

By the Committee on Transportation; and Senator Baker

596-2121-07

1 A bill to be entitled
2 An act relating to motor vehicle dealers;
3 amending s. 320.64, F.S.; revising provisions
4 for grounds for denial, suspension, or
5 revocation of license of a motor vehicle
6 manufacturer, factory branch, distributor, or
7 importer licensed by the Department of Highway
8 Safety and Motor Vehicles to enter into
9 franchise agreements with dealers; prohibiting
10 certain charge-backs of warranty service
11 payments made to a dealer unless certain
12 procedures are followed; revising such
13 procedures; prohibiting applicant or licensee
14 from refusing to allow, limiting, or
15 restricting a motor vehicle dealer acquisition
16 or addition of operations for another line-make
17 of motor vehicles without a showing that the
18 acquisition or addition would impair the
19 dealer's ability to adequately sell or service
20 such applicant's or licensee's motor vehicles;
21 amending s. 320.641, F.S.; revising procedures
22 for a determination that a discontinuation,
23 cancellation, or nonrenewal of a franchise
24 agreement by the applicant or licensee is
25 unfair; providing for a 180-day notice to cure
26 an alleged breach of the agreement; providing
27 an effective date.

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29 Be It Enacted by the Legislature of the State of Florida:
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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 a
2 claim unless a representative of the applicant or licensee has
3 met in person, by telephone, or by video teleconference with
4 an officer or employee of the dealer designated by the motor
5 vehicle dealer. At such meeting the applicant or licensee must
6 have provided a detailed explanation, with supporting
7 documentation, as to the basis for each of the claims for
8 which the applicant or licensee proposed to charge back the
9 dealer and a written statement containing the basis upon which
10 the motor vehicle dealer was selected for audit or review.
11 Thereafter, the applicant or licensee must have provided the
12 motor vehicle dealer's representative a reasonable period
13 after the meeting within which to respond to the proposed
14 charge-backs, said period to be commensurate with the volume
15 of claims under consideration, but in no case less than 45
16 days after such meeting. The applicant or licensee shall be
17 prohibited from changing or altering the basis for each of the
18 proposed charge-backs as presented to the motor vehicle
19 dealer's representative following the conclusion of the audit,
20 unless the applicant or licensee received new information
21 affecting the basis for one or more charge-backs. If the
22 applicant or licensee has claimed the existence of new
23 information, the dealer must have been given the same right to
24 a meeting and right to respond as when the charge-back was
25 originally presented.

26 (37) Notwithstanding the terms of any franchise
27 agreement, the applicant or licensee has refused to allow,
28 limited, or restricted a motor vehicle dealer from acquiring
29 or adding a sales or service operation for another line-make
30 of motor vehicles at the same or expanded facility at which
31 the motor vehicle dealer currently operates a dealership

1 unless the applicant or licensee can demonstrate that such
2 refusal, limitation, or restriction is justified by
3 consideration of reasonable facility and financial
4 requirements and the dealer's performance for the existing
5 line-make.

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

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

15 320.641 Discontinuations, cancellations, nonrenewals,
16 modifications, and replacement of franchise agreements.--

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

1 | cancellation, or nonrenewal have not been applied in a uniform
2 | and consistent manner by the licensee. If the notice of
3 | discontinuation, cancellation, or nonrenewal relates to an
4 | alleged failure of the new motor vehicle dealer's sales or
5 | service performance obligations under the franchise agreement,
6 | the new motor vehicle dealer must first be provided with at
7 | least 180 days to correct the alleged failure before a
8 | licensee may send the notice of discontinuation, cancellation,
9 | or nonrenewal. A modification or replacement is unfair if it
10 | is not clearly permitted by the franchise agreement; is not
11 | undertaken in good faith; or is not undertaken for good cause.
12 | The applicant or licensee shall have the burden of proof that
13 | such action is fair and not prohibited.

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

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16 | STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
17 | COMMITTEE SUBSTITUTE FOR
18 | Senate Bill 1722

19 | The committee substitute addresses three issues. First, the CS
20 | clarifies the manufacturer may also meet with a dealer by
21 | telephone or videoconference to discuss proposed charge-backs;
22 | requires the manufacturer to provide the dealer with
23 | documentation for each charge-back and gives the dealer at
24 | least 45 days to respond; and specifies the dealer must be
25 | given the right to a meeting and to respond if the
26 | manufacturer changes the basis for a charge-back.

24 | Second, the CS clarifies a manufacturer may not refuse to
25 | allow a dealer to add another line make at the dealer's
26 | existing facility unless the manufacturer can show the refusal
27 | is justified by consideration of reasonable facility and
28 | financial requirements and the dealer's performance for the
29 | existing line make.

27 | Lastly, the CS requires the manufacturer to provide a 180-day
28 | cure period before ending a franchise agreement if the alleged
29 | failure relates to the dealer's sales or service performance.