

By Senator Baker

20-1058-05

See HB 1037

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

1 | procedures for administrative hearings;
2 | requiring a certain schedule unless extended by
3 | the administrative law judge under certain
4 | conditions; amending ss. 320.645, 681.102, and
5 | 681.113, F.S.; correcting cross references;
6 | providing an effective date.
7 |

8 | Be It Enacted by the Legislature of the State of Florida:
9 |

10 | Section 1. Subsection (3) of section 320.60, Florida
11 | Statutes, is amended, subsections (6) through (16) are
12 | renumbered as subsections (7) through (17), respectively, and
13 | a new subsection (6) is added to that section, to read:

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

18 | (3) "Demonstrator" means any new motor vehicle which
19 | is carried on the records of the dealer as a demonstrator and
20 | is used by or⁷ being inspected or driven by the dealer or his
21 | or her employees⁷ or driven by prospective customers for the
22 | purpose of demonstrating vehicle characteristics in the sale
23 | or display of motor vehicles sold by the dealer.

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

29 | Section 2. Subsection (36) is added to section 320.64,
30 | Florida Statutes, to read:
31 |

1 320.64 Denial, suspension, or revocation of license;
2 grounds.--A license of a licensee under s. 320.61 may be
3 denied, suspended, or revoked within the entire state or at
4 any specific location or locations within the state at which
5 the applicant or licensee engages or proposes to engage in
6 business, upon proof that the section was violated with
7 sufficient frequency to establish a pattern of wrongdoing, and
8 a licensee or applicant shall be liable for claims and
9 remedies provided in ss. 320.695 and 320.697 for any violation
10 of any of the following provisions. A licensee is prohibited
11 from committing the following acts:

12 ~~(36) Notwithstanding the terms of any franchise~~
13 ~~agreement, after termination of a franchise, voluntarily or~~
14 ~~involuntarily, an applicant or licensee has failed to pay to~~
15 ~~the motor vehicle dealer, within 90 days after the effective~~
16 ~~date of the termination, cancellation, or nonrenewal, the~~
17 ~~following amounts:~~

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

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

24 ~~1. Is in the current parts catalog and is still in the~~
25 ~~original, resalable merchandising package and in an unbroken~~
26 ~~lot, except that, in the case of sheet metal, a comparable~~
27 ~~substitute for the original package may be used; and~~

28 ~~2. Was purchased by the dealer either directly from~~
29 ~~the manufacturer or distributor or was purchased from an~~
30 ~~outgoing authorized dealer as a part of the dealer's initial~~
31 ~~inventory.~~

1 (c) The fair market value of each undamaged sign owned
2 by the dealer that bears a trademark or trade name used or
3 claimed by the applicant or licensee or a representative of
4 the applicant or licensee and that was purchased from or at
5 the request of the applicant or licensee or a representative
6 of the applicant or licensee.

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

10 1. Were recommended in writing by the applicant or
11 licensee or a representative of the applicant or licensee and
12 designated as special tools and equipment;

13 2. Were purchased from or at the request of the
14 applicant or licensee or a representative of the applicant or
15 licensee; and

16 3. Are in usable and good condition except for
17 reasonable wear and tear.

18 (e) The cost of transporting, handling, packing,
19 storing, and loading any property subject to repurchase under
20 this section.

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

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

30 320.641 Discontinuations, cancellations, nonrenewals,
31 modifications, and replacement of franchise agreements.--

1 (3)(a) Any motor vehicle dealer who receives a notice
2 of intent to discontinue, cancel, not renew, modify, or
3 replace may, within the 90-day notice period, file a petition
4 or complaint for a determination of whether such action is an
5 unfair or prohibited discontinuation, cancellation,
6 nonrenewal, modification, or replacement. Agreements and
7 certificates of appointment shall continue in effect until
8 final determination of the issues raised in such petition or
9 complaint by the motor vehicle dealer. A discontinuation,
10 cancellation, or nonrenewal of a franchise agreement is unfair
11 if it is not clearly permitted by the franchise agreement; is
12 not undertaken in good faith; is not undertaken for good
13 cause; or is based on an alleged breach of the franchise
14 agreement which is not in fact a material and substantial
15 breach; or, if the grounds relied upon for termination,
16 cancellation, or nonrenewal have not been applied in a uniform
17 and consistent manner by the licensee. A modification or
18 replacement is unfair if it is not clearly permitted by the
19 franchise agreement; is not undertaken in good faith; or is
20 not undertaken for good cause. The applicant or licensee shall
21 have the burden of proof that such action is fair and not
22 prohibited.

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

28 Section 4. Subsections (2), (3), (5), and (6) of
29 section 320.642, Florida Statutes, are amended, and subsection
30 (7) is added to that section, to read:
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1 320.642 Dealer licenses in areas previously served;
2 procedure.--

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

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

8 2. The licensee fails to show that the existing
9 franchised dealer or dealers who register new motor vehicle
10 retail sales or retail leases of the same line-make in the
11 community or territory of the proposed dealership are not
12 providing adequate representation of such line-make motor
13 vehicles in such community or territory as a whole and not
14 with respect to any part thereof or identifiable plot therein.
15 The burden of proof in establishing inadequate representation
16 shall be on the licensee.

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

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

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

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1 3. The reasonably expected market penetration of the
2 line-make motor vehicle for the community or territory
3 involved, after consideration of all factors which may affect
4 said penetration, including, but not limited to, demographic
5 factors such as age, income, education, size class preference,
6 product popularity, retail lease transactions, import
7 penetration, existence and extent of interbrand competition,
8 whether located in a metropolitan or nonmetropolitan area, or
9 other factors affecting sales to consumers of the community or
10 territory. With respect to any geographic comparison area used
11 to evaluate the performance of the line-make within the
12 community or territory, such comparison area shall not be
13 smaller than an entire county and shall not include any
14 geographic area located outside this state. Reasonably
15 expected market penetration shall be measured with respect to
16 the community or territory as a whole and not with respect to
17 any part thereof or identifiable plot therein. In order to
18 satisfy its burden of proof pursuant to this section, the
19 licensee must prove that any deviation or shortfall in market
20 penetration from a reasonable comparison area is substantial
21 and significant, considering factors including, but not
22 limited to, the size of the community or territory and the
23 projected sales of the proposed dealership.

24 4. Any actions by the licensees in denying its
25 existing dealer or dealers of the same line-make the
26 opportunity for reasonable growth, market expansion, or
27 relocation, including the availability of line-make vehicles
28 in keeping with the reasonable expectations of the licensee in
29 providing an adequate number of dealers in the community or
30 territory.
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1 5. Any attempts by the licensee to coerce the existing
2 dealer or dealers into consenting to additional or relocated
3 franchises of the same line-make in the community or
4 territory.

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

9 7. Whether benefits to consumers will likely occur
10 from the establishment or relocation of the dealership which
11 cannot be obtained by other geographic or demographic changes
12 or expected changes in the community or territory.

13 8. Whether the protesting dealer or dealers are in
14 substantial compliance with their dealer agreement.

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

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

25 11. The volume of registrations and service business
26 transacted by the existing dealer or dealers of the same
27 line-make in the relevant community or territory of the
28 proposed dealership.

29 (3) An existing franchised motor vehicle dealer or
30 dealers shall have standing to protest a proposed additional
31 or relocated motor vehicle dealer where the existing motor

1 | vehicle dealer or dealers have a franchise agreement for the
2 | same line-make vehicle to be sold or serviced by the proposed
3 | additional or relocated motor vehicle dealer and are
4 | physically located so as to meet or satisfy any of the
5 | following requirements or conditions:

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

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

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

23 | 3. Any existing motor vehicle dealer or dealers of the
24 | same line-make can establish that, during any consecutive
25 | 12-month period of the 36-month period preceding the month in
26 | which the publication of the proposed additional or relocated
27 | dealership appears in the Florida Administrative Weekly for
28 | the filing of the licensee's application for the proposed
29 | additional or relocated motor vehicle dealer, dealership, such
30 | dealer or its predecessor made 25 percent of the its retail
31 | sales of new motor vehicles made by such dealer or its

1 predecessor were to persons or entities that ~~whose~~ registered
2 the purchased vehicle to an address ~~household addresses were~~
3 located within a radius of 20 miles of the geometric centroid
4 of the property that will encompass all ~~location~~ of the
5 proposed additional or relocated motor vehicle dealer
6 operations; provided such existing dealer is located in the
7 same county or any county contiguous to the county where the
8 additional or relocated dealer is proposed to be located.

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

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

18 2. Any existing motor vehicle dealer or dealers of the
19 same line-make can establish that, during any consecutive
20 12-month period of the 36-month period preceding the month in
21 which the publication of the proposed additional or relocated
22 dealership appears in the Florida Administrative Weekly for
23 the filing of the licensee's application for the proposed
24 additional or relocated motor vehicle dealer, dealership, such
25 dealer or its predecessor made 25 percent of the ~~its~~ retail
26 sales of new motor vehicles made by such dealer or its
27 predecessor were to persons or entities that ~~whose~~ registered
28 the purchased vehicle to an address ~~household addresses were~~
29 located within a radius of 12.5 miles of the geometric
30 centroid of the property that will encompass all ~~location~~ of
31 the proposed additional or relocated motor vehicle dealer

1 operations; provided such existing dealer is located in the
2 same county or any county contiguous to the county where the
3 additional or relocated dealer is proposed to be located.

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

8 1.(a) The opening or reopening is within the same or
9 an adjacent county and is within 2 miles of the former motor
10 vehicle dealer location;;

11 2.(b) There is no dealer within 25 miles of the
12 proposed location or the proposed location is further from
13 each existing dealer of the same line-make than the prior
14 location is from each dealer of the same line-make within 25
15 miles of the new location;;

16 3.(c) The opening or reopening is within 6 miles of
17 the prior location and, if any existing motor vehicle dealer
18 of the same line-make is located within 15 miles of the former
19 location, the proposed location is no closer to any existing
20 dealer of the same line-make within 15 miles of the proposed
21 location;; or

22 4.(d) The opening or reopening is within 6 miles of
23 the prior location and, if all existing motor vehicle dealers
24 of the same line-make are beyond 15 miles of the former
25 location, the proposed location is further than 15 miles from
26 any existing motor vehicle dealer of the same line-make.

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28 Any other such opening or reopening shall constitute an
29 additional motor vehicle dealer within the meaning of this
30 section.

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

8 (6) When a proposed addition or relocation concerns a
9 dealership that performs or is to perform only service, as
10 defined in s. 320.60~~(17)~~~~(16)~~, and will not or does not sell or
11 lease new motor vehicles, as defined in s. 320.60~~(16)~~~~(15)~~, the
12 proposal shall be subject to notice and protest pursuant to
13 the provisions of this section.

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

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

20 1. The applicant for the service-only dealership
21 location is an existing motor vehicle dealer of the same
22 line-make as the proposed additional or relocated service-only
23 dealership;

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

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

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

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

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

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

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

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

21 (7) All measurements required by this section of the
22 distance between existing motor vehicle dealer locations or
23 existing motor vehicle dealer locations and a proposed motor
24 vehicle dealer's location shall be taken from the geometric
25 centroid of the property that encompasses all of the existing
26 or proposed motor vehicle dealer operations.

27 Section 5. Subsection (5) of section 320.643, Florida
28 Statutes, is renumbered as subsection (6) and a new subsection
29 (5) is added to that section to read:

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

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

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

11 (b) The proposed dealership's facility satisfies
12 facility requirements in effect between the licensee and the
13 dealer proposing the transfer at the time the transfer is
14 proposed.

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

17 320.645 Restriction upon ownership of dealership by
18 licensee.--

19 (4) Nothing in this chapter shall prohibit a
20 distributor as defined in s. 320.60(5) or common entity that
21 is not a manufacturer, a division of a manufacturer, an entity
22 that is controlled by a manufacturer, or a common entity of a
23 manufacturer, and that is not owned, in whole or in part,
24 directly or indirectly, by a manufacturer, as defined in s.
25 320.60~~(10)(9)~~, from receiving a license or licenses as defined
26 in s. 320.27 and owning and operating a motor vehicle
27 dealership or dealerships that sell or service motor vehicles
28 other than any line-make of motor vehicles distributed by the
29 distributor.

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

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

3 (3) If a complaint is filed pursuant to s. 320.641, s.
4 320.643, s. 320.644, or s. 320.696, a hearing shall be held
5 not sooner than 180 days nor later than 240 days after the
6 date of filing of the complaint unless the time is extended by
7 the administrative law judge for good cause shown. This
8 subsection shall govern the schedule of hearings for a
9 complaint filed pursuant to s. 320.641, s. 320.643, s.
10 320.644, or s. 320.696 in lieu of any other provision of law
11 with respect to an administrative hearing conducted by the
12 Department of Highway Safety and Motor Vehicles or the
13 Division of Administrative Hearings, including performance
14 standards of state agencies, which may be included in current
15 and future appropriations acts.

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

18 681.102 Definitions.--As used in this chapter, the
19 term:

20 (14) "Manufacturer" means any person, whether a
21 resident or nonresident of this state, who manufactures or
22 assembles motor vehicles, or who manufactures or assembles
23 chassis for recreational vehicles, or who manufactures or
24 installs on previously assembled truck or recreational vehicle
25 chassis special bodies or equipment which, when installed,
26 forms an integral part of the motor vehicle, a distributor as
27 defined in s. 320.60(5), or an importer as defined in s.
28 320.60(8)~~(7)~~. A dealer as defined in s. 320.60(12)~~(11)~~(a)
29 shall not be deemed to be a manufacturer, distributor, or
30 importer as provided in this section.

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1 Section 9. Section 681.113, Florida Statutes, is
2 amended to read:

3 681.113 Dealer liability.--Except as provided in ss.
4 681.103(3) and 681.114(2), nothing in this chapter imposes any
5 liability on a dealer as defined in s. 320.60(12)(~~11~~)(a) or
6 creates a cause of action by a consumer against a dealer,
7 except for written express warranties made by the dealer apart
8 from the manufacturer's warranties. A dealer may not be made a
9 party defendant in any action involving or relating to this
10 chapter, except as provided in this section. The manufacturer
11 shall not charge back or require reimbursement by the dealer
12 for any costs, including, but not limited to, any refunds or
13 vehicle replacements, incurred by the manufacturer arising out
14 of this chapter, in the absence of evidence that the related
15 repairs had been carried out by the dealer in a manner
16 substantially inconsistent with the manufacturer's published
17 instructions.

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