

Committee Substitute for Senate Bill No. 2708

An act relating to motor vehicle dealers; amending s. 320.60, F.S.; revising definitions; defining “service”; amending s. 320.64, F.S.; prohibiting certain acts by licensee or applicant; providing for penalties, liability, and remedies for violation; amending s. 320.642, F.S.; revising provisions for evidence to be considered by the Department of Highway Safety and Motor Vehicles in making certain determinations of representation by preexisting dealers; providing criteria and procedures for protest of proposed addition or relocation of service-only dealership; requiring license to permit service only in certain circumstances; amending s. 320.643, F.S.; revising criteria and procedures for transfer, sale, or disposal of franchise agreements and acceptance or rejection by the licensee of such transfer, sale, or disposal; prohibiting certain acts by a licensee; amending s. 320.644, F.S.; defining “executive management”; revising criteria and procedures for change of executive management of motor vehicle dealership and acceptance or rejection by the licensee of such change; prohibiting certain acts by licensee; amending s. 320.645, F.S.; revising restriction upon ownership of dealership by licensee; amending s. 501.976, F.S.; revising specifications under the Florida Deceptive and Unfair Trade Practices Act for representation by dealer of vehicle as a demonstrator; deleting the requirement that a demonstrator must have been driven by a prospective customer; providing an effective date.

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

Section 1. Subsections (3), (10), and (13) of section 320.60, Florida Statutes, are amended, and subsection (16) is added to that section, to read:

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

(3) “Demonstrator” means any new motor vehicle which is carried on the records of the dealer as a demonstrator and is used by, being inspected or driven by the dealer or his or her employees, or prospective customers for the purpose of demonstrating vehicle characteristics in the sale or display of motor vehicles sold by the dealer.

(10) “Motor vehicle” means any new automobile, motorcycle, or truck, including all trucks, regardless of weight, including “heavy truck” as defined in s. 320.01(10) and “truck” as defined in s. 320.01(9), the equitable or legal title to which has never been transferred by a manufacturer, distributor, importer, or dealer to an ultimate purchaser; however, when legal title is not transferred but possession of a motor vehicle is transferred pursuant to a conditional sales contract or lease and the conditions are not satisfied and the vehicle is returned to the motor vehicle dealer, the motor vehicle may be resold by the motor vehicle dealer as a new motor vehicle, provided the

selling motor vehicle dealer gives the following written notice to the purchaser: "THIS VEHICLE WAS DELIVERED TO A PREVIOUS PURCHASER." The purchaser shall sign an acknowledgment, a copy of which is kept in the selling dealer's file.

(13) ~~"Used motor vehicle" means any motor vehicle the title to or possession of which has been transferred, at least once, by a from the person who first acquired it from the manufacturer, distributor, importer, or dealer to an ultimate purchaser and which is commonly known as "secondhand" within the ordinary meaning thereof.~~

(16) "Service" means any maintenance or repair of any motor vehicle or used motor vehicle that is sold or provided to an owner, operator, or user pursuant to a motor vehicle warranty, or any extension thereof, issued by the licensee.

Section 2. Subsections (33), (34), and (35) are added to section 320.64, Florida Statutes, to read:

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

(33) The applicant or licensee has attempted to sell or lease, or has sold or leased, used motor vehicles at retail of a line-make that is the subject of any franchise agreement with a motor vehicle dealer in this state, other than trucks with a net weight of more than 8,000 pounds.

(34) The applicant or licensee, after the effective date of this subsection, has included in any franchise agreement with a motor vehicle dealer a mandatory obligation or requirement of the motor vehicle dealer to purchase, sell, or lease, or offer for purchase, sale, or lease, any quantity of used motor vehicles.

(35) The applicant or licensee has refused to assign allocation earned by a motor vehicle dealer, or has refused to sell motor vehicles to a motor vehicle dealer, because the motor vehicle dealer has failed or refused to purchase, sell, lease, or certify a certain quantity of used motor vehicles prescribed by the licensee.

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

Section 3. Paragraph (b) of subsection (2) and subsection (3) of section 320.642, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

320.642 Dealer licenses in areas previously served; procedure.—

(2)

(b) In determining whether the existing franchised motor vehicle dealer or dealers are providing adequate representation in the community or territory for the line-make, the department may consider evidence which may include, but is not limited to:

1. The impact of the establishment of the proposed or relocated dealer on the consumers, public interest, existing dealers, and the licensee; provided, however, that financial impact may only be considered with respect to the protesting dealer or dealers.

2. The size and permanency of investment reasonably made and reasonable obligations incurred by the existing dealer or dealers to perform their obligations under the dealer agreement.

3. The reasonably expected market penetration of the line-make motor vehicle for the community or territory involved, after consideration of all factors which may affect said penetration, including, but not limited to, demographic factors such as age, income, education, size class preference, product popularity, retail lease transactions, or other factors affecting sales to consumers of the community or territory.

4. Any actions by the licensee in denying its existing dealer or dealers of the same line-make the opportunity for reasonable growth, market expansion, or relocation, including the availability of line-make vehicles in keeping with the reasonable expectations of the licensee in providing an adequate number of dealers in the community or territory.

5. Any attempts by the licensee to coerce the existing dealer or dealers into consenting to additional or relocated franchises of the same line-make in the community or territory.

6. Distance, travel time, traffic patterns, and accessibility between the existing dealer or dealers of the same line-make and the location of the proposed additional or relocated dealer.

7. Whether benefits to consumers will likely occur from the establishment or relocation of the dealership which ~~the protesting dealer or dealers prove~~ cannot be obtained by other geographic or demographic changes or expected changes in the community or territory.

8. Whether the protesting dealer or dealers are in substantial compliance with their dealer agreement.

9. Whether there is adequate interbrand and intrabrand competition with respect to said line-make in the community or territory and adequately

convenient consumer care for the motor vehicles of the line-make, including the adequacy of sales and service facilities.

10. Whether the establishment or relocation of the proposed dealership appears to be warranted and justified based on economic and marketing conditions pertinent to dealers competing in the community or territory, including anticipated future changes.

11. The volume of registrations and service business transacted by the existing dealer or dealers of the same line-make in the relevant community or territory of the proposed dealership.

(3) An existing franchised motor vehicle dealer or dealers shall have standing to protest a proposed additional or relocated motor vehicle dealer where the existing motor vehicle dealer or dealers have a franchise agreement for the same line-make vehicle to be sold or serviced by the proposed additional or relocated motor vehicle dealer and are physically located so as to meet or satisfy any of the following requirements or conditions:

(a) If the proposed additional or relocated motor vehicle dealer is to be located in a county with a population of less than 300,000 according to the most recent data of the United States Census Bureau or the data of the Bureau of Economic and Business Research of the University of Florida:

1. The proposed additional or relocated motor vehicle dealer is to be located in the area designated or described as the area of responsibility, or such similarly designated area, including the entire area designated as a multiple-point area, in the franchise agreement or in any related document or commitment with the existing motor vehicle dealer or dealers of the same line-make as such agreement existed upon October 1, 1988;

2. The existing motor vehicle dealer or dealers of the same line-make have a licensed franchise location within a radius of 20 miles of the location of the proposed additional or relocated motor vehicle dealer; or

3. Any existing motor vehicle dealer or dealers of the same line-make can establish that during any 12-month period of the 36-month period preceding the filing of the licensee's application for the proposed dealership, such dealer or its predecessor made 25 percent of its retail sales of new motor vehicles to persons whose registered household addresses were located within a radius of 20 miles of the location of the proposed additional or relocated motor vehicle dealer; provided such existing dealer is located in the same county or any county contiguous to the county where the additional or relocated dealer is proposed to be located.

(b) If the proposed additional or relocated motor vehicle dealer is to be located in a county with a population of more than 300,000 according to the most recent data of the United States Census Bureau or the data of the Bureau of Economic and Business Research of the University of Florida:

1. Any existing motor vehicle dealer or dealers of the same line-make have a licensed franchise location within a radius of 12.5 miles of the location of the proposed additional or relocated motor vehicle dealer; or

2. Any existing motor vehicle dealer or dealers of the same line-make can establish that during any 12-month period of the 36-month period preceding the filing of the licensee's application for the proposed dealership, such dealer or its predecessor made 25 percent of its retail sales of new motor vehicles to persons whose registered household addresses were located within a radius of 12.5 miles of the location of the proposed additional or relocated motor vehicle dealer; provided such existing dealer is located in the same county or any county contiguous to the county where the additional or relocated dealer is proposed to be located.

(6) When a proposed addition or relocation concerns a dealership that performs or is to perform only service, as defined in s. 320.60(16), and will not or does not sell or lease new motor vehicles, as defined in s. 320.60(15), the proposal shall be subject to notice and protest pursuant to the provisions of this section.

(a) Standing to protest the addition or relocation of a service-only dealership shall be limited to those instances in which the applicable mileage requirement established in subparagraphs (3)(a)2. and (3)(b)1. is met.

(b) The addition or relocation of a service-only dealership shall not be subject to protest if:

1. The applicant for the service-only dealership location is an existing motor vehicle dealer of the same line-make as the proposed additional or relocated service-only dealership;

2. There is no existing dealer of the same line-make closer than the applicant to the proposed location of the additional or relocated service-only dealership; and

3. The proposed location of the additional or relocated service-only dealership is at least 7 miles from all existing motor vehicle dealerships of the same line-make, other than motor vehicle dealerships owned by the applicant.

(c) In determining whether existing franchised motor vehicle dealers are providing adequate representations in the community or territory for the line-make in question in a protest of the proposed addition or relocation of a service-only dealership, the department may consider the elements set forth in paragraph (2)(b), provided:

1. With respect to subparagraph (2)(b)1., only the impact as it relates to service may be considered;

2. Subparagraph (2)(b)3. shall not be considered;

3. With respect to subparagraph (2)(b)9., only service facilities shall be considered; and

4. With respect to subparagraph (2)(b)11., only the volume of service business transacted shall be considered.

(d) If an application for a service-only dealership is granted, the department shall issue a license which permits only service, as defined in s. 320.60(16), and does not permit the selling or leasing of new motor vehicles, as defined in s. 320.60(15). If a service-only dealership subsequently seeks to sell new motor vehicles at its location, the notice and protest provisions of this section shall apply.

Section 4. Section 320.643, Florida Statutes, is amended to read:

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

(1)(a) Notwithstanding the terms of any franchise agreement, a licensee shall not, by contract or otherwise, fail or refuse to give effect to, prevent, prohibit, or penalize or attempt to refuse to give effect to, prohibit, or penalize any motor vehicle dealer from selling, assigning, transferring, alienating, or otherwise disposing of its franchise agreement to any other person or persons, including a corporation established or existing for the purpose of owning or holding a franchise agreement, unless the licensee proves at a hearing pursuant to a complaint filed by a motor vehicle dealer under this section that such sale, transfer, alienation, or other disposition is to a person who is not, or whose controlling executive management is not, of good moral character or does not meet the written, reasonable, and uniformly applied standards or qualifications of the licensee relating to financial qualifications of the transferee and business experience of the transferee or the transferee's executive management. A motor vehicle dealer who desires to sell, assign, transfer, alienate, or otherwise dispose of a franchise shall notify, or cause the proposed transferee to notify, the licensee, in writing, setting forth the prospective transferee's name, address, financial qualifications, and business experience during the previous 5 years. A licensee who receives such notice may, within 60 days following such receipt, notify the motor vehicle dealer, in writing, that the proposed transferee is not a person qualified to be a transferee under this section and setting forth the material reasons for such rejection. Failure of the licensee to notify the motor vehicle dealer within the 60-day period of such rejection shall be deemed an approval of the transfer. No such transfer, assign, or sale shall be valid unless the transferee agrees in writing to comply with all requirements of the franchise then in effect. A motor vehicle dealer shall not transfer, assign, or sell a franchise agreement to another person unless the dealer first notifies the licensee of the dealer's decision to make such transfer, by written notice setting forth the prospective transferee's name, address, financial qualification, and business experience during the previous 5 years. The licensee shall, in writing, within 60 days after receipt of such notice, inform the dealer either of the licensee's approval of the transfer, assignment, or sale or of the unacceptability of the proposed transferee, setting forth the material reasons for the rejection. If the licensee does not so inform the dealer within the 60-day period, its approval of the proposed transfer is deemed granted. No such transfer, assignment, or sale will be valid unless the transferee agrees in writing to comply with all requirements of the franchise then in effect. For the purposes of this section, the refusal by the licensee to accept a proposed transferee who is of good moral character and who otherwise meets the written, reasonable, and uniformly applied standards or qualifications, if any, of the licensee relating to financial qualifications of

the transferee and the business experience of the transferee or the transferee's executive management is presumed to be unreasonable.

(b) A motor vehicle dealer whose proposed sale is rejected may, within 60 days following such receipt of such rejection, file with the department a complaint for a determination that the proposed transferee has been rejected in violation of this section. The licensee has the burden of proof with respect to all issues raised by such complaint. The department shall determine, and enter an order providing, that the proposed transferee is either qualified or is not and cannot be qualified for specified reasons, or the order may provide the conditions under which a proposed transferee would be qualified. If the licensee fails to file such a response to the motor vehicle dealer's complaint within 30 days after receipt of the complaint, unless the parties agree in writing to an extension, or if the department, after a hearing, renders a decision other than one disqualifying the proposed transferee, the franchise agreement between the motor vehicle dealer and the licensee shall be deemed amended to incorporate such transfer or amended in accordance with the determination and order rendered, effective upon compliance by the proposed transferee with any conditions set forth in the determination or order.

(2)(a) Notwithstanding the terms of any franchise agreement, a licensee shall not, by contract or otherwise, fail or refuse to give effect to, prevent, prohibit, or penalize, or attempt to refuse to give effect to, prevent, prohibit, or penalize, any motor vehicle dealer or any proprietor, partner, stockholder, owner, or other person who holds or otherwise owns an interest therein from selling, assigning, transferring, alienating, or otherwise disposing of, in whole or in part, the equity interest of any of them in such motor vehicle dealer to any other person or persons, including a corporation established or existing for the purpose of owning or holding the stock or ownership interests of other entities, unless the licensee proves at a hearing pursuant to a complaint filed by a motor vehicle dealer under this section that such sale, transfer, alienation, or other disposition is to a person who is not, or whose controlling executive management is not, of good moral character. A motor vehicle dealer, or any proprietor, partner, stockholder, owner, or other person who holds or otherwise owns an interest in the motor vehicle dealer, who desires to sell, assign, transfer, alienate, or otherwise dispose of any interest in such motor vehicle dealer shall notify, or cause the proposed transferee to so notify, the licensee, in writing, of the identity and address of the proposed transferee. A licensee who receives such notice may, within 60 days following such receipt, notify the motor vehicle dealer in writing that the proposed transferee is not a person qualified to be a transferee under this section and setting forth the material reasons for such rejection. Failure of the licensee to notify the motor vehicle dealer within the 60-day period of such rejection shall be deemed an approval of the transfer. Any person whose proposed sale of stock is rejected may file within 60 days of receipt of such rejection a complaint with the department alleging that the rejection was in violation of the law or the franchise agreement. The licensee has the burden of proof with respect to all issues raised by such complaint. The department shall determine, and enter an order providing, that the proposed transferee either is qualified or is not and cannot be qualified for specified reasons; or the order may provide the conditions under which a

proposed transferee would be qualified. If the licensee fails to file a response to the motor vehicle dealer's complaint within 30 days of receipt of the complaint, unless the parties agree in writing to an extension, or if the department, after a hearing, renders a decision on the complaint other than one disqualifying the proposed transferee, the transfer shall be deemed approved in accordance with the determination and order rendered, effective upon compliance by the proposed transferee with any conditions set forth in the determination or order.

(3)(b) During the pendency of any such hearing, the franchise agreement of the motor vehicle dealer shall continue in effect in accordance with its terms. The department shall expedite any determination requested under this section.

(4)(3) Notwithstanding the terms of any franchise agreement, the acceptance by the licensee of the proposed transferee shall not be unreasonably withheld. For the purposes of this section, the refusal by the licensee to accept a proposed transferee who satisfies the criteria set forth in subsection (1) or subsection (2) is presumed to be unreasonable.

(5) It shall be a violation of this section for the licensee to reject or withhold approval of a proposed transfer unless the licensee can prove in any court of competent jurisdiction in defense of any claim brought pursuant to s. 320.697 that, in fact, the rejection or withholding of approval of the proposed transfer was reasonable. The determination of whether such rejection or withholding was reasonable shall be based on an objective standard. Alleging the permitted statutory grounds by the licensee in the written rejection of the proposed transfer shall not protect the licensee from liability for violating this section.

Section 5. Section 320.644, Florida Statutes, is amended to read:

320.644 Change of executive management control; objection by licensee; procedure.—

(1) Notwithstanding the terms of any franchise agreement, a licensee shall not, by contract or otherwise, fail or refuse to give effect to, prevent, prohibit, or penalize, or attempt to refuse to give effect to, prevent, prohibit, or penalize any motor vehicle dealer from changing its executive management control unless the licensee proves at a hearing pursuant to a complaint filed by a motor vehicle dealer under this section that such change is to a person who is not of good moral character or who does No licensee shall prohibit or prevent, or attempt to prohibit or prevent, any motor vehicle dealer from changing the executive management control of the motor vehicle dealer unless the proposed change of executive management control of the motor vehicle dealer is to a person or persons not of good moral character or who do not meet the written, reasonable, and uniformly applied standards of the licensee relating to the business experience of executive management required by the licensee of its motor vehicle dealers. A motor vehicle dealer who desires to change its executive management control shall notify the licensee by written notice, setting forth the name, address, and business experience of the proposed executive management. A licensee who receives such notice shall, in writing may, within 60 days following such receipt,

inform the motor vehicle dealer either of the approval of the proposed change in executive management or the unacceptability of the proposed change. If the licensee does not so inform the motor vehicle dealer within the 60-day period, its approval of the proposed change is deemed granted. A motor vehicle dealer whose proposed change is rejected may, within 60 days following receipt of such rejection, file with the department a complaint for a determination that the proposed change of executive management has been rejected in violation of this section. The licensee has the burden of proof with respect to all issues raised by such complaint. The department shall determine, and enter an order providing, that the person proposed for the change is either qualified or is not and cannot be qualified for specific reasons, or the order may provide the conditions under which a proposed executive manager would be qualified. If the licensee fails to file a response to the motor vehicle dealer's complaint within 30 days after receipt of the complaint, unless the parties agree in writing to an extension, or if the department after a hearing renders a decision other than one disqualifying the person proposed for the change, the franchise agreement between the motor vehicle dealer and the licensee shall be deemed amended to incorporate such change or amended in accordance with the determination or order rendered, effective upon compliance by the person proposed for the change with any conditions set forth in the determination or order file with the department a verified complaint for a determination that the proposed change of executive management will result in executive management control by persons who are not of good moral character or who do not meet such licensee's standards. The licensee has the burden of proof with respect to all issues raised by such verified complaint. If the licensee fails to file such verified complaint within such 60-day period or if the department, after a hearing, dismisses the complaint, the franchise agreement between the motor vehicle dealer and the licensee shall be deemed amended to incorporate such change or amended in accordance with the decision rendered. For the purpose of this section, the mere termination of employment of executive management, including the dealer/operator or such similarly designated person or persons, shall not be deemed to be a change in executive management or a transfer of the franchise. Provided, however, the designation of replacement executive management shall be subject to this section.

(2) For the purpose of this section, the mere termination of employment of executive management shall not be deemed to be a change in executive management or a transfer of the franchise; however, the proposal of replacement executive management shall be subject to During the pendency of any such hearing, the franchise agreement of the motor vehicle dealer shall continue in effect in accordance with its terms. The department shall expedite any determination requested under this section.

(3) For the purpose of this section, the term "executive management" means, and is limited to, the person or persons designated under the franchise agreement as the dealer-operator, executive manager, or similarly designated persons who are responsible for the overall day-to-day operation of the dealership. A motor vehicle dealer may change all other dealership personnel without seeking approval from the licensee.

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

(5) It shall be a violation of this section for the licensee to reject or withhold approval of a proposed transfer unless the licensee can prove in any court of competent jurisdiction in defense of any claim brought pursuant to s. 320.697 that, in fact, the rejection or withholding of approval of the proposed transfer was reasonable. The determination of whether such rejection or withholding was reasonable shall be based on an objective standard. Alleging the permitted statutory grounds by the licensee in the written rejection of the proposed transfer shall not protect the licensee from liability for violating this section.

Section 6. Subsection (4) of section 320.645, Florida Statutes, is amended to read:

320.645 Restriction upon ownership of dealership by licensee.—

~~(4) Nothing in this chapter section shall prohibit a distributor licensee-distributor as defined in s. 320.60(5) or common entity that is not a manufacturer, a division of a manufacturer, an entity that is controlled by a manufacturer, or a common entity of a manufacturer, and that is not owned, in whole or in part, directly or indirectly, by a manufacturer, as defined in s. 320.60(9), and that has owned and operated a motor vehicle dealership in this state on or before July 1, 1996, other than a motor vehicle dealership permitted by paragraph (1)(b), from receiving a license or licenses as defined in s. 320.27 and while owning and operating a motor vehicle dealership or dealerships that sell or service sells or services motor vehicles other than any line-make of motor vehicles distributed by the distributor licensee-distributor.~~

Section 7. Subsection (2) of section 501.976, Florida Statutes, is amended to read:

501.976 Actionable, unfair, or deceptive acts or practices.—It is an unfair or deceptive act or practice, actionable under the Florida Deceptive and Unfair Trade Practices Act, for a dealer to:

~~(2) Represent directly or indirectly that a vehicle is a demonstrator unless the vehicle was driven by prospective customers of a dealership selling the vehicle and such vehicle complies with the definition of a demonstrator in s. 320.60(3).~~

In any civil litigation resulting from a violation of this section, when evaluating the reasonableness of an award of attorney's fees to a private person, the trial court shall consider the amount of actual damages in relation to the time spent.

Section 8. This act shall take effect upon becoming a law.

Approved by the Governor June 26, 2003.

Filed in Office Secretary of State June 26, 2003.