

1 Section 1. Subsection (25) of section 320.64, Florida
2 Statutes, is amended, and subsection (37) is added to that
3 section, to read:

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

15 (25) The applicant or licensee has undertaken an audit
16 of warranty payments or incentive payment previously paid to a
17 motor vehicle dealer in violation of this section or has
18 failed to comply with s. 320.696. An applicant or licensee may
19 reasonably and periodically audit a motor vehicle dealer to
20 determine the validity of paid claims. Audit of warranty
21 payments shall only be for the 1-year period immediately
22 following the date the claim was paid. Audit of incentive
23 payments shall only be for an 18-month period immediately
24 following the date the incentive was paid. An applicant or
25 licensee shall not deny a claim or charge a motor vehicle
26 dealer back subsequent to the payment of the claim unless the
27 applicant or licensee can show that the claim was false or
28 fraudulent or that the motor vehicle dealer failed to
29 substantially comply with the reasonable written and uniformly
30 applied procedures of the applicant or licensee for such
31 repairs or incentives. An applicant or licensee may not charge

1 a motor vehicle dealer back subsequent to the payment of the
2 claim unless a representative of the applicant or licensee has
3 met in person at the dealership with an officer or employee of
4 the dealer designated by the motor vehicle dealer and
5 explained in detail the basis for each of the proposed
6 charge-backs and thereafter given the motor vehicle dealer's
7 representative a reasonable opportunity at the meeting, and no
8 less than 30 days after such meeting, to explain the motor
9 vehicle dealer's position relating to each of the proposed
10 charge-backs. The applicant or licensee shall be prohibited
11 from changing or altering the basis for each of the proposed
12 charge-backs as presented to the motor vehicle dealer's
13 representative following the conclusion of the audit. In the
14 event the motor vehicle dealer was selected for audit or
15 review on the basis that some or all of the motor vehicle
16 dealer's claims were viewed as excessive in comparison to
17 average, mean, or aggregate data accumulated by the applicant
18 or licensee, or in relation to claims submitted by a group of
19 other motor vehicle dealers, the applicant or licensee shall,
20 at or prior to the meeting with the motor vehicle dealer's
21 representative, provide the dealer with a written statement
22 containing the basis or methodology upon which the motor
23 vehicle dealer was selected for audit or review.

24 (37) Notwithstanding the terms of any franchise
25 agreement, the applicant or licensee has refused to allow,
26 limited, or restricted a motor vehicle dealer from acquiring
27 or adding a sales or service operation for another line-make
28 of motor vehicles at the same or expanded facility at which
29 the motor vehicle dealer currently operates a dealership
30 unless the applicant or licensee can demonstrate that such
31 acquisition or addition will substantially impair the dealer's

1 ability to adequately sell or service such applicant's or
2 licensee's motor vehicles.

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4 A motor vehicle dealer who can demonstrate that a violation
5 of, or failure to comply with, any of the preceding provisions
6 by an applicant or licensee will or can adversely and
7 pecuniarily affect the complaining dealer, shall be entitled
8 to pursue all of the remedies, procedures, and rights of
9 recovery available under ss. 320.695 and 320.697.

10 Section 2. Subsection (3) of section 320.641, Florida
11 Statutes, is amended to read:

12 320.641 Discontinuations, cancellations, nonrenewals,
13 modifications, and replacement of franchise agreements.--

14 (3) Any motor vehicle dealer who receives a notice of
15 intent to discontinue, cancel, not renew, modify, or replace
16 may, within the 90-day notice period, file a petition or
17 complaint for a determination of whether such action is an
18 unfair or prohibited discontinuation, cancellation,
19 nonrenewal, modification, or replacement. Agreements and
20 certificates of appointment shall continue in effect until
21 final determination of the issues raised in such petition or
22 complaint by the motor vehicle dealer. A discontinuation,
23 cancellation, or nonrenewal of a franchise agreement is unfair
24 if it is not clearly permitted by the franchise agreement; is
25 not undertaken in good faith; is not undertaken for good
26 cause; or is based on an alleged breach of the franchise
27 agreement for which the motor vehicle dealer was not given 180
28 days' notice to cure the alleged breach and which is not in
29 fact a material and substantial breach~~+~~ or~~7~~ if the grounds
30 relied upon for termination, cancellation, or nonrenewal have
31 not been applied in a uniform and consistent manner by the

1 licensee. A modification or replacement is unfair if it is not
2 clearly permitted by the franchise agreement; is not
3 undertaken in good faith; or is not undertaken for good cause.
4 The applicant or licensee shall have the burden of proof that
5 such action is fair and not prohibited.

6 Section 3. This act shall take effect July 1, 2007.
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