

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.

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

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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:

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

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

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.

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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.