

By Senator Garcia

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1 A bill to be entitled
2 An act relating to motor vehicle manufacturer
3 licenses; amending s. 320.64, F.S.; providing that a
4 motor vehicle dealer who received approval of a
5 facility from an applicant or licensee within a
6 specified timeframe is deemed to be in full compliance
7 with facility-related requirements; revising
8 provisions relating to when an applicant or licensee
9 has undertaken or engaged in an audit of service-
10 related payments or incentive payments; limiting the
11 timeframe for the performance of such audits; defining
12 the term "incentive"; providing that an applicant or
13 licensee may only deny or charge back that portion of
14 a service-related claim or incentive claim which the
15 applicant or licensee has proven to be false or
16 fraudulent or for which the dealer failed to
17 substantially comply with certain procedures;
18 prohibiting an applicant or licensee from taking
19 adverse action against a motor vehicle dealer because
20 a motor vehicle sold, leased, or delivered to a
21 customer was resold or exported within a specified
22 period after delivery to the customer, subject to
23 certain requirements and restrictions; prohibiting an
24 applicant or licensee from failing to make any payment
25 due a motor vehicle dealer that substantially complies
26 with the terms of a certain contract between the two
27 parties regarding reimbursement for temporary
28 replacement vehicles under certain circumstances;
29 prohibiting the applicant or licensee from requiring

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30 or coercing a motor vehicle dealer to purchase goods
31 or services from a vendor under certain circumstances;
32 defining the term "goods"; prohibiting the applicant
33 or licensee from failing to provide written notice to
34 a motor vehicle dealer of the motor vehicle dealer's
35 rights relating to the purchase of goods or services
36 from a vendor; prohibiting the applicant or licensee
37 from failing to provide a motor vehicle dealer a
38 written statement disclosing the identity of a vendor
39 under certain circumstances and subject to certain
40 requirements; prohibiting the applicant or licensee
41 from failing to provide a motor vehicle dealer the
42 right to purchase signs or other image elements from a
43 vendor selected by the motor vehicle dealer under
44 certain circumstances and subject to certain
45 requirements; prohibiting an applicant or licensee
46 from requiring a motor vehicle dealer to participate
47 in or affiliate with a dealer advertising or marketing
48 entity; providing that an applicant or licensee may
49 not take or threaten to take any adverse action
50 against a motor vehicle dealer who refuses to join or
51 participate in such entity; defining the term "adverse
52 action"; providing that an applicant or licensee may
53 not require a dealer to participate in, and may not
54 preclude only some of its motor vehicle dealers in a
55 designated market area from establishing, a voluntary
56 motor vehicle dealer advertising or marketing entity;
57 prohibiting the applicant or licensee from failing to
58 act in good faith or deal fairly with a motor vehicle

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59 dealer regarding the terms or provisions of any
60 agreement; requiring the Department of Highway Safety
61 and Motor Vehicles or a court to consider certain
62 factors in determining whether an applicant or
63 licensee has failed to act in good faith or deal
64 fairly with a motor vehicle dealer regarding the terms
65 or provisions of any agreement; conforming a cross-
66 reference; amending s. 320.641, F.S.; providing that
67 any motor vehicle dealer may file a petition or
68 complaint with the department or a court for a
69 determination as to whether specified notices of
70 intent are unfair or prohibited, under certain
71 circumstances; specifying the circumstances under
72 which a complainant motor vehicle dealer substantially
73 prevails in a certain cause of action; amending s.
74 320.642, F.S.; providing that a franchised motor
75 vehicle dealer with standing to protest the proposed
76 addition or relocation of a motor vehicle dealer may
77 file a protest with the department or a court;
78 directing the department not to issue a license for
79 the proposed additional or relocated motor vehicle
80 dealer until a certain final decision not subject to
81 further appeal is rendered; amending s. 320.643, F.S.;
82 providing that a motor vehicle dealer whose proposed
83 sale is rejected may file with a court a certain
84 complaint; providing that any person whose proposed
85 sale of stock is rejected may file with a court a
86 certain complaint; creating s. 320.69913, F.S.;
87 providing alternative civil causes of action and

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88 procedures for a motor vehicle dealer directly and
89 adversely affected by the action or conduct of an
90 applicant or licensee which is alleged to be in
91 violation of any provision of ss. 320.60-320.70, F.S.;
92 providing an effective date.

93

94 WHEREAS, the Legislature finds that motor vehicle
95 manufacturers control nearly every aspect of a motor vehicle
96 dealer's operations, and

97 WHEREAS, at the beginning of the relationship and at
98 renewal periods, which are determined entirely by the
99 manufacturer, a dealer must sign a contract of adhesion drafted
100 by the manufacturer and must do so generally without any
101 negotiation, and

102 WHEREAS, due to the unequal bargaining power wielded by
103 manufacturers, which has been recognized by state and federal
104 courts, state legislatures, and the Congress over the last 40
105 years, licensees or franchisors operating under ss. 320.60-
106 320.70, Florida Statutes, have been able to demand that motor
107 vehicle dealers, at the time of their appointment, provide
108 dealership facilities that meet size, configuration, and
109 appearance requirements imposed by the manufacturer, and

110 WHEREAS, such facilities require dealer investments of tens
111 of millions of dollars which benefit the public by their
112 location and appearance and improve the working conditions of
113 the dealership's employees, and

114 WHEREAS, without regard to such investments, manufacturers
115 often establish new facility standards or offer so-called
116 "voluntary" incentive programs for additional renovations or

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117 alterations, or both, before the dealer has had time to
118 sufficiently depreciate and recover its original facility
119 investment, and

120 WHEREAS, such programs, in effect, economically coerce a
121 dealer to comply with the demands of the manufacturer or risk
122 not benefitting from the incentive program and being placed at
123 an unfair competitive disadvantage, and

124 WHEREAS, the foregoing negatively affects Florida consumers
125 by reducing competition and increasing consumer costs and
126 requiring potential customers to travel farther to transact
127 business with a motor vehicle dealer, among other things, and

128 WHEREAS, the Legislature intends to allow motor vehicle
129 dealers in this state to have the use and benefit of dealership
130 facility investments for at least 10 years before the dealers
131 may be required by the manufacturers to make additional
132 improvements as a condition of participation in bonus or
133 incentive programs, NOW, THEREFORE,

134

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

136

137 Section 1. Present paragraph (h) of subsection (10) of
138 section 320.64, Florida Statutes, is redesignated as paragraph
139 (i) and amended, a new paragraph (h) is added to that
140 subsection, subsections (25) and (26) of that section are
141 amended, and subsections (39) through (42) are added to that
142 section, to read:

143 320.64 Denial, suspension, or revocation of license;
144 grounds.—A license of a licensee under s. 320.61 may be denied,
145 suspended, or revoked within the entire state or at any specific

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146 location or locations within the state at which the applicant or
147 licensee engages or proposes to engage in business, upon proof
148 that the section was violated with sufficient frequency to
149 establish a pattern of wrongdoing, and a licensee or applicant
150 shall be liable for claims and remedies provided in ss. 320.695
151 and 320.697 for any violation of any of the following
152 provisions. A licensee is prohibited from committing the
153 following acts:

154 (10)

155 (h) If an applicant or licensee offers any bonus,
156 incentive, rebate, or other program that is available to a motor
157 vehicle dealer in this state which is premised, wholly or in
158 part, on dealer facility improvements, renovations, expansion,
159 remodeling, alterations, or installation of signs or other image
160 elements, a motor vehicle dealer who received approval of its
161 facility from the applicant or licensee within 10 years prior to
162 the offer shall be deemed to be in full compliance with
163 facility-related requirements under the offer for the duration
164 of that 10-year period.

165 (i)~~(h)~~ A violation of paragraphs (b) through (h) ~~(g)~~ is not
166 a violation of s. 320.70 and does not subject any licensee to
167 any criminal penalty under s. 320.70.

168 (25) The applicant or licensee has undertaken or engaged in
169 an audit of warranty, maintenance, and other service-related
170 payments or incentive payments, including payments to a motor
171 vehicle dealer under any licensee-issued program, policy, or
172 other benefit, which previously have been paid to a motor
173 vehicle dealer in violation of this section or has failed to
174 comply with any of its obligations under s. 320.696. An

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175 applicant or licensee may reasonably and periodically audit a
176 motor vehicle dealer to determine the validity of paid claims as
177 provided in s. 320.696. Audits of warranty, maintenance, and
178 other service-related payments shall be performed by an
179 applicant or licensee only during the 6-month ~~1-year~~ period
180 immediately following the date the claim was paid. Audits ~~Audit~~
181 of incentive payments shall ~~only~~ be performed only during the 6-
182 month ~~for an 18-month~~ period immediately following the date the
183 incentive was paid. As used in this section, the term
184 "incentive" includes any bonus, incentive, or other monetary or
185 nonmonetary thing of value. After such time periods have
186 elapsed, all warranty, maintenance, and other service-related
187 payments and incentive payments shall be deemed final and
188 incontrovertible for any reason notwithstanding any otherwise
189 applicable law, and the motor vehicle dealer shall not be
190 subject to any charge-back or repayment. An applicant or
191 licensee may deny a claim or, as a result of a timely conducted
192 audit, impose a charge-back against a motor vehicle dealer for
193 warranty, maintenance, or other service-related payments or
194 incentive payments only if the applicant or licensee can show
195 that the warranty, maintenance, or other service-related claim
196 or incentive claim was false or fraudulent or that the motor
197 vehicle dealer failed to substantially comply with the
198 reasonable written and uniformly applied procedures of the
199 applicant or licensee for such repairs or incentives, but only
200 for that portion of the claim shown to be false or fraudulent.
201 Notwithstanding the terms of any franchise agreement, guideline,
202 program, policy, or procedure, an applicant or licensee may only
203 deny or charge back that portion of a warranty, maintenance, or

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204 other service-related claim or incentive claim which the
205 applicant or licensee has proven to be false or fraudulent or
206 for which the dealer failed to substantially comply with the
207 reasonable, written, and uniformly applied procedures of the
208 applicant or licensee for such repairs or incentives, as set
209 forth in this subsection. An applicant or licensee may not
210 charge back a motor vehicle dealer ~~back~~ subsequent to the
211 payment of a warranty, maintenance, or service-related claim or
212 incentive claim unless, within 30 days after a timely conducted
213 audit, a representative of the applicant or licensee first meets
214 in person, by telephone, or by video teleconference with an
215 officer or employee of the dealer designated by the motor
216 vehicle dealer. At such meeting the applicant or licensee must
217 provide a detailed explanation, with supporting documentation,
218 as to the basis for each of the claims for which the applicant
219 or licensee proposed a charge-back to the dealer and a written
220 statement containing the basis upon which the motor vehicle
221 dealer was selected for audit or review. Thereafter, the
222 applicant or licensee must provide the motor vehicle dealer's
223 representative a reasonable period after the meeting within
224 which to respond to the proposed charge-backs, with such period
225 to be commensurate with the volume of claims under
226 consideration, but in no case less than 45 days after the
227 meeting. The applicant or licensee is prohibited from changing
228 or altering the basis for each of the proposed charge-backs as
229 presented to the motor vehicle dealer's representative following
230 the conclusion of the audit unless the applicant or licensee
231 receives new information affecting the basis for one or more
232 charge-backs and that new information is received within 30 days

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233 after the conclusion of the timely conducted audit. If the
234 applicant or licensee claims the existence of new information,
235 the dealer must be given the same right to a meeting and right
236 to respond as when the charge-back was originally presented.
237 After all internal dispute resolution processes provided through
238 the applicant or licensee have been completed, the applicant or
239 licensee shall give written notice to the motor vehicle dealer
240 of the final amount of its proposed charge-back. If the dealer
241 disputes that amount, the dealer may file a protest with the
242 department within 30 days after receipt of the notice. If a
243 protest is timely filed, the department shall notify the
244 applicant or licensee of the filing of the protest, and the
245 applicant or licensee may not take any action to recover the
246 amount of the proposed charge-back until the department renders
247 a final determination, which is not subject to further appeal,
248 that the charge-back is in compliance with the provisions of
249 this section. In any hearing pursuant to this subsection, the
250 applicant or licensee has the burden of proof that its audit and
251 resulting charge-back are in compliance with this subsection.

252 (26) Notwithstanding the terms of any franchise agreement,
253 including any licensee's program, policy, or procedure, the
254 applicant or licensee has refused to allocate, sell, or deliver
255 motor vehicles; charged back or withheld payments or other
256 things of value for which the dealer is otherwise eligible under
257 a sales promotion, program, or contest; prevented a motor
258 vehicle dealer from participating in any promotion, program, or
259 contest; or has taken or threatened to take any adverse action
260 against a dealer, including charge-backs, reducing vehicle
261 allocations, or terminating or threatening to terminate a

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262 franchise because the dealer sold or leased a motor vehicle to a
263 customer who exported the vehicle to a foreign country or who
264 resold the vehicle, unless the licensee proves that the dealer
265 knew or reasonably should have known that the customer intended
266 to export or resell the motor vehicle. There is a rebuttable
267 presumption that the dealer neither knew nor reasonably should
268 have known of its customer's intent to export or resell the
269 vehicle if the vehicle is titled or registered in any state in
270 this country. A licensee may not take any action against a motor
271 vehicle dealer, including reducing its allocations or supply of
272 motor vehicles to the dealer, or charging back a dealer for an
273 incentive payment previously paid, unless the licensee first
274 meets in person, by telephone, or video conference with an
275 officer or other designated employee of the dealer. At such
276 meeting, the licensee must provide a detailed explanation, with
277 supporting documentation, as to the basis for its claim that the
278 dealer knew or reasonably should have known of the customer's
279 intent to export or resell the motor vehicle. Thereafter, the
280 motor vehicle dealer shall have a reasonable period,
281 commensurate with the number of motor vehicles at issue, but not
282 less than 15 days, to respond to the licensee's claims. If,
283 following the dealer's response and completion of all internal
284 dispute resolution processes provided through the applicant or
285 licensee, the dispute remains unresolved, the dealer may file a
286 protest with the department within 30 days after receipt of a
287 written notice from the licensee that it still intends to take
288 adverse action against the dealer with respect to the motor
289 vehicles still at issue. If a protest is timely filed, the
290 department shall notify the applicant or licensee of the filing

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291 of the protest, and the applicant or licensee may not take any
292 action adverse to the dealer until the department renders a
293 final determination, which is not subject to further appeal,
294 that the licensee's proposed action is in compliance with the
295 provisions of this subsection. In any hearing pursuant to this
296 subsection, the applicant or licensee has the burden of proof on
297 all issues raised by this subsection. In addition to the
298 requirements, protections, and procedures set forth in this
299 subsection, an applicant or licensee, by agreement, program,
300 rule, policy, standard, or otherwise, may not take adverse
301 action against a motor vehicle dealer, including, without
302 limitation, reducing allocations, product deliveries, or
303 planning volumes, or imposing any penalty or charge-back,
304 because a motor vehicle sold, leased, or delivered to a customer
305 was resold or exported more than 90 days after it was delivered
306 to the customer. If the applicant or licensee does not provide
307 written notification to the motor vehicle dealer of such resale
308 or export within 6 months of the date of the motor vehicle
309 dealer's delivery of the vehicle to the customer, the motor
310 vehicle dealer is not subject to any adverse action.
311 Notwithstanding the provisions of any franchise agreement,
312 program, policy, or procedure, a motor vehicle dealer's
313 franchise agreement may not be terminated, canceled,
314 discontinued, or nonrenewed by an applicant or licensee on the
315 basis of any act related to a customer's exporting or reselling
316 of a motor vehicle, unless the applicant or licensee proves by
317 clear and convincing evidence before a trier of fact that the
318 majority owner, or if there is no majority owner, the person
319 designated as the dealer-principal or a person similarly

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320 designated in the franchise agreement, had actual knowledge that
321 the customer intended to export or resell the motor vehicle.

322 (39) Regarding reimbursement for temporary replacement
323 vehicles loaned, rented, or provided by a motor vehicle dealer
324 to or for its service or repair customers, the applicant or
325 licensee has failed to make a payment due a motor vehicle dealer
326 who substantially complied with the terms of the franchise
327 agreement or other contract with the applicant or licensee,
328 notwithstanding that the temporary replacement motor vehicle has
329 been titled or registered to the motor vehicle dealer's rental
330 or leasing division or an entity that is owned or controlled by
331 the motor vehicle dealer.

332 (40) Notwithstanding the terms of any franchise agreement,
333 the applicant or licensee has done any of the following:

334 (a) Required or coerced, or attempted to require or coerce,
335 a motor vehicle dealer to purchase goods or services from a
336 vendor selected, identified, or designated by an applicant or
337 licensee, or one of its parents, subsidiaries, divisions, or
338 affiliates, by agreement, standard, policy, program, incentive
339 provision, or otherwise, without providing the motor vehicle
340 dealer with the option of obtaining substantially similar goods
341 or services of a like kind and quality from a vendor chosen by
342 the motor vehicle dealer while remaining eligible for all
343 benefits described in such agreement, standard, policy, program,
344 or incentive. For purposes of this subsection, the term "goods"
345 does not include, except for items in paragraph (d), the
346 intellectual property rights of, or special tools and training
347 required by, the applicant or licensee, or replacement parts to
348 be used in repairs under the warranty obligations of an

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349 applicant or licensee.

350 (b) Failed to provide written notice to a motor vehicle
351 dealer of the motor vehicle dealer's rights pursuant to
352 paragraph (a) when requiring the dealer to purchase goods or
353 services from a vendor selected, identified, or designated by
354 the applicant or licensee.

355 (c) Failed to provide to a motor vehicle dealer, when the
356 applicant or licensee claims that a vendor chosen by the motor
357 vehicle dealer cannot supply substantially similar goods and
358 services of like kind and quality pursuant to paragraph (a), a
359 written statement disclosing the identity of the vendor
360 selected, identified, or designated by the applicant or licensee
361 and stating all of the following:

362 1. Whether the applicant or licensee, or any officer,
363 director, or employee of the same, has an equitable or
364 beneficial ownership interest in the vendor and, if so, the
365 percentage of the ownership interest.

366 2. Whether the applicant or licensee has an agreement or
367 arrangement by which the vendor pays to the applicant or
368 licensee, or one of its affiliates or common entities, or any
369 officer, director, or employee of the affiliate or common
370 entity, any compensation and, if so, the basis and amount of the
371 compensation to be paid resulting from such purchases by the
372 motor vehicle dealer or any motor vehicle dealer in the state
373 which has made similar purchases.

374 3. Whether the compensation is to be paid by direct payment
375 by the vendor or by credit from the vendor for the benefit of
376 the recipient.

377 (d) Failed to provide to a motor vehicle dealer, if the

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378 goods and services to be supplied to the dealer by a vendor
379 selected, identified, or designated by the applicant or licensee
380 are signs or other image elements to be leased to the motor
381 vehicle dealer, the right to purchase the signs or other image
382 elements of like kind and quality from a vendor selected by the
383 motor vehicle dealer. If the vendor selected by the applicant or
384 licensee is the only available vendor, the motor vehicle dealer
385 must be given the opportunity to purchase, at the time of
386 installation, the signs or other image elements at a price
387 substantially similar to the costs to the applicant or licensee
388 therefor. This paragraph may not be construed as allowing a
389 motor vehicle dealer to erect or maintain signs or registered
390 logos that do not conform to the intellectual property usage
391 guidelines of the applicant or licensee.

392 (41) (a) An applicant or licensee may not, by agreement,
393 policy, program, standard, or otherwise, require a motor vehicle
394 dealer to participate in, contribute to, affiliate with, or join
395 a dealer advertising or marketing group, fund, pool,
396 association, or other entity and may not take or threaten to
397 take any adverse action against a motor vehicle dealer that
398 refuses to join or participate in such group, fund, pool,
399 association, or other entity. For purposes of this subsection,
400 the term "adverse action" includes, without limitation,
401 reduction of allocations, charging fees for a licensee's or
402 dealer's advertising or a marketing group's advertising or
403 marketing, termination of or threatening to terminate the motor
404 vehicle dealer's franchise, reducing any incentive for which the
405 motor vehicle dealer is eligible, or any action that fails to
406 take into account the interests of the motor vehicle dealer.

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407 (b) An applicant or licensee may not require a dealer to
408 participate in, and may not preclude only a portion of its motor
409 vehicle dealers in a designated market area from establishing, a
410 voluntary motor vehicle dealer advertising or marketing group,
411 fund, pool, association, or other entity.

412 (42) The applicant or licensee has failed to act in good
413 faith or deal fairly with one of its motor vehicle dealers in
414 performing, complying with, or enforcing an agreement. An
415 applicant or licensee may have failed to act in good faith or
416 deal fairly with a motor vehicle dealer even in the absence of
417 any act or threat of coercion or intimidation made by the
418 applicant or licensee toward the motor vehicle dealer. An
419 applicant or licensee may have failed to act in good faith or
420 deal fairly with a motor vehicle dealer even in the absence of
421 an allegation by the motor vehicle dealer that an express term
422 or provision of a franchise agreement has been breached or
423 violated by the applicant or licensee. In any cause of action
424 brought under this subsection, the department, or a court of
425 competent jurisdiction, shall consider at least one of the
426 following factors in determining whether an applicant or
427 licensee has failed to act in good faith or deal fairly with a
428 motor vehicle dealer in performing, complying with, or enforcing
429 any of the terms or provisions of any agreement:

430 (a) Whether the applicant or licensee has fairly taken into
431 account the motor vehicle dealer's investment in its facilities,
432 product or service promotions, staffing, and general operations.

433 (b) Whether the applicant or licensee has fairly taken into
434 account the motor vehicle dealer's independence in operating the
435 dealership.

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436 (c) Whether the applicant or licensee has altered the
437 rights of the motor vehicle dealer, impaired the sales or
438 service obligations of the motor vehicle dealer, or impaired the
439 investment or potential financial return of the motor vehicle
440 dealer.

441 (d) Whether the applicant or licensee has fairly taken into
442 account the equities and interests of the motor vehicle dealer.

443

444 A motor vehicle dealer who can demonstrate that a violation of,
445 or failure to comply with, any of the preceding provisions by an
446 applicant or licensee will or can adversely and pecuniarily
447 affect the complaining dealer, shall be entitled to pursue all
448 of the remedies, procedures, and rights of recovery available
449 under ss. 320.695 and 320.697.

450 Section 2. Subsections (3) and (6) of section 320.641,
451 Florida Statutes, are amended to read:

452 320.641 Discontinuations, cancellations, nonrenewals,
453 modifications, and replacement of franchise agreements.—

454 (3) Any motor vehicle dealer who receives a notice of
455 intent to discontinue, cancel, not renew, modify, or replace
456 may, within the 90-day notice period, file a petition or
457 complaint with the department or, in the alternative, a court of
458 competent jurisdiction, for a determination of whether such
459 action is an unfair or prohibited discontinuation, cancellation,
460 nonrenewal, modification, or replacement. Agreements and
461 certificates of appointment shall continue in effect until final
462 determination of the issues raised in such petition or complaint
463 by the motor vehicle dealer. A discontinuation, cancellation, or
464 nonrenewal of a franchise agreement is unfair if it is not

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465 clearly permitted by the franchise agreement; is not undertaken
466 in good faith; is not undertaken for good cause; or is based on
467 an alleged breach of the franchise agreement which is not in
468 fact a material and substantial breach; or, if the grounds
469 relied upon for termination, cancellation, or nonrenewal have
470 not been applied in a uniform and consistent manner by the
471 licensee. If the notice of discontinuation, cancellation, or
472 nonrenewal relates to an alleged failure of the new motor
473 vehicle dealer's sales or service performance obligations under
474 the franchise agreement, the new motor vehicle dealer must first
475 be provided with at least 180 days to correct the alleged
476 failure before a licensee may send the notice of
477 discontinuation, cancellation, or nonrenewal. A modification or
478 replacement is unfair if it is not clearly permitted by the
479 franchise agreement; is not undertaken in good faith; or is not
480 undertaken for good cause. The applicant or licensee shall have
481 the burden of proof that such action is fair and not prohibited.

482 (6) If the complainant motor vehicle dealer substantially
483 prevails, the motor vehicle dealer has ~~he or she shall have a~~
484 cause of action against the licensee under s. 320.697 and shall
485 be awarded for reasonable attorney attorneys' fees and costs
486 incurred by the motor vehicle dealer ~~him or her~~ in such
487 proceeding, ~~and he or she shall have a cause of action under s.~~
488 320.697. For purposes of this subsection, a complainant motor
489 vehicle dealer has substantially prevailed if:

490 (a) An administrative or judicial order, declaration, or
491 adjudication of its rights, an enforceable written agreement, or
492 court-approved or administratively approved settlement or
493 consent decree has been issued in its favor; or

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494 (b) The complainant's claim is substantial and an applicant
495 or licensee has voluntarily or unilaterally changed its
496 position, regardless of whether such change is accomplished by a
497 withdrawal of a notice of termination or a proposed modification
498 of an agreement; modification of any notice of discontinuation,
499 cancellation, nonrenewal, or replacement agreement; or any
500 change of pleading.

501 Section 3. Subsection (4) of section 320.642, Florida
502 Statutes, is amended to read:

503 320.642 Dealer licenses in areas previously served;
504 procedure.—

505 (4) An existing franchised motor vehicle dealer with
506 standing to protest the proposed addition or relocation of a
507 motor vehicle dealer pursuant to subsection (3) may file a
508 protest with the department or, in the alternative, in any court
509 of competent jurisdiction. A ~~The department's~~ decision to deny
510 issuance of a license under this section shall remain in effect
511 for a period of 12 months. The department shall not issue a
512 license for the proposed additional or relocated motor vehicle
513 dealer until a final decision not subject to further appeal by
514 ~~the department~~ is rendered determining that the application for
515 the motor vehicle dealer's license should be granted.

516 Section 4. Paragraph (b) of subsection (1), paragraph (a)
517 of subsection (2), and subsection (4) of section 320.643,
518 Florida Statutes, are amended to read:

519 320.643 Transfer, assignment, or sale of franchise
520 agreements.—

521 (1)

522 (b) A motor vehicle dealer whose proposed sale is rejected

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523 may, within 60 days following such receipt of such rejection,
524 file with the department or, in the alternative, in any court of
525 competent jurisdiction a complaint for a determination that the
526 proposed transferee has been rejected in violation of this
527 section. The licensee has the burden of proof with respect to
528 all issues raised by the complaint. The department or court
529 shall determine, and enter an order providing, that the proposed
530 transferee is either qualified or is not and cannot be qualified
531 for specified reasons, or the order may provide the conditions
532 under which a proposed transferee would be qualified. If the
533 licensee fails to file such a response to the motor vehicle
534 dealer's complaint within 30 days after receipt of the
535 complaint, unless the parties agree in writing to an extension,
536 or if the department or court, after a hearing, renders a
537 decision other than one disqualifying the proposed transferee,
538 the franchise agreement between the motor vehicle dealer and the
539 licensee is deemed amended to incorporate such transfer or
540 amended in accordance with the determination and order rendered,
541 effective upon compliance by the proposed transferee with any
542 conditions set forth in the determination or order.

543 (2) (a) Notwithstanding the terms of any franchise
544 agreement, a licensee shall not, by contract or otherwise, fail
545 or refuse to give effect to, prevent, prohibit, or penalize, or
546 attempt to refuse to give effect to, prevent, prohibit, or
547 penalize, any motor vehicle dealer or any proprietor, partner,
548 stockholder, owner, or other person who holds or otherwise owns
549 an interest therein from selling, assigning, transferring,
550 alienating, or otherwise disposing of, in whole or in part, the
551 equity interest of any of them in such motor vehicle dealer to

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552 any other person or persons, including a corporation established
553 or existing for the purpose of owning or holding the stock or
554 ownership interests of other entities, unless the licensee
555 proves at a hearing pursuant to a complaint filed by a motor
556 vehicle dealer under this section that the sale, transfer,
557 alienation, or other disposition is to a person who is not, or
558 whose controlling executive management is not, of good moral
559 character. A motor vehicle dealer, or any proprietor, partner,
560 stockholder, owner, or other person who holds or otherwise owns
561 an interest in the motor vehicle dealer, who desires to sell,
562 assign, transfer, alienate, or otherwise dispose of any interest
563 in such motor vehicle dealer shall notify, or cause the proposed
564 transferee to so notify, the licensee, in writing, of the
565 identity and address of the proposed transferee. A licensee who
566 receives such notice may, within 60 days following such receipt,
567 notify the motor vehicle dealer in writing that the proposed
568 transferee is not a person qualified to be a transferee under
569 this section and setting forth the material reasons for such
570 rejection. Failure of the licensee to notify the motor vehicle
571 dealer within the 60-day period of such rejection shall be
572 deemed an approval of the transfer. Any person whose proposed
573 sale of stock is rejected may file within 60 days of receipt of
574 such rejection a complaint with the department or, in the
575 alternative, in any court of competent jurisdiction alleging
576 that the rejection was in violation of the law or the franchise
577 agreement. The licensee has the burden of proof with respect to
578 all issues raised by such complaint. The department or court
579 shall determine, and enter an order providing, that the proposed
580 transferee either is qualified or is not and cannot be qualified

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581 for specified reasons; or the order may provide the conditions
582 under which a proposed transferee would be qualified. If the
583 licensee fails to file a response to the motor vehicle dealer's
584 complaint within 30 days of receipt of the complaint, unless the
585 parties agree in writing to an extension, or if the department
586 or court, after a hearing, renders a decision on the complaint
587 other than one disqualifying the proposed transferee, the
588 transfer shall be deemed approved in accordance with the
589 determination and order rendered, effective upon compliance by
590 the proposed transferee with any conditions set forth in the
591 determination or order.

592 (4) During the pendency of any such hearing, the franchise
593 agreement of the motor vehicle dealer shall continue in effect
594 in accordance with its terms. The department or court shall
595 expedite any determination requested under this section.

596 Section 5. Section 320.69913, Florida Statutes, is created
597 to read:

598 320.69913 Alternative civil cause of action; procedure.—Any
599 motor vehicle dealer that is directly and adversely affected by
600 the action or conduct of an applicant or licensee, and which
601 action or conduct is alleged to be in violation of any provision
602 of ss. 320.60-320.70, in addition to any right, remedy, or
603 procedure expressly provided in ss. 320.60-320.70, has a cause
604 of action in any court of competent jurisdiction against the
605 applicant or licensee for legal, equitable, or declaratory
606 relief, or an adjudication of the motor vehicle dealer's rights
607 with respect to the alleged action or conduct of the applicant
608 or licensee, in which case the court shall hear and determine
609 all matters arising under ss. 320.60-320.70.

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Section 6. This act shall take effect upon becoming a law.