

ENROLLED  
CS/HB 815

2007 Legislature

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 an  
11          applicant or licensee from refusing to allow, limiting, or  
12          restricting a motor vehicle dealer's acquisition or  
13          addition of operations for another line-make of motor  
14          vehicles without demonstrating that the action is  
15          justified based on consideration of certain requirements;  
16          amending s. 320.641, F.S.; revising procedures for a  
17          determination that a discontinuation, cancellation, or  
18          nonrenewal of a franchise agreement by the applicant or  
19          licensee is unfair; requiring that a new dealer be given  
20          180 days to correct alleged sales or service performance  
21          failure; 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:

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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

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56 subsequent to the payment of a claim unless a representative of  
57 the applicant or licensee first meets in person, by telephone,  
58 or by video teleconference with an officer or employee of the  
59 dealer designated by the motor vehicle dealer. At such meeting  
60 the applicant or licensee must provide a detailed explanation,  
61 with supporting documentation, as to the basis for each of the  
62 claims for which the applicant or licensee proposed a charge  
63 back to the dealer and a written statement containing the basis  
64 upon which the motor vehicle dealer was selected for audit or  
65 review. Thereafter, the applicant or licensee must provide the  
66 motor vehicle dealer's representative a reasonable period after  
67 the meeting within which to respond to the proposed charge-  
68 backs, with such period to be commensurate with the volume of  
69 claims under consideration, but in no case less than 45 days  
70 after the meeting. The applicant or licensee is prohibited from  
71 changing or altering the basis for each of the proposed charge-  
72 backs as presented to the motor vehicle dealer's representative  
73 following the conclusion of the audit unless the applicant or  
74 licensee receives new information affecting the basis for one or  
75 more charge-backs. If the applicant or licensee claims the  
76 existence of new information, the dealer must be given the same  
77 right to a meeting and right to respond as when the charge-back  
78 was originally presented.

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

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84 vehicle dealer currently operates a dealership unless the  
 85 applicant or licensee can demonstrate that such refusal,  
 86 limitation, or restriction is justified by consideration of  
 87 reasonable facility and financial requirements and the dealer's  
 88 performance for the existing line-make.

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

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

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

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

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112 | alleged breach of the franchise agreement which is not in fact a  
113 | material and substantial breach; or, if the grounds relied upon  
114 | for termination, cancellation, or nonrenewal have not been  
115 | applied in a uniform and consistent manner by the licensee. If  
116 | the notice of discontinuation, cancellation, or nonrenewal  
117 | relates to an alleged failure of the new motor vehicle dealer's  
118 | sales or service performance obligations under the franchise  
119 | agreement, the new motor vehicle dealer must first be provided  
120 | with at least 180 days to correct the alleged failure before a  
121 | licensee may send the notice of discontinuation, cancellation,  
122 | or nonrenewal. A modification or replacement is unfair if it is  
123 | not clearly permitted by the franchise agreement; is not  
124 | undertaken in good faith; or is not undertaken for good cause.  
125 | The applicant or licensee shall have the burden of proof that  
126 | such action is fair and not prohibited.

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