

1 A bill to be entitled
2 An act relating to motor vehicle franchise agreements;
3 amending s. 320.60, F.S.; revising the definition of the
4 terms "agreement" and "franchise agreement" to include
5 certain ancillary agreements; amending s. 320.605, F.S.;
6 revising legislative intent; amending s. 320.61, F.S.;
7 prohibiting the Department of Highway Safety and Motor
8 Vehicles from renewing the license of a manufacturer,
9 factory branch, distributor, or importer unless the
10 licensee complies with specified provisions; amending s.
11 320.63, F.S.; requiring such licensee to provide an
12 affidavit to the department regarding the provisions of
13 its existing franchise agreements; amending s. 320.64,
14 F.S.; providing for a dealer to make an immediate request
15 for payment for loss if there is a public announcement of
16 the discontinuance of a line-make; providing for a
17 determination of the fair market value of the franchise;
18 prohibiting requiring an existing motor vehicle dealer to
19 enter into a site control agreement or an exclusive use
20 agreement; defining the terms "site control agreement" and
21 "exclusive use agreement"; amending s. 320.695, F.S.;
22 authorizing a motor vehicle dealer association to apply
23 for injunctive relief under certain circumstances for an
24 action by a manufacturer, importer, or distributor which
25 adversely affects more than one of the association's
26 members; amending s. 320.699, F.S.; authorizing certain
27 associations to seek a declaration and adjudication of
28 their rights with respect to the alleged action or conduct

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29 of a manufacturer, importer, or distributor; providing
 30 procedures for a hearing conducted by the department;
 31 providing an effective date.

32

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

34

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

37 320.60 Definitions for ss. 320.61-320.70.—Whenever used in
 38 ss. 320.61-320.70, unless the context otherwise requires, the
 39 following words and terms have the following meanings:

40 (1) "Agreement" or "franchise agreement" means a contract,
 41 franchise, new motor vehicle franchise, sales and service
 42 agreement, or dealer agreement or any other terminology used to
 43 describe the contractual relationship between a manufacturer,
 44 factory branch, distributor, or importer, and a motor vehicle
 45 dealer, including any ancillary agreement relating to a dealer's
 46 facilities, staffing, and operations or relating to a licensee's
 47 programs, policies, or requirements ~~pursuant to which the motor~~
 48 ~~vehicle dealer is authorized to transact business pertaining to~~
 49 ~~motor vehicles of a particular line-make.~~

50 Section 2. Section 320.605, Florida Statutes, is amended
 51 to read:

52 320.605 Legislative intent.—It is the intent of the
 53 Legislature to protect the public health, safety, and welfare of
 54 the citizens of the state by regulating the licensing of motor
 55 vehicle dealers and manufacturers, maintaining competition,
 56 reconciling the disparity in the economic power manufacturers

57 have over motor vehicle dealers, providing consumer protection
 58 and fair trade, and providing minorities with opportunities for
 59 full participation as motor vehicle dealers.

60 Section 3. Subsection (2) of section 320.61, Florida
 61 Statutes, is amended to read:

62 320.61 Licenses required of motor vehicle manufacturers,
 63 distributors, importers, etc.—

64 (2) The department may prescribe an abbreviated
 65 application for renewal of a license if the licensee had
 66 previously filed an initial application pursuant to s. 320.63.
 67 The application for renewal shall include any information
 68 necessary to bring current the information required in the
 69 initial application. The department shall not issue a renewal of
 70 any license unless the licensee complies with the provisions of
 71 s. 320.63.

72 Section 4. Subsections (4) through (7) of section 320.63,
 73 Florida Statutes, are renumbered as subsections (5) through (8),
 74 respectively, and a new subsection (4) is added to that section
 75 to read:

76 320.63 Application for license; contents.—Any person
 77 desiring to be licensed pursuant to ss. 320.60–320.70 shall make
 78 application therefor to the department upon a form containing
 79 such information as the department requires. The department
 80 shall require, with such application or otherwise and from time
 81 to time, all of the following, which information may be
 82 considered by the department in determining the fitness of the
 83 applicant or licensee to engage in the business for which the
 84 applicant or licensee desires to be licensed:

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85 (4) Upon annual renewal of its license, an affidavit
86 acknowledging that the terms or provisions of every existing
87 franchise agreement with a motor vehicle dealer in this state
88 are not inconsistent with, prohibited by, or contrary to the
89 existing provisions contained in ss. 320.60-320.70 and the
90 existing rules adopted by the department then in effect, and
91 that any terms or provisions in such a franchise agreement which
92 are determined to be inconsistent with, prohibited by, or
93 contrary to the existing laws or rules of this state then in
94 effect are of no force and effect.

95 Section 5. Subsection (36) of section 320.64, Florida
96 Statutes, is amended, and subsection (39) is added to that
97 section, to read:

98 320.64 Denial, suspension, or revocation of license;
99 grounds.—A license of a licensee under s. 320.61 may be denied,
100 suspended, or revoked within the entire state or at any specific
101 location or locations within the state at which the applicant or
102 licensee engages or proposes to engage in business, upon proof
103 that the section was violated with sufficient frequency to
104 establish a pattern of wrongdoing, and a licensee or applicant
105 shall be liable for claims and remedies provided in ss. 320.695
106 and 320.697 for any violation of any of the following
107 provisions. A licensee is prohibited from committing the
108 following acts:

109 (36) (a) Notwithstanding the terms of any franchise
110 agreement, in addition to any other statutory or contractual
111 rights of recovery after the voluntary or involuntary
112 termination, cancellation, or nonrenewal of a franchise, failing

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113 to pay the motor vehicle dealer, as provided in paragraph (e)
 114 ~~(d)~~, the following amounts:

115 1. The net cost paid by the dealer for each new car or
 116 truck in the dealer's inventory with mileage of 2,000 miles or
 117 less, or a motorcycle with mileage of 100 miles or less,
 118 exclusive of mileage placed on the vehicle before it was
 119 delivered to the dealer.

120 2. The current price charged for each new, unused,
 121 undamaged, or unsold part or accessory that:

122 a. Is in the current parts catalogue and is still in the
 123 original, resalable merchandising package and in an unbroken
 124 lot, except that sheet metal may be in a comparable substitute
 125 for the original package; and

126 b. Was purchased by the dealer directly from the
 127 manufacturer or distributor or from an outgoing authorized
 128 dealer as a part of the dealer's initial inventory.

129 3. The fair market value of each undamaged sign owned by
 130 the dealer which bears a trademark or trade name used or claimed
 131 by the applicant or licensee or its representative which was
 132 purchased from or at the request of the applicant or licensee or
 133 its representative.

134 4. The fair market value of all special tools, data
 135 processing equipment, and automotive service equipment owned by
 136 the dealer which:

137 a. Were recommended in writing by the applicant or
 138 licensee or its representative and designated as special tools
 139 and equipment;

140 b. Were purchased from or at the request of the applicant

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141 or licensee or its representative; and

142 c. Are in usable and good condition except for reasonable
143 wear and tear.

144 5. The cost of transporting, handling, packing, storing,
145 and loading any property subject to repurchase under this
146 section.

147 (b) If the termination, cancellation, or nonrenewal of the
148 dealer's franchise is the result of the bankruptcy or
149 reorganization of a licensee or its common entity;; ~~or the~~
150 ~~result of~~ a licensee's plan, scheme, or policy, whether or not
151 publicly declared, which is intended to decrease or has the
152 effect of decreasing the number of, or eliminating, the
153 licensee's franchised motor vehicle dealers of a line-make in
154 this state;; ~~or the result of~~ a termination, elimination, or
155 cessation of manufacture or reorganization of a licensee or its
156 common entity;; ~~or the result of~~ a termination, elimination, or
157 cessation of manufacture or distribution of a line-make, in
158 addition to the above payments to the dealer, the licensee or
159 its common entity~~;~~ shall be liable to and shall pay the motor
160 vehicle dealer for an amount at least equal to the fair market
161 value of the franchise for the line-make, which shall be the
162 greater of the value determined as of the day the licensee
163 announces the action that results in the termination,
164 cancellation, or nonrenewal~~;~~ or the value determined on the day
165 that is 12 months before that date. Fair market value of the
166 franchise for the line-make includes only the goodwill value of
167 the dealer's franchise for that line-make in the dealer's
168 community or territory.

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169 (c) In the case of a public announcement by the licensee
170 or its common entity that the line-make will be discontinued
171 presently or in the future, the motor vehicle dealer may
172 immediately request payment of fair market value under this
173 subsection following the announcement in exchange for canceling
174 any further franchise rights, except payments owed to the motor
175 vehicle dealer in the ordinary course, and such fair market
176 value for the franchise shall be the greater of the value
177 determined as of the day of the initial public announcement or
178 the value determined on the day that is 12 months before that
179 date.

180 (d)~~(e)~~ This subsection does not apply to a termination,
181 cancellation, or nonrenewal that is implemented as a result of
182 the sale of the assets or corporate stock or other ownership
183 interests of the dealer.

184 (e)~~(d)~~ The dealer shall return the property listed in this
185 subsection to the licensee within 90 days after the effective
186 date of the termination, cancellation, or nonrenewal. The
187 licensee shall supply the dealer with reasonable instructions
188 regarding the method by which the dealer must return the
189 property. Absent shipping instructions and prepayment of
190 shipping costs from the licensee or its common entity, the
191 dealer shall tender the inventory and other items to be returned
192 at the dealer's facility. The compensation for the property
193 shall be paid by the licensee or its common entity
194 simultaneously with the tender of inventory and other items,
195 provided that, if the dealer does not have clear title to the
196 inventory and other items and is not in a position to convey

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197 that title to the licensee, payment for the property being
198 returned may be made jointly to the dealer and the holder of any
199 security interest.

200 (39) (a) On or after the effective date of this subsection
201 and notwithstanding the terms of any franchise agreement, the
202 applicant or licensee has directly or indirectly required an
203 existing motor vehicle dealer or motor vehicle dealer applicant
204 to enter into a site control agreement or exclusive use
205 agreement.

206 (b) For purposes of this subsection, the terms "site
207 control agreement" and "exclusive use agreement" include any
208 agreement that has the effect of:

209 1. Requiring that the motor vehicle dealer establish or
210 maintain exclusive dealership facilities; or

211 2. Restricting the ability of the motor vehicle dealer, or
212 the ability of the motor vehicle dealer's lessor in the event
213 the dealership facility is being leased, to transfer, sell,
214 lease, or change the use of the dealership premises, whether by
215 sublease, lease, collateral pledge of lease, right of first
216 refusal to purchase or lease, option to purchase, option to
217 lease, or other similar agreement, regardless of the parties to
218 such agreement.

219
220 A motor vehicle dealer who can demonstrate that a violation of,
221 or failure to comply with, any of the preceding provisions by an
222 applicant or licensee will or can adversely and pecuniarily
223 affect the complaining dealer, shall be entitled to pursue all

224 of the remedies, procedures, and rights of recovery available
 225 under ss. 320.695 and 320.697.

226 Section 6. Section 320.695, Florida Statutes, is amended
 227 to read:

228 320.695 Injunction.—In addition to the remedies provided
 229 in this chapter, and notwithstanding the existence of any
 230 adequate remedy at law, the department, ~~or~~ any motor vehicle
 231 dealer in the name of the department and state and for the use
 232 and benefit of the motor vehicle dealer, or any association that
 233 is comprised of a minimum of 100 new motor vehicle dealers
 234 licensed in this state and that represents the collective
 235 interests of its members with more than one member directly and
 236 adversely affected by the action or conduct of an applicant or
 237 licensee may ~~is authorized to~~ make application to any circuit
 238 court of the state for the grant, upon a hearing and for cause
 239 shown, of a temporary or permanent injunction, or both,
 240 restraining any person from acting as a licensee under the terms
 241 of ss. 320.60-320.70 without being properly licensed hereunder,
 242 ~~or~~ from violating or continuing to violate any of the provisions
 243 of ss. 320.60-320.70, or from failing or refusing to comply with
 244 the requirements of this law or any rule or regulation adopted
 245 hereunder. Such injunction shall be issued without bond. A
 246 single act in violation of the provisions of ss. 320.60-320.70
 247 shall be sufficient to authorize the issuance of an injunction.
 248 However, this statutory remedy shall not be applicable to any
 249 motor vehicle dealer after final determination by the department
 250 under s. 320.641(3).

251 Section 7. Section 320.699, Florida Statutes, is amended
 252 to read:

253 320.699 Administrative hearings and adjudications;
 254 procedure.—

255 (1) A motor vehicle dealer, or person with entitlements to
 256 or in a motor vehicle dealer, who is directly and adversely
 257 affected by the action or conduct of an applicant or licensee
 258 that ~~which~~ is alleged to be in violation of any provision of ss.
 259 320.60-320.70, or any association that is comprised of a minimum
 260 of 100 new motor vehicle dealers licensed in this state and that
 261 represents the collective interests of its members with more
 262 than one member directly and adversely affected by the action or
 263 conduct of an applicant or licensee that is alleged to be in
 264 violation of any provision of ss. 320.60-320.70, may seek a
 265 declaration and adjudication of its rights with respect to the
 266 alleged action or conduct of the applicant or licensee by:

267 (a) Filing with the department a request for a proceeding
 268 and an administrative hearing which conforms substantially with
 269 the requirements of ss. 120.569 and 120.57; or

270 (b) Filing with the department a written objection or
 271 notice of protest pursuant to s. 320.642.

272 (2) If a written objection or notice of protest is filed
 273 with the department under paragraph (1)(b), a hearing shall be
 274 held not sooner than 180 days nor later than 240 days from the
 275 date of filing of the first objection or notice of protest,
 276 unless the time is extended by the administrative law judge for
 277 good cause shown. This subsection shall govern the schedule of
 278 hearings in lieu of any other provision of law with respect to

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279 | administrative hearings conducted by the Department of Highway
280 | Safety and Motor Vehicles or the Division of Administrative
281 | Hearings, including performance standards of state agencies,
282 | which may be included in current and future appropriations acts.
283 | Section 8. This act shall take effect July 1, 2010.