider evidence including ~~which may include~~, but ~~is~~
163 not limited to:

164 1. The impact of the establishment of the proposed or
165 relocated dealer on the consumers, public interest, existing
166 dealers, and the licensee; provided, however, that financial

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167 impact may only be considered with respect to the protesting
168 dealer or dealers.

169 2. The size and permanency of investment reasonably made
170 and reasonable obligations incurred by the existing dealer or
171 dealers to perform their obligations under the dealer agreement.

172 3. The reasonably expected market penetration of the line-
173 make motor vehicle for the community or territory involved,
174 after consideration of all factors which may affect said
175 penetration, including, but not limited to, demographic factors
176 such as age, income, education, size class preference, product
177 popularity, retail lease transactions, import penetration,
178 existence and extent of interbrand competition, whether located
179 in a metropolitan or nonmetropolitan area, or other factors
180 affecting sales to consumers of the community or territory. With
181 respect to any geographic comparison area used to evaluate the
182 performance of the line-make within the community or territory,
183 such comparison area shall not be smaller than an entire county
184 and shall not include any geographic area located outside this
185 state. Reasonably expected market penetration shall be measured
186 with respect to the community or territory as a whole and not
187 with respect to any part thereof or identifiable plot therein.
188 In order to satisfy its burden of proof pursuant to this
189 section, the licensee must prove that any deviation or shortfall
190 in market penetration from a reasonable comparison area is
191 substantial and significant, considering factors including, but
192 not limited to, the size of the community or territory and the
193 projected sales of the proposed dealership.

194 4. Any actions by the licensees in denying its existing
195 dealer or dealers of the same line-make the opportunity for
196 reasonable growth, market expansion, or relocation, including
197 the availability of line-make vehicles in keeping with the
198 reasonable expectations of the licensee in providing an adequate
199 number of dealers in the community or territory.

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

203 6. Distance, travel time, traffic patterns, and
204 accessibility between the existing dealer or dealers of the same
205 line-make and the location of the proposed additional or
206 relocated dealer.

207 7. Whether benefits to consumers will likely occur from
208 the establishment or relocation of the dealership which cannot
209 be obtained by other geographic or demographic changes or
210 expected changes in the community or territory.

211 8. Whether the protesting dealer or dealers are in
212 substantial compliance with their dealer agreement.

213 9. Whether there is adequate interbrand and intrabrand
214 competition with respect to said line-make in the community or
215 territory and adequately convenient consumer care for the motor
216 vehicles of the line-make, including the adequacy of sales and
217 service facilities.

218 10. Whether the establishment or relocation of the
219 proposed dealership appears to be warranted and justified based
220 on economic and marketing conditions pertinent to dealers

221 competing in the community or territory, including anticipated
 222 future changes.

223 11. The volume of registrations and service business
 224 transacted by the existing dealer or dealers of the same line-
 225 make in the relevant community or territory of the proposed
 226 dealership.

227 (3) An existing franchised motor vehicle dealer or dealers
 228 shall have standing to protest a proposed additional or
 229 relocated motor vehicle dealer where the existing motor vehicle
 230 dealer or dealers have a franchise agreement for the same line-
 231 make vehicle to be sold or serviced by the proposed additional
 232 or relocated motor vehicle dealer and are physically located so
 233 as to meet or satisfy any of the following requirements or
 234 conditions:

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

240 1. The proposed additional or relocated motor vehicle
 241 dealer is to be located in the area designated or described as
 242 the area of responsibility, or such similarly designated area,
 243 including the entire area designated as a multiple-point area,
 244 in the franchise agreement or in any related document or
 245 commitment with the existing motor vehicle dealer or dealers of
 246 the same line-make as such agreement existed upon October 1,
 247 1988;

248 2. The existing motor vehicle dealer or dealers of the
 249 same line-make have a licensed franchise location within a
 250 radius of 20 miles of the location of the proposed additional or
 251 relocated motor vehicle dealer; or

252 3. Any existing motor vehicle dealer or dealers of the
 253 same line-make can establish that, during any consecutive 12-
 254 month period of the 36-month period preceding the month in which
 255 the publication of the proposed additional or relocated
 256 dealership appears in the Florida Administrative Weekly for the
 257 filing of the licensee's application for the proposed additional
 258 or relocated motor vehicle dealer, dealership, such dealer or
 259 its predecessor made 25 percent of the its retail sales of new
 260 motor vehicles made by such dealer or its predecessor were to
 261 persons or entities that whose registered the purchased vehicle
 262 to an address household addresses were located within a radius
 263 of 20 miles of the geometric centroid of the property that will
 264 encompass all location of the proposed additional or relocated
 265 motor vehicle dealer operations; provided such existing dealer
 266 is located in the same county or any county contiguous to the
 267 county where the additional or relocated dealer is proposed to
 268 be located.

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

274 1. Any existing motor vehicle dealer or dealers of the
 275 same line-make have a licensed franchise location within a

276 radius of 12.5 miles of the location of the proposed additional
 277 or relocated motor vehicle dealer; or

278 2. Any existing motor vehicle dealer or dealers of the
 279 same line-make can establish that, during any consecutive 12-
 280 month period of the 36-month period preceding the month in which
 281 the publication of the proposed additional or relocated
 282 dealership appears in the Florida Administrative Weekly for the
 283 filing of the licensee's application for the proposed additional
 284 or relocated motor vehicle dealer, dealership, such dealer or
 285 its predecessor made 25 percent of the its retail sales of new
 286 motor vehicles made by such dealer or its predecessor were to
 287 persons or entities that whose registered the purchased vehicle
 288 to an address household addresses were located within a radius
 289 of 12.5 miles of the geometric centroid of the property that
 290 will encompass all location of the proposed additional or
 291 relocated motor vehicle dealer operations; provided such
 292 existing dealer is located in the same county or any county
 293 contiguous to the county where the additional or relocated
 294 dealer is proposed to be located.

295 (5)(a) The opening or reopening of the same or a successor
 296 motor vehicle dealer within 12 months shall not be considered an
 297 additional motor vehicle dealer subject to protest within the
 298 meaning of this section, if:

299 1.(a) The opening or reopening is within the same or an
 300 adjacent county and, is within 2 miles of the former motor
 301 vehicle dealer location;;

302 2.(b) There is no dealer within 25 miles of the proposed
 303 location or the proposed location is further from each existing

304 dealer of the same line-make than the prior location is from
 305 each dealer of the same line-make within 25 miles of the new
 306 location;~~7~~

307 3.~~(e)~~ The opening or reopening is within 6 miles of the
 308 prior location and, if any existing motor vehicle dealer of the
 309 same line-make is located within 15 miles of the former
 310 location, the proposed location is no closer to any existing
 311 dealer of the same line-make within 15 miles of the proposed
 312 location;~~7~~ or

313 4.~~(d)~~ The opening or reopening is within 6 miles of the
 314 prior location and, if all existing motor vehicle dealers of the
 315 same line-make are beyond 15 miles of the former location, the
 316 proposed location is further than 15 miles from any existing
 317 motor vehicle dealer of the same line-make.

318
 319 Any other such opening or reopening shall constitute an
 320 additional motor vehicle dealer within the meaning of this
 321 section.

322 (b) If an opening or reopening is accomplished pursuant to
 323 the terms of this subsection and therefore not considered an
 324 additional motor vehicle dealer subject to protest, the licensee
 325 shall not propose a motor vehicle dealer of the same line-make
 326 that is to be located within 5 miles from the previous location
 327 for a period of 5 years after the date of the exempt relocation.

328 (6) When a proposed addition or relocation concerns a
 329 dealership that performs or is to perform only service, as
 330 defined in s. 320.60~~(17)~~~~(16)~~, and will not or does not sell or
 331 lease new motor vehicles, as defined in s. 320.60~~(16)~~~~(15)~~, the

332 proposal shall be subject to notice and protest pursuant to the
333 provisions of this section.

334 (a) Standing to protest the addition or relocation of a
335 service-only dealership shall be limited to those instances in
336 which the applicable mileage requirement established in
337 subparagraphs (3)(a)2. and (3)(b)1. is met.

338 (b) The addition or relocation of a service-only
339 dealership shall not be subject to protest if:

340 1. The applicant for the service-only dealership location
341 is an existing motor vehicle dealer of the same line-make as the
342 proposed additional or relocated service-only dealership;

343 2. There is no existing dealer of the same line-make
344 closer than the applicant to the proposed location of the
345 additional or relocated service-only dealership; and

346 3. The proposed location of the additional or relocated
347 service-only dealership is at least 7 miles from all existing
348 motor vehicle dealerships of the same line-make, other than
349 motor vehicle dealerships owned by the applicant.

350 (c) In determining whether existing franchised motor
351 vehicle dealers are providing adequate representations in the
352 community or territory for the line-make in question in a
353 protest of the proposed addition or relocation of a service-only
354 dealership, the department may consider the elements set forth
355 in paragraph (2)(b), provided:

356 1. With respect to subparagraph (2)(b)1., only the impact
357 as it relates to service may be considered;

358 2. Subparagraph (2)(b)3. shall not be considered;

359 3. With respect to subparagraph (2)(b)9., only service
360 facilities shall be considered; and

361 4. With respect to subparagraph (2)(b)11., only the volume
362 of service business transacted shall be considered.

363 (d) If an application for a service-only dealership is
364 granted, the department shall issue a license which permits only
365 service, as defined in s. 320.60~~(17)(16)~~, and does not permit
366 the selling or leasing of new motor vehicles, as defined in s.
367 320.60~~(16)(15)~~. If a service-only dealership subsequently seeks
368 to sell new motor vehicles at its location, the notice and
369 protest provisions of this section shall apply.

370 (7) All measurements required by this section of the
371 distance between existing motor vehicle dealer locations or
372 existing motor vehicle dealer locations and a proposed motor
373 vehicle dealer's location shall be taken from the geometric
374 centroid of the property that encompasses all of the existing or
375 proposed motor vehicle dealer operations.

376 Section 5. Subsection (5) of section 320.643, Florida
377 Statutes, is renumbered as subsection (6) and a new subsection
378 (5) is added to said section to read:

379 320.643 Transfer, assignment, or sale of franchise
380 agreements.--

381 (5) A transferee proposing to simultaneously relocate
382 motor vehicle dealership operations in conjunction with an asset
383 purchase pursuant to subsection (1) or an equity purchase
384 pursuant to subsection (2) shall not be required to comply with
385 the location requirements of the franchise agreement then in
386 effect and such a proposal shall be subject to this section if:

387 (a) The proposed relocation is a relocation exempt from
 388 protest and not considered as an additional motor vehicle dealer
 389 pursuant to the provisions of s. 320.642(5); and

390 (b) The proposed dealership's facility satisfies facility
 391 requirements in effect between the licensee and the dealer
 392 proposing the transfer at the time the transfer is proposed.

393 Section 6. Subsection (4) of section 320.645, Florida
 394 Statutes, is amended to read:

395 320.645 Restriction upon ownership of dealership by
 396 licensee.--

397 (4) Nothing in this chapter shall prohibit a distributor
 398 as defined in s. 320.60(5) or common entity that is not a
 399 manufacturer, a division of a manufacturer, an entity that is
 400 controlled by a manufacturer, or a common entity of a
 401 manufacturer, and that is not owned, in whole or in part,
 402 directly or indirectly, by a manufacturer, as defined in s.
 403 320.60(10)(9), from receiving a license or licenses as defined
 404 in s. 320.27 and owning and operating a motor vehicle dealership
 405 or dealerships that sell or service motor vehicles other than
 406 any line-make of motor vehicles distributed by the distributor.

407 Section 7. Subsection (3) is added to section 320.699,
 408 Florida Statutes, to read:

409 320.699 Administrative hearings and adjudications;
 410 procedure.--

411 (3) If a complaint is filed pursuant to s. 320.641, s.
 412 320.643, s. 320.644, or s. 320.696, a hearing shall be held not
 413 sooner than 180 days nor later than 240 days after the date of
 414 filing of the complaint unless the time is extended by the

415 administrative law judge for good cause shown. This subsection
 416 shall govern the schedule of hearings for a complaint filed
 417 pursuant to s. 320.641, s. 320.643, s. 320.644, or s. 320.696 in
 418 lieu of any other provision of law with respect to an
 419 administrative hearing conducted by the Department of Highway
 420 Safety and Motor Vehicles or the Division of Administrative
 421 Hearings, including performance standards of state agencies,
 422 which may be included in current and future appropriations acts.

423 Section 8. Subsection (14) of section 681.102, Florida
 424 Statutes, is amended to read:

425 681.102 Definitions.--As used in this chapter, the term:

426 (14) "Manufacturer" means any person, whether a resident
 427 or nonresident of this state, who manufactures or assembles
 428 motor vehicles, or who manufactures or assembles chassis for
 429 recreational vehicles, or who manufactures or installs on
 430 previously assembled truck or recreational vehicle chassis
 431 special bodies or equipment which, when installed, forms an
 432 integral part of the motor vehicle, a distributor as defined in
 433 s. 320.60(5), or an importer as defined in s. 320.60~~(8)~~~~(7)~~. A
 434 dealer as defined in s. 320.60~~(12)~~~~(11)~~(a) shall not be deemed to
 435 be a manufacturer, distributor, or importer as provided in this
 436 section.

437 Section 9. Section 681.113, Florida Statutes, is amended
 438 to read:

439 681.113 Dealer liability.--Except as provided in ss.
 440 681.103(3) and 681.114(2), nothing in this chapter imposes any
 441 liability on a dealer as defined in s. 320.60~~(12)~~~~(11)~~(a) or
 442 creates a cause of action by a consumer against a dealer, except

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443 for written express warranties made by the dealer apart from the
444 manufacturer's warranties. A dealer may not be made a party
445 defendant in any action involving or relating to this chapter,
446 except as provided in this section. The manufacturer shall not
447 charge back or require reimbursement by the dealer for any
448 costs, including, but not limited to, any refunds or vehicle
449 replacements, incurred by the manufacturer arising out of this
450 chapter, in the absence of evidence that the related repairs had
451 been carried out by the dealer in a manner substantially
452 inconsistent with the manufacturer's published instructions.

453 Section 10. This act shall take effect July 1, 2005.