

HB 815

2007

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

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Subsection (25) of section 320.64, Florida
26 Statutes, is amended, and subsection (37) is added to that
27 section, to read:

HB 815

2007

28 320.64 Denial, suspension, or revocation of license;
29 grounds.--A license of a licensee under s. 320.61 may be denied,
30 suspended, or revoked within the entire state or at any specific
31 location or locations within the state at which the applicant or
32 licensee engages or proposes to engage in business, upon proof
33 that the section was violated with sufficient frequency to
34 establish a pattern of wrongdoing, and a licensee or applicant
35 shall be liable for claims and remedies provided in ss. 320.695
36 and 320.697 for any violation of any of the following
37 provisions. A licensee is prohibited from committing the
38 following acts:

39 (25) The applicant or licensee has undertaken an audit of
40 warranty payments or incentive payment previously paid to a
41 motor vehicle dealer in violation of this section or has failed
42 to comply with s. 320.696. An applicant or licensee may
43 reasonably and periodically audit a motor vehicle dealer to
44 determine the validity of paid claims. Audit of warranty
45 payments shall only be for the 1-year period immediately
46 following the date the claim was paid. Audit of incentive
47 payments shall only be for an 18-month period immediately
48 following the date the incentive was paid. An applicant or
49 licensee shall not deny a claim or charge a motor vehicle dealer
50 back subsequent to the payment of the claim unless the applicant
51 or licensee can show that the claim was false or fraudulent or
52 that the motor vehicle dealer failed to substantially comply
53 with the reasonable written and uniformly applied procedures of
54 the applicant or licensee for such repairs or incentives. An
55 applicant or licensee may not charge a motor vehicle dealer back

HB 815

2007

56 subsequent to the payment of the claim unless a representative
57 of the applicant or licensee has met in person at the dealership
58 with an officer or employee of the dealer designated by the
59 motor vehicle dealer and explained in detail the basis for each
60 of the proposed charge-backs and thereafter given the motor
61 vehicle dealer's representative a reasonable opportunity at the
62 meeting, and no less than 30 days after such meeting, to explain
63 the motor vehicle dealer's position relating to each of the
64 proposed charge-backs. The applicant or licensee shall be
65 prohibited from changing or altering the basis for each of the
66 proposed charge-backs as presented to the motor vehicle dealer's
67 representative following the conclusion of the audit. In the
68 event the motor vehicle dealer was selected for audit or review
69 on the basis that some or all of the motor vehicle dealer's
70 claims were viewed as excessive in comparison to average, mean,
71 or aggregate data accumulated by the applicant or licensee, or
72 in relation to claims submitted by a group of other motor
73 vehicle dealers, the applicant or licensee shall, at or prior to
74 the meeting with the motor vehicle dealer's representative,
75 provide the dealer with a written statement containing the basis
76 or methodology upon which the motor vehicle dealer was selected
77 for audit or review.

78 (37) Notwithstanding the terms of any franchise agreement,
79 the applicant or licensee has refused to allow, limited, or
80 restricted a motor vehicle dealer from acquiring or adding a
81 sales or service operation for another line-make of motor
82 vehicles at the same or expanded facility at which the motor
83 vehicle dealer currently operates a dealership unless the

HB 815

2007

84 applicant or licensee can demonstrate that such acquisition or
85 addition will substantially impair the dealer's ability to
86 adequately sell or service such applicant's or licensee's motor
87 vehicles.

88
89 A motor vehicle dealer who can demonstrate that a violation of,
90 or failure to comply with, any of the preceding provisions by an
91 applicant or licensee will or can adversely and pecuniarily
92 affect the complaining dealer, shall be entitled to pursue all
93 of the remedies, procedures, and rights of recovery available
94 under ss. 320.695 and 320.697.

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

97 320.641 Discontinuations, cancellations, nonrenewals,
98 modifications, and replacement of franchise agreements.--

99 (3) Any motor vehicle dealer who receives a notice of
100 intent to discontinue, cancel, not renew, modify, or replace
101 may, within the 90-day notice period, file a petition or
102 complaint for a determination of whether such action is an
103 unfair or prohibited discontinuation, cancellation, nonrenewal,
104 modification, or replacement. Agreements and certificates of
105 appointment shall continue in effect until final determination
106 of the issues raised in such petition or complaint by the motor
107 vehicle dealer. A discontinuation, cancellation, or nonrenewal
108 of a franchise agreement is unfair if it is not clearly
109 permitted by the franchise agreement; is not undertaken in good
110 faith; is not undertaken for good cause; or is based on an
111 alleged breach of the franchise agreement for which the motor

HB 815

2007

112 vehicle dealer was not given 180 days' notice to cure the
113 alleged breach and which is not in fact a material and
114 substantial breach, or, if the grounds relied upon for
115 termination, cancellation, or nonrenewal have not been applied
116 in a uniform and consistent manner by the licensee. A
117 modification or replacement is unfair if it is not clearly
118 permitted by the franchise agreement; is not undertaken in good
119 faith; or is not undertaken for good cause. The applicant or
120 licensee shall have the burden of proof that such action is fair
121 and not prohibited.

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