

A bill to be entitled

An act relating to motor vehicle dealership operations; amending s. 320.60, F.S.; revising the definition of "demonstrator" for purposes of provisions relating to manufacturing, importing, and distributing motor vehicles; amending s. 320.64, F.S.; prohibiting an applicant or licensee from failing to pay certain compensation amounts to a motor vehicle dealer after termination of the franchise agreement; providing exceptions; providing for certain remedies, procedures, and rights of recovery; amending s. 320.642, F.S.; revising conditions under which an opening or reopening of a motor vehicle dealership is not subject to protest; restricting proposal for a dealer of the same line-make for a certain period of time after the opening of a relocated dealership; providing criteria for measurements of distance between dealer locations; amending s. 320.643, F.S.; exempting a transferee proposing to relocate motor vehicle dealership operations in conjunction with an asset or equity purchase from franchise agreement location requirements; providing conditions for the exemption; providing an effective date.

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

Section 1. Subsection (3) of section 320.60, Florida Statutes, is amended to read:

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27 320.60 Definitions for ss. 320.61-320.70.--Whenever used
28 in ss. 320.61-320.70, unless the context otherwise requires, the
29 following words and terms have the following meanings:

30 (3) "Demonstrator" means any new motor vehicle which is
31 carried on the records of the dealer as a demonstrator and is
32 used by, being inspected or driven by the dealer or his or her
33 employees, or driven by prospective customers for the purpose of
34 demonstrating vehicle characteristics in the sale or display of
35 motor vehicles sold by the dealer.

36 Section 2. Subsection (35) of section 320.64, Florida
37 Statutes, is renumbered as subsection (36), and a new subsection
38 (35) is added to that section to read:

39 320.64 Denial, suspension, or revocation of license;
40 grounds.--A license of a licensee under s. 320.61 may be denied,
41 suspended, or revoked within the entire state or at any specific
42 location or locations within the state at which the applicant or
43 licensee engages or proposes to engage in business, upon proof
44 that the section was violated with sufficient frequency to
45 establish a pattern of wrongdoing, and a licensee or applicant
46 shall be liable for claims and remedies provided in ss. 320.695
47 and 320.697 for any violation of any of the following
48 provisions. A licensee is prohibited from committing the
49 following acts:

50 (35) Notwithstanding the terms of any franchise agreement,
51 after termination of a franchise, either voluntarily or
52 involuntarily, the applicant or licensee has failed to pay to
53 the motor vehicle dealer, within 90 days after the effective

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54 date of the termination, cancellation, or nonrenewal, the
55 following amounts:

56 (a) The net cost paid by the dealer for each new motor
57 vehicle in the dealer's inventory with mileage of 2,000 miles or
58 less, exclusive of mileage placed on the vehicle before it was
59 delivered to the dealer.

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

62 1. Is in the current parts catalogue and is still in the
63 original, resalable merchandising package and in an unbroken
64 lot, except that in the case of sheet metal a comparable
65 substitute for the original package may be used; and

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

69 (c) The fair market value of each undamaged sign owned by
70 the dealer that bears a trademark or trade name used or claimed
71 by the applicant or licensee, or a representative of the
72 applicant or licensee, and that was purchased from or at the
73 request of the applicant or licensee, or a representative of the
74 applicant or licensee.

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

78 1. Were recommended in writing by the applicant or
79 licensee or its representative and designated as special tools
80 and equipment;

81 2. Were purchased from or at the request of the applicant
 82 or licensee or its representative; and

83 3. Are in usable and good condition except for reasonable
 84 wear and tear.

85 (e) The cost of transporting, handling, packing, storing,
 86 and loading any property subject to repurchase under this
 87 subsection.

88
 89 This subsection shall not apply to terminations, cancellations,
 90 and nonrenewals that are implemented as a result of the sale of
 91 the assets or stock of the dealer. The dealer shall return the
 92 property listed in this subsection to the licensee within 90
 93 days after the effective date of the termination, cancellation,
 94 or nonrenewal. The licensee shall supply the new vehicle dealer
 95 with reasonable instructions on the method by which the new
 96 vehicle dealer must return the property to the licensee. The
 97 compensation for the property shall be paid by the licensee
 98 within 60 days after the tender of inventory and other items,
 99 provided the new motor vehicle dealer has clear title to the
 100 inventory and other items and is in a position to convey that
 101 title to the manufacturer or distributor. In the event the
 102 inventory or other items are subject to a security interest, the
 103 licensee may make payment jointly to the new motor vehicle
 104 dealer and the holder of the security interest.

105
 106 A motor vehicle dealer who can demonstrate that a violation of,
 107 or failure to comply with, any of the preceding provisions by an
 108 applicant or licensee will or can adversely and pecuniarily

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109 affect the complaining dealer, shall be entitled to pursue all
110 of the remedies, procedures, and rights of recovery available
111 under ss. 320.695 and 320.697.

112 Section 3. Subsection (5) of section 320.642, Florida
113 Statutes, is amended, and subsection (7) is added to that
114 section, to read:

115 320.642 Dealer licenses in areas previously served;
116 procedure.--

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

121 1.-(a) The opening or reopening is within the same or an
122 adjacent county and, is within 2 miles of the former motor
123 vehicle dealer location;;

124 2.-(b) There is no motor vehicle dealer within 25 miles of
125 the proposed location or the proposed location is further from
126 each existing dealer of the same line-make than the prior
127 location is from each dealer of the same line-make within 25
128 miles of the new location;;

129 3.-(c) The opening or reopening is within 6 miles of the
130 prior location and, if any existing motor vehicle dealer of the
131 same line-make is located within 15 miles of the former
132 location, the proposed location is no closer to any existing
133 dealer of the same line-make within 15 miles of the proposed
134 location; or

135 4.-(d) The opening or reopening is within 6 miles of the
136 prior location and, if all existing motor vehicle dealers of the

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137 same line-make are beyond 15 miles of the former location, the
 138 proposed location is further than 15 miles from any existing
 139 motor vehicle dealer of the same line-make.

140
 141 Any other such opening or reopening shall constitute an
 142 additional motor vehicle dealer within the meaning of this
 143 section.

144 (b) If an opening or reopening is accomplished pursuant to
 145 the terms of this subsection and therefore not considered an
 146 additional motor vehicle dealer subject to protest, the licensee
 147 shall not propose a motor vehicle dealer of the same line-make
 148 which is to be located within 4 miles of the previous location
 149 for a period of 2 years after the date of the opening of the
 150 relocated dealership.

151 (7) All measurements required by this section of the
 152 distance between two or more existing motor vehicle dealer
 153 locations, or between existing motor vehicle dealer locations
 154 and a proposed motor vehicle dealer's location, shall be taken
 155 from the geometric centroid of the property which encompasses
 156 all of the existing or proposed motor vehicle dealer operations.

157 Section 4. Subsection (5) of section 320.643, Florida
 158 Statutes, is renumbered as subsection (6), and a new subsection
 159 (5) is added to that section to read:

160 320.643 Transfer, assignment, or sale of franchise
 161 agreements.--

162 (5) A transferee proposing to simultaneously relocate
 163 motor vehicle dealership operations in conjunction with an asset
 164 purchase pursuant to subsection (1) or an equity purchase

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165 pursuant to subsection (2) shall not be required to comply with
166 the location requirements of the franchise agreement then in
167 effect and such a proposal shall be subject to this section if:

168 (a) The proposed relocation is a relocation exempt from
169 protest and not considered as an additional motor vehicle dealer
170 pursuant to s. 320.642(5);

171 (b) The proposed dealership's facility satisfies facility
172 requirements in effect between the licensee and the dealer
173 proposing the transfer at the time the transfer is proposed; and

174 (c) The proposed facility is otherwise an appropriate
175 location, taking into account the accessibility and convenience
176 to consumers of the proposed location, the location of the other
177 dealers of the same line-make, and other factors related to the
178 appropriateness of the facility for its proposed use and whether
179 the proposed dealership facility and dealership operations are
180 separate from any other line-makes.

181 Section 5. This act shall take effect July 1, 2006.