

By Senator Baker

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1 A bill to be entitled
 2 An act relating to motor vehicle dealers; amending s.
 3 320.60, F.S.; redefining the terms "agreement" or
 4 "franchise agreement" to include certain ancillary
 5 agreements; amending s. 320.605, F.S.; revising
 6 legislative intent provisions; amending s. 320.61,
 7 F.S.; providing clarification regarding licensure
 8 renewal requirements; amending s. 320.63, F.S.;
 9 requiring the submission of an affidavit with a
 10 license renewal application; amending s. 320.64, F.S.;
 11 requiring certain payments and payment terms to
 12 dealers following an announcement that the dealer's
 13 line-make will be discontinued; prohibiting certain
 14 requirements that a dealer enter into site control
 15 agreements or exclusive use agreements relating to
 16 dealership property; amending s. 320.695, F.S.;
 17 authorizing certain dealer associations to seek
 18 injunctive relief regarding conduct by a licensee;
 19 amending s. 320.699, F.S.; authorizing certain dealer
 20 associations to seek administrative relief regarding
 21 conduct by a licensee; providing an effective date.

22
 23 Be It Enacted by the Legislature of the State of Florida:
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25 Section 1. Subsection (1) of section 320.60, Florida
 26 Statutes, is amended to read:

27 320.60 Definitions for ss. 320.61-320.70.—Whenever used in
 28 ss. 320.61-320.70, unless the context otherwise requires, the
 29 following words and terms have the following meanings:

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30 (1) "Agreement" or "franchise agreement" means a contract,
31 franchise, new motor vehicle franchise, sales and service
32 agreement, or dealer agreement or any other terminology used to
33 describe the contractual relationship between a manufacturer,
34 factory branch, distributor, or importer, and a motor vehicle
35 dealer, including any ancillary agreement relating to a dealer's
36 facilities, staffing, or operations or relating to a licensee's
37 programs, policies, or requirements pursuant to which the motor
38 vehicle dealer is authorized to transact business pertaining to
39 motor vehicles of a particular line-make.

40 Section 2. Section 320.605, Florida Statutes, is amended to
41 read:

42 320.605 Legislative intent.—It is the intent of the
43 Legislature to protect the public health, safety, and welfare of
44 the citizens of the state by regulating the licensing of motor
45 vehicle dealers and manufacturers, maintaining competition,
46 reconciling the disparity in economic power which manufacturers
47 have over motor vehicle dealers, providing consumer protection
48 and fair trade, and providing minorities with opportunities for
49 full participation as motor vehicle dealers.

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

52 320.61 Licenses required of motor vehicle manufacturers,
53 distributors, importers, etc.—

54 (2) The department may prescribe an abbreviated application
55 for renewal of a license if the licensee had previously filed an
56 initial application pursuant to s. 320.63. The application for
57 renewal shall include any information necessary to bring current
58 the information required in the initial application. The

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59 department shall not renew any license unless the licensee
60 complies with the provisions of s. 320.63.

61 Section 4. Present subsection (7) of section 320.63,
62 Florida Statutes, is renumbered as subsection (8), and a new
63 subsection (7) is added to that section, to read:

64 320.63 Application for license; contents.—Any person
65 desiring to be licensed pursuant to ss. 320.60-320.70 shall make
66 application therefor to the department upon a form containing
67 such information as the department requires. The department
68 shall require, with such application or otherwise and from time
69 to time, all of the following, which information may be
70 considered by the department in determining the fitness of the
71 applicant or licensee to engage in the business for which the
72 applicant or licensee desires to be licensed:

73 (7) An affidavit annually with each license renewal
74 application, acknowledging that the provisions of the licensee's
75 franchise agreements with motor vehicle dealers in this state
76 are consistent with and not prohibited by ss. 320.60-320.70 and
77 rules adopted thereunder then in effect, and that any provisions
78 in such agreements which are inconsistent with or prohibited by
79 such laws or rules then in effect are void.

80 Section 5. Paragraph (e) is added to subsection (36) of
81 section 320.64, Florida Statutes, and subsection (39) is added
82 to that section, to read:

83 320.64 Denial, suspension, or revocation of license;
84 grounds.—A license of a licensee under s. 320.61 may be denied,
85 suspended, or revoked within the entire state or at any specific
86 location or locations within the state at which the applicant or
87 licensee engages or proposes to engage in business, upon proof

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88 that the section was violated with sufficient frequency to
89 establish a pattern of wrongdoing, and a licensee or applicant
90 shall be liable for claims and remedies provided in ss. 320.695
91 and 320.697 for any violation of any of the following
92 provisions. A licensee is prohibited from committing the
93 following acts:

94 (36)

95 (e) If a licensee or its common entity publicly announces
96 that a line-make will be discontinued, presently or in the
97 future, a motor vehicle dealer is entitled to immediate payment
98 of fair market value under this subsection in exchange for
99 cancelling any further franchise rights to the line-make, except
100 payments owed to the dealer in the ordinary course of business.
101 The fair market value for the franchise shall be the greater of
102 the value determined as of the day of the initial public
103 announcement or the value determined on the day that is 12
104 months before that date.

105 (39) Notwithstanding the terms of any franchise agreement,
106 the applicant or licensee has directly or indirectly required a
107 motor vehicle dealer or applicant for a franchise to enter into
108 a site control agreement or exclusive use agreement. As used in
109 this subsection, the terms "site control agreement" and
110 "exclusive use agreement" include any agreement that has the
111 effect of requiring the motor vehicle dealer to establish or
112 maintain exclusive dealership facilities or restricting the
113 ability of the dealer or the lessor, if the dealership facility
114 is leased, to transfer, sell, lease, or change the use of the
115 dealership premises by sublease, lease, collateral pledge of
116 lease, right of first refusal to purchase or lease, option to

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117 purchase, option to lease, or other similar agreement,
118 regardless of the parties to such agreement.

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120 A motor vehicle dealer who can demonstrate that a violation of,
121 or failure to comply with, any of the preceding provisions by an
122 applicant or licensee will or can adversely and pecuniarily
123 affect the complaining dealer, shall be entitled to pursue all
124 of the remedies, procedures, and rights of recovery available
125 under ss. 320.695 and 320.697.

126 Section 6. Section 320.695, Florida Statutes, is amended to
127 read:

128 320.695 Injunction.—In addition to the remedies provided in
129 this chapter, and notwithstanding the existence of any adequate
130 remedy at law, the department, ~~or~~ any motor vehicle dealer in
131 the name of the department and state and for the use and benefit
132 of the motor vehicle dealer, or any association that is
133 comprised of a minimum of 100 new motor vehicle dealers licensed
134 in this state, which represents the collective interests of its
135 members and has more than one member directly and adversely
136 affected by the action or conduct of an applicant or licensee,
137 is authorized to make application to any circuit court of the
138 state for the grant, upon a hearing and for cause shown, of a
139 temporary or permanent injunction, or both, restraining any
140 person from acting as a licensee under the terms of ss. 320.60-
141 320.70 without being properly licensed hereunder, or from
142 violating or continuing to violate any of the provisions of ss.
143 320.60-320.70, or from failing or refusing to comply with the
144 requirements of this law or any rule or regulation adopted
145 hereunder. Such injunction shall be issued without bond. A

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146 single act in violation of the provisions of ss. 320.60-320.70
147 shall be sufficient to authorize the issuance of an injunction.
148 However, this statutory remedy shall not be applicable to any
149 motor vehicle dealer after final determination by the department
150 under s. 320.641(3).

151 Section 7. Section 320.699, Florida Statutes, is amended to
152 read:

153 320.699 Administrative hearings and adjudications;
154 procedure.—

155 (1) A motor vehicle dealer, or person with entitlements to
156 or in a motor vehicle dealer, who is directly and adversely
157 affected by the action or conduct of an applicant or licensee
158 which is alleged to be in violation of any provision of ss.
159 320.60-320.70, or any association that is comprised of a minimum
160 of 100 new motor vehicle dealers licensed in this state, which
161 represents the collective interests of its members and has more
162 than one member directly and adversely affected by the action or
163 conduct of an applicant or licensee that is alleged to be in
164 violation of any provision of ss. 320.60-320.70, may seek a
165 declaration and adjudication of its rights with respect to the
166 alleged action or conduct of the applicant or licensee by:

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

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

172 (2) If a written objection or notice of protest is filed
173 with the department under paragraph (1)(b), a hearing shall be
174 held not sooner than 180 days nor later than 240 days from the

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175 date of filing of the first objection or notice of protest,
176 unless the time is extended by the administrative law judge for
177 good cause shown. This subsection shall govern the schedule of
178 hearings in lieu of any other provision of law with respect to
179 administrative hearings conducted by the Department of Highway
180 Safety and Motor Vehicles or the Division of Administrative
181 Hearings, including performance standards of state agencies,
182 which may be included in current and future appropriations acts.

183 Section 8. This act shall take effect July 1, 2010.