Fla. Stat. § 320.0104

Current through sections amended effective May 6, 2022.

LexisNexis® Florida Annotated Statutes > Title XXIII. Motor Vehicles. (Chs. 316 — 325) > Chapter 320. Motor Vehicle Licenses. (§§ 320.01 — 320.96)

§ 320.0104. Legislative intent with respect to implementation of chapter.

(1) It is the intent of the Legislature that the provisions of this chapter be implemented in such a manner that the convenience of the applicant is the first consideration.

(2) Further, it is the intent of the Legislature that all services affecting motor carriers be consolidated in order to encourage interstate commerce and achieve maximum efficiency in registration, permitting, and safety programs administered by this state. In order to achieve this goal, Florida must join the cooperative effort that is being conducted on the national level by Congress, the United States Department of Transportation, and other groups to achieve uniformity among the jurisdictions and reduce the number of separate reports required by each jurisdiction of the motor carrier industry. Florida shall consolidate all requirements imposed on motor carriers operating in this state and shall actively negotiate reciprocal agreements and compacts with other jurisdictions to accomplish the intent of this chapter.

History

S. 2, ch. 83-318; s. 44, ch. 85-180.

End of Document

Fla. Stat. § 320.27

Current through sections amended effective May 6, 2022.

LexisNexis® Florida Annotated Statutes > Title XXIII. Motor Vehicles. (Chs. 316 — 325) > Chapter 320. Motor Vehicle Licenses. (§§ 320.01 — 320.96)

§ 320.27. Motor vehicle dealers.

(1) Definitions. — The following words, terms, and phrases when used in this section have the meanings respectively ascribed to them in this subsection, except where the context clearly indicates a different meaning:

(a) "Department" means the Department of Highway Safety and Motor Vehicles.

(b) "Motor vehicle" means any motor vehicle of the type and kind required to be registered and titled under chapter 319 and this chapter, except a recreational vehicle, moped, motorcycle powered by a motor with a displacement of 50 cubic centimeters or less, or mobile home.

(c) "Motor vehicle dealer" means any person engaged in the business of buying, selling, or dealing in motor vehicles or offering or displaying motor vehicles for sale at wholesale or retail, or who may service and repair motor vehicles pursuant to an agreement as defined in s. 320.60(1). Any person who buys, sells, or deals in three or more motor vehicles in any 12-month period or who offers or displays for sale three or more motor vehicles in any 12-month period shall be prima facie presumed to be engaged in such business. The terms "selling" and "sale" include lease-purchase transactions. A motor vehicle dealer may, at retail or wholesale, sell a recreational vehicle as described in s. 320.01(1)(b)1.-6. and 8., acquired in exchange for the sale of a motor vehicle, provided such acquisition is incidental to the principal business of being a motor vehicle dealer. However, a motor vehicle dealer may not buy a recreational vehicle for the purpose of resale unless licensed as a recreational vehicle dealer pursuant to s. 320.771. A motor vehicle dealer may apply for a certificate of title to a motor vehicle required to be registered under s. 320.08(2)(b), (c), and (d), using a manufacturer's statement of origin as permitted by s. 319.23(1), only if such dealer is authorized by a franchised agreement as defined in s. 320.60(1), to buy, sell, or deal in such vehicle and is authorized by such agreement to perform delivery and preparation obligations and warranty defect adjustments on the motor vehicle; provided this limitation shall not apply to recreational vehicles, van conversions, or any other motor vehicle manufactured on a truck chassis. The transfer of a motor vehicle by a dealer not meeting these qualifications shall be titled as a used vehicle. The classifications of motor vehicle dealers are defined as follows:

1. "Franchised motor vehicle dealer" means any person who engages in the business of repairing, servicing, buying, selling, or dealing in motor vehicles pursuant to an agreement as defined in s. 320.60(1).

2. "Independent motor vehicle dealer" means any person other than a franchised or wholesale motor vehicle dealer who engages in the business of buying, selling, or dealing in motor vehicles, and who may service and repair motor vehicles.

3. "Wholesale motor vehicle dealer" means any person who engages exclusively in the business of buying, selling, or dealing in motor vehicles at wholesale or with motor vehicle auctions. Such person shall be licensed to do business in this state, shall not sell or auction a vehicle to any person who is not a licensed dealer, and shall not have the privilege of the use of dealer license plates. Any person who buys, sells, or deals in motor vehicles at wholesale or with motor vehicle auctions on behalf of a licensed motor vehicle dealer and as a bona fide employee of such licensed motor vehicle dealer is not required to be licensed as a wholesale motor vehicle dealer. In such

cases it shall be prima facie presumed that a bona fide employer-employee relationship exists. A wholesale motor vehicle dealer shall be exempt from the display provisions of this section but shall maintain an office wherein records are kept in order that those records may be inspected.

4. "Motor vehicle auction" means any person offering motor vehicles or recreational vehicles for sale to the highest bidder where buyers are licensed motor vehicle dealers. Such person shall not sell a vehicle to anyone other than a licensed motor vehicle dealer.

5. "Salvage motor vehicle dealer" means any person who engages in the business of acquiring salvaged or wrecked motor vehicles for the purpose of reselling them and their parts.

The term "motor vehicle dealer" does not include persons not engaged in the purchase or sale of motor vehicles as a business who are disposing of vehicles acquired for their own use or for use in their business or acquired by foreclosure or by operation of law, provided such vehicles are acquired and sold in good faith and not for the purpose of avoiding the provisions of this law; persons engaged in the business of manufacturing, selling, or offering or displaying for sale at wholesale or retail no more than 25 trailers in a 12-month period; public officers while performing their official duties; receivers; trustees, administrators, executors, guardians, or other persons appointed by, or acting under the judgment or order of, any court; banks, finance companies, or other loan agencies that acquire motor vehicles as an incident to their regular business; motor vehicle brokers; and motor vehicle rental and leasing companies that sell motor vehicles to motor vehicle dealers licensed under this section. Vehicles owned under circumstances described in this paragraph may be disposed of at retail, wholesale, or auction, unless otherwise restricted. A manufacturer of fire trucks, ambulances, or school buses may sell such vehicles directly to governmental agencies or to persons who contract to perform or provide firefighting, ambulance, or school transportation services exclusively to governmental agencies without processing such sales through dealers if such fire trucks, ambulances, school buses, or similar vehicles are not presently available through motor vehicle dealers licensed by the department.

(d) "Motor vehicle broker" means any person engaged in the business of offering to procure or procuring motor vehicles for the general public, or who holds himself or herself out through solicitation, advertisement, or otherwise as one who offers to procure or procures motor vehicles for the general public, and who does not store, display, or take ownership of any vehicles for the purpose of selling such vehicles.

(e) "Person" means any natural person, firm, partnership, association, or corporation.

(f) "Bona fide employee" means a person who is employed by a licensed motor vehicle dealer and receives annually an Internal Revenue Service Form W-2, or an independent contractor who has a written contract with a licensed motor vehicle dealer and receives annually an Internal Revenue Service Form 1099, for the purpose of acting in the capacity of or conducting motor vehicle sales transactions as a motor vehicle dealer.

(2) License required. — No person shall engage in business as, serve in the capacity of, or act as a motor vehicle dealer in this state without first obtaining a license therefor in the appropriate classification as provided in this section. With the exception of transactions with motor vehicle auctions, no person other than a licensed motor vehicle dealer may advertise for sale any motor vehicle belonging to another party unless as a direct result of a bona fide legal proceeding, court order, settlement of an estate, or by operation of law. However, owners of motor vehicles titled in their names may advertise and offer vehicles for sale on their own behalf. It shall be unlawful for a licensed motor vehicle dealer to allow any person other than a bona fide employee to use the motor vehicle dealer license for the purpose of acting in the capacity of or conducting motor vehicle sales transactions as a motor vehicle dealer. Any person selling or offering a motor vehicle for sale in violation of the licensing requirements of this subsection, or who misrepresents to any person its relationship with any manufacturer, importer, or distributor, in addition to the penalties provided herein, shall be deemed guilty of an unfair and deceptive trade practice as defined in part II of chapter 501 and shall be subject to the provisions of subsections (8) and (9).

(3) Application and fee. — APPLICATION AND FEE. –The application for the license shall be in such form as may be prescribed by the department and shall be subject to such rules with respect thereto as may be so prescribed by it. Such application shall be verified by oath or affirmation and shall contain a full statement of the name and birth date of the person or persons applying therefor; the name of the firm or copartnership, with the names and places of residence of all members thereof, if such applicant is a firm or copartnership; the names and places of residence of the principal officers, if the applicant is a body corporate or other artificial body; the name of the state under whose laws the corporation is organized; the present and former place or places of residence of the applicant; and prior business in which the applicant has been engaged and the location thereof. Such application shall describe the exact location of the place of business and shall state whether the place of business is owned by the applicant and when acquired, or, if leased, a true copy of the lease shall be attached to the application. The applicant shall certify that the location provides an adequately equipped office and is not a residence; that the location affords sufficient unoccupied space upon and within which adequately to store all motor vehicles offered and displayed for sale; and that the location is a suitable place where the applicant can in good faith carry on such business and keep and maintain books, records, and files necessary to conduct such business, which shall be available at all reasonable hours to inspection by the department or any of its inspectors or other employees. The applicant shall certify that the business of a motor vehicle dealer is the principal business which shall be conducted at that location. The application shall contain a statement that the applicant is either franchised by a manufacturer of motor vehicles, in which case the name of each motor vehicle that the applicant is franchised to sell shall be included, or an independent (nonfranchised) motor vehicle dealer. The application shall contain other relevant information as may be required by the department, including evidence that the applicant is insured under a garage liability insurance policy or a general liability insurance policy coupled with a business automobile policy, which shall include, at a minimum, $25,000 combined single-limit liability coverage including bodily injury and property damage protection and $10,000 personal injury protection. However, a salvage motor vehicle dealer as defined in subparagraph (1)(c)5. is exempt from the requirements for garage liability insurance and personal injury protection insurance on those vehicles that cannot be legally operated on roads, highways, or streets in this state. Franchise dealers must submit a garage liability insurance policy, and all other dealers must submit a garage liability insurance policy or a general liability insurance policy coupled with a business automobile policy. Such policy shall be for the license period, and evidence of a new or continued policy shall be delivered to the department at the beginning of each license period. A licensee shall deliver to the department, in the manner prescribed by the department, within 10 calendar days after any renewal or continuation of or change in such policy or within 10 calendar days after any issuance of a new policy, a copy of the renewed, continued, changed, or new policy. Upon making initial application, the applicant shall pay to the department a fee of $300 in addition to any other fees required by law. Applicants may choose to extend the licensure period for 1 additional year for a total of 2 years. An initial applicant shall pay to the department a fee of $300 for the first year and $75 for the second year, in addition to any other fees required by law. An applicant for renewal shall pay to the department $75 for a 1 year renewal or $150 for a 2-year renewal, in addition to any other fees required by law. Upon making an application for a change of location, the person shall pay a fee of $50 in addition to any other fees now required by law. The department shall, in the case of every application for initial licensure, verify whether certain facts set forth in the application are true. Each applicant, general partner in the case of a partnership, or corporate officer and director in the case of a corporate applicant, must file a set of fingerprints with the department for the purpose of determining any prior criminal record or any outstanding warrants. The department shall submit the fingerprints to the Department of Law Enforcement for state processing and forwarding to the Federal Bureau of Investigation for federal processing. The actual cost of state and federal processing shall be borne by the applicant and is in addition to the fee for licensure. The department may issue a license to an applicant pending the results of the fingerprint investigation, which license is fully revocable if the department subsequently determines that any facts set forth in the application are not true or correctly represented.

(4) License certificate.

(a) A license certificate shall be issued by the department in accordance with such application when the application is regular in form and in compliance with the provisions of this section. The license certificate may be in the form of a document or a computerized card as determined by the department. The actual cost of each original, additional, or replacement computerized card shall be borne by the licensee and is in addition to the fee for licensure. Such license, when so issued, entitles the licensee to carry on and conduct the business of a motor vehicle dealer. Each license issued to a franchise motor vehicle dealer expires on December 31 of the year of its expiration unless revoked or suspended prior to that date. Each license issued to an independent or wholesale dealer or auction expires on April 30 of the year of its expiration unless revoked or suspended prior to that date. At least 60 days before the license expiration date, the department shall deliver or mail to each licensee the necessary renewal forms. Each independent dealer shall certify that the dealer (owner, partner, officer, or director of the licensee, or a full-time employee of the licensee that holds a responsible management-level position) has completed 8 hours of continuing education prior to filing the renewal forms with the department. Such certification shall be filed once every 2 years. The continuing education shall include at least 2 hours of legal or legislative issues, 1 hour of department issues, and 5 hours of relevant motor vehicle industry topics. Continuing education shall be provided by dealer schools licensed under paragraph (b) either in a classroom setting or by correspondence. Such schools shall provide certificates of completion to the department and the customer which shall be filed with the license renewal form, and such schools may charge a fee for providing continuing education. Any licensee who does not file his or her application and fees and any other requisite documents, as required by law, with the department at least 30 days prior to the license expiration date shall cease to engage in business as a motor vehicle dealer on the license expiration date. A renewal filed with the department within 45 days after the expiration date shall be accompanied by a delinquent fee of $100. Thereafter, a new application is required, accompanied by the initial license fee. A license certificate duly issued by the department may be modified by endorsement to show a change in the name of the licensee, provided, as shown by affidavit of the licensee, the majority ownership interest of the licensee has not changed or the name of the person appearing as franchisee on the sales and service agreement has not changed. Modification of a license certificate to show any name change as herein provided shall not require initial licensure or reissuance of dealer tags; however, any dealer obtaining a name change shall transact all business in and be properly identified by that name. All documents relative to licensure shall reflect the new name. In the case of a franchise dealer, the name change shall be approved by the manufacturer, distributor, or importer. A licensee applying for a name change endorsement shall pay a fee of $25 which fee shall apply to the change in the name of a main location and all additional locations licensed under the provisions of subsection (5). Each initial license application received by the department shall be accompanied by verification that, within the preceding 6 months, the applicant, or one or more of his or her designated employees, has attended a training and information seminar conducted by a licensed motor vehicle dealer training school. Any applicant for a new franchised motor vehicle dealer license who has held a valid franchised motor vehicle dealer license continuously for the past 2 years and who remains in good standing with the department is exempt from the prelicensing training requirement. Such seminar shall include, but is not limited to, statutory dealer requirements, which requirements include required bookkeeping and recordkeeping procedures, requirements for the collection of sales and use taxes, and such other information that in the opinion of the department will promote good business practices. No seminar may exceed 8 hours in length.

(b) Each initial license application received by the department for licensure under subparagraph (1)(c)2. shall be accompanied by verification that, within the preceding 6 months, the applicant (owner, partner, officer, or director of the applicant, or a full-time employee of the applicant that holds a responsible management-level position) has successfully completed training conducted by a licensed motor vehicle dealer training school. Such training must include training in titling and registration of motor vehicles, laws relating to unfair and deceptive trade practices, laws relating to financing with regard to buy-here, pay-here operations, and such other information that in the opinion of the department will promote good business practices. Successful completion of this training shall be determined by examination administered at the end of the course and attendance of no less than 90

percent of the total hours required by such school. Any applicant who had held a valid motor vehicle dealer's license continuously within the past 2 years and who remains in good standing with the department is exempt from the prelicensing requirements of this section. The department shall have the authority to adopt any rule necessary for establishing the training curriculum; length of training, which shall not exceed 8 hours for required department topics and shall not exceed an additional 24 hours for topics related to other regulatory agencies' instructor qualifications; and any other requirements under this section. The curriculum for other subjects shall be approved by any and all other regulatory agencies having jurisdiction over specific subject matters; however, the overall administration of the licensing of these dealer schools and their instructors shall remain with the department. Such schools are authorized to charge a fee.

(5) Supplemental license. — Any person licensed under this section shall obtain a supplemental license for each permanent additional place or places of business not contiguous to the premises for which the original license is issued, on a form to be furnished by the department, and upon payment of a fee of $50 for each such additional location. Applicants may choose to extend the licensure period for 1 additional year for a total of 2 years. The applicant shall pay to the department a fee of $50 for the first year and $50 for the second year for each such additional location. Thereafter, the applicant shall pay $50 for a 1-year renewal or $100 for a 2-year renewal for each such additional location. A supplemental license authorizing off-premises sales shall be issued, at no charge to the dealer, for a period not to exceed 10 consecutive calendar days. To obtain such a temporary supplemental license for off-premises sales, the applicant must be a licensed dealer; must notify the applicable local department office of the specific dates and location for which such license is requested, display a sign at the licensed location clearly identifying the dealer, and provide staff to work at the temporary location for the duration of the off-premises sale; must meet any local government permitting requirements; and must have permission of the property owner to sell at that location. In the case of an off-premises sale by a motor vehicle dealer licensed under subparagraph (1)(c)1. for the sale of new motor vehicles, the applicant must also include documentation notifying the applicable licensee licensed under s. 320.61 of the intent to engage in an off-premises sale 5 working days prior to the date of the off-premises sale. The licensee shall either approve or disapprove of the off-premises sale within 2 working days after receiving notice; otherwise, it will be deemed approved. This section does not apply to a nonselling motor vehicle show or public display of new motor vehicles.

(6) Records to be kept by licensee. — Every licensee shall keep a book or record in either paper or electronic form as prescribed or approved by the department for a period of 5 years, in which the licensee shall keep a record of the purchase, sale, or exchange, or receipt for the purpose of sale, of any motor vehicle, the date upon which any temporary tag was issued, the date of title transfer, and a description of such motor vehicle together with the name and address of the seller, the purchaser, and the alleged owner or other person from whom such motor vehicle was purchased or received or to whom it was sold or delivered, as the case may be. Such description shall include the identification or engine number, maker's number, if any, chassis number, if any, and such other numbers or identification marks as may be thereon and shall also include a statement that a number has been obliterated, defaced, or changed, if such is the fact. When a licensee chooses to maintain electronic records, the original paper documents may be destroyed after the licensee successfully transfers title and registration to the purchaser as required by chapter 319 for any purchaser who titles and registers the motor vehicle in this state. In the case of a sale to a purchaser who will title and register the motor vehicle in another state or country, the licensee may destroy the original paper documents after successfully delivering a lawfully reassigned title or manufacturer's certificate or statement of origin to the purchaser and after producing electronic images of all documents related to the sale.

(7) Certificate of title required. — For each used motor vehicle in the possession of a licensee and offered for sale by him or her, the licensee either shall have in his or her possession or control a duly assigned certificate of title from the owner in accordance with the provisions of chapter 319, from the time when the motor vehicle is delivered to the licensee and offered for sale by him or her until it has been disposed of by the licensee, or shall have reasonable indicia of ownership or right of possession, or shall have made proper application for a certificate of title or duplicate certificate of title in accordance with the provisions of chapter 319. A motor vehicle dealer may not sell or offer for sale a vehicle in his or her

possession unless the dealer satisfies the requirements of this subsection. Reasonable indicia of ownership shall include a duly assigned certificate of title; in the case of a new motor vehicle, a manufacturer's certificate of origin issued to or reassigned to the dealer; a consignment contract between the owner and the dealer along with a secure power of attorney from the owner to the dealer authorizing the dealer to apply for a duplicate certificate of title and assign the title on behalf of the owner; a court order awarding title to the vehicle to the dealer; a salvage certificate of title; a photocopy of a duly assigned certificate of title being held by a financial institution as collateral for a business loan of money to the dealer ("floor plan"); a copy of a canceled check or other documentation evidencing that an outstanding lien on a vehicle taken in trade by a licensed dealer has been satisfied and that the certificate of title will be, but has not yet been, received by the dealer; a vehicle purchase order or installment contract for a specific vehicle identifying that vehicle as a trade-in on a replacement vehicle; or a duly executed odometer disclosure statement as required by Title IV of the Motor Vehicle Information and Cost Savings Act of 1972 (Pub. L. No. 92-513, as amended by Pub. L. No. 94-364 and Pub. L. No. 100-561) and by 49 C.F.R. part 580 bearing the signatures of the titled owners of a traded-in vehicle.

(8) Penalty. — Any person found guilty of violating any of the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(9) Denial, suspension, or revocation.

(a) The department may deny, suspend, or revoke any license issued hereunder or under the provisions of s. 320.77 or s. 320.771 upon proof that an applicant or a licensee has:

1. Committed fraud or willful misrepresentation in application for or in obtaining a license.

2. Been convicted of a felony.

3. Failed to honor a bank draft or check given to a motor vehicle dealer for the purchase of a motor vehicle by another motor vehicle dealer within 10 days after notification that the bank draft or check has been dishonored. If the transaction is disputed, the maker of the bank draft or check shall post a bond in accordance with the provisions of s. 559.917, and no proceeding for revocation or suspension shall be commenced until the dispute is resolved.

4.

a. Failed to provide payment within 10 business days to the department for a check payable to the department that was dishonored due to insufficient funds in the amount due plus any statutorily authorized fee for uttering a worthless check. The department shall notify an applicant or licensee when the applicant or licensee makes payment to the department by a check that is subsequently dishonored by the bank due to insufficient funds. The applicant or licensee shall, within 10 business days after receiving the notice, provide payment to the department in the form of cash in the amount due plus any statutorily authorized fee. If the applicant or licensee fails to make such payment within 10 business days, the department may deny, suspend, or revoke the applicant's or licensee's motor vehicle dealer license.

b. Stopped payment on a check payable to the department, issued a check payable to the department from an account that has been closed, or charged back a credit card transaction to the department. If an applicant or licensee commits any such act, the department may deny, suspend, or revoke the applicant's or licensee's motor vehicle dealer license.

(b) The department may deny, suspend, or revoke any license issued hereunder or under the provisions of s. 320.77 or s. 320.771 upon proof that a licensee has committed, with sufficient frequency so as to establish a pattern of wrongdoing on the part of a licensee, violations of one or more of the following activities:

1. Representation that a demonstrator is a new motor vehicle, or the attempt to sell or the sale of a demonstrator as a new motor vehicle without written notice to the purchaser that the vehicle is a demonstrator. For the purposes of this section, a "demonstrator," a "new motor vehicle," and a "used motor vehicle" shall be defined as under s. 320.60.

2. Unjustifiable refusal to comply with a licensee's responsibility under the terms of the new motor vehicle warranty issued by its respective manufacturer, distributor, or importer. However, if such refusal is at the direction of the manufacturer, distributor, or importer, such refusal shall not be a ground under this section.

3. Misrepresentation or false, deceptive, or misleading statements with regard to the sale or financing of motor vehicles which any motor vehicle dealer has, or causes to have, advertised, printed, displayed, published, distributed, broadcast, televised, or made in any manner with regard to the sale or financing of motor vehicles.

4. Failure by any motor vehicle dealer to provide a customer or purchaser with an odometer disclosure statement and a copy of any bona fide written, executed sales contract or agreement of purchase connected with the purchase of the motor vehicle purchased by the customer or purchaser.

5. Failure of any motor vehicle dealer to comply with the terms of any bona fide written, executed agreement, pursuant to the sale of a motor vehicle.

6. Failure to apply for transfer of a title as prescribed in s. 319.23(6).

7. Use of the dealer license identification number by any person other than the licensed dealer or his or her designee.

8. Failure to continually meet the requirements of the licensure law.

9. Representation to a customer or any advertisement to the public representing or suggesting that a motor vehicle is a new motor vehicle if such vehicle lawfully cannot be titled in the name of the customer or other member of the public by the seller using a manufacturer's statement of origin as permitted in s. 319.23(1).

10. Requirement by any motor vehicle dealer that a customer or purchaser accept equipment on his or her motor vehicle which was not ordered by the customer or purchaser.

11. Requirement by any motor vehicle dealer that any customer or purchaser finance a motor vehicle with a specific financial institution or company.

12. Requirement by any motor vehicle dealer that the purchaser of a motor vehicle contract with the dealer for physical damage insurance.

13. Perpetration of a fraud upon any person as a result of dealing in motor vehicles, including, without limitation, the misrepresentation to any person by the licensee of the licensee's relationship to any manufacturer, importer, or distributor.

14. Violation of any of the provisions of s. 319.35 by any motor vehicle dealer.

15. Sale by a motor vehicle dealer of a vehicle offered in trade by a customer prior to consummation of the sale, exchange, or transfer of a newly acquired vehicle to the customer, unless the customer provides written authorization for the sale of the trade-in vehicle prior to delivery of the newly acquired vehicle.

16. Willful failure to comply with any administrative rule adopted by the department or the provisions of s. 320.131(8).

17. Violation of chapter 319, this chapter, or ss. 559.901-559.9221, which has to do with dealing in or repairing motor vehicles or mobile homes. Additionally, in the case of used motor vehicles, the willful violation of the federal law and rule in 15 U.S.C. s. 2304, 16 C.F.R. part 455, pertaining to the consumer sales window form.

18. Failure to maintain evidence of notification to the owner or co-owner of a vehicle regarding registration or titling fees owed as required in s. 320.02(17).

19. Failure to register a mobile home salesperson with the department as required by this section.

(c) When a motor vehicle dealer is convicted of a crime which results in his or her being prohibited from continuing in that capacity, the dealer may not continue in any capacity within the industry. The offender shall have no financial interest, management, sales, or other role in the operation of a dealership. Further, the offender may not derive income from the dealership beyond reasonable compensation for the sale of his or her ownership interest in the business.

(10) Surety bond or irrevocable letter of credit required.

(a) Annually, before any license shall be issued to a motor vehicle dealer, the applicant-dealer of new or used motor vehicles shall deliver to the department a good and sufficient surety bond or irrevocable letter of credit, executed by the applicant-dealer as principal, in the sum of $25,000. A licensee shall deliver to the department, in the manner prescribed by the department, within 10 calendar days after any renewal or continuation of or change in such surety bond or irrevocable letter of credit or within 10 calendar days after any issuance of a new surety bond or irrevocable letter of credit, a copy of such renewed, continued, changed, or new surety bond or irrevocable letter of credit.

(b) Surety bonds and irrevocable letters of credit shall be in a form to be approved by the department and shall be conditioned that the motor vehicle dealer shall comply with the conditions of any written contract made by such dealer in connection with the sale or exchange of any motor vehicle and shall not violate any of the provisions of chapter 319 and this chapter in the conduct of the business for which the dealer is licensed. Such bonds and letters of credit shall be to the department and in favor of any person in a retail or wholesale transaction who shall suffer any loss as a result of any violation of the conditions hereinabove contained. When the department determines that a person has incurred a loss as a result of a violation of chapter 319 or this chapter, it shall notify the person in writing of the existence of the bond or letter of credit. Such bonds and letters of credit shall be for the license period, and a new bond or letter of credit or a proper continuation certificate shall be delivered to the department at the beginning of each license period. However, the aggregate liability of the surety in any one year shall in no event exceed the sum of the bond or, in the case of a letter of credit, the aggregate liability of the issuing bank shall not exceed the sum of the credit.

(c) Surety bonds shall be executed by a surety company authorized to do business in the state as surety, and irrevocable letters of credit shall be issued by a bank authorized to do business in the state as a bank.

(d) Irrevocable letters of credit shall be engaged by a bank as an agreement to honor demands for payment as specified in this section.

(e) The department shall, upon denial, suspension, or revocation of any license, notify the surety company of the licensee, or bank issuing an irrevocable letter of credit for the licensee, in writing, that the license has been denied, suspended, or revoked and shall state the reason for such denial, suspension, or revocation.

(f) Any surety company which pays any claim against the bond of any licensee or any bank which honors a demand for payment as a condition specified in a letter of credit of a licensee shall notify the department in writing that such action has been taken and shall state the amount of the claim or payment.

(g) Any surety company which cancels the bond of any licensee or any bank which cancels an irrevocable letter of credit shall notify the department in writing of such cancellation, giving reason for the cancellation.

(11) Injunction. — In addition to the remedies provided in this chapter and notwithstanding the existence of any adequate remedy at law, the department is authorized to make application to any circuit court of the state, and such circuit court shall have jurisdiction, upon a hearing and for cause shown, to grant a temporary or permanent injunction, or both, restraining any person from acting as a motor vehicle dealer under the terms of this section without being properly licensed hereunder, from violating or continuing to violate any of the provisions of chapter 319, this chapter, or ss. 559.901-559.9221, or for failing or refusing to comply with the requirements of chapter 319, this chapter, or ss. 559.901-559.9221, or any rule or

regulation adopted thereunder, such injunction to be issued without bond. A single act in violation of the provisions of chapter 319, this chapter, or chapter 559 shall be sufficient to authorize the issuance of an injunction.

(12) Civil fines; procedure. — In addition to the exercise of other powers provided in this section, the department may levy and collect a civil fine, in an amount not to exceed $1,000 for each violation, against any licensee if it finds that the licensee has violated any provision of this section or has violated any other law of this state or the federal law and administrative rule set forth in paragraph (9)(a) related to dealing in motor vehicles. Any licensee shall be entitled to a hearing pursuant to chapter 120 if the licensee contests the fine levied, or about to be levied, upon him or her.

(13) Deposit and use of fees. — The fees charged applicants for both the required background investigation and the computerized card as provided in this section shall be deposited into the Highway Safety Operating Trust Fund and shall be used to cover the cost of such service.

(14) Exemption. — The provisions of this section do not apply to persons who sell or deliver motorized disability access vehicles as defined in s. 320.01.

History

S. 11, ch. 9157, 1923; CGL 1060, 7452; ss. 1, 2, ch. 23660, 1947; ss. 10, 11, ch. 28186, 1953; s. 1, ch. 57-404; s. 1, ch. 59-238; ss. 1, 2, ch. 63-349; s. 6, ch. 65-190; s. 1, ch. 65-235; s. 1, ch. 67-93; ss. 24, 35, ch. 69-106; s. 1, ch. 70-424; s. 1, ch. 70-439; s. 200, ch. 71-136; s. 94, ch. 71-377; s. 1, ch. 75-203; s. 3, ch. 76-168; s. 21, ch. 77-357; s. 1, ch. 77-457; s. 20, ch. 78-95; s. 2, ch. 78-183; ss. 2, 15, 17, ch. 80-217; ss. 2, 3, ch. 81-318; s. 3, ch. 82-129; s. 24, ch. 82-134; s. 16, ch. 83-218; s. 7, ch. 84-155; s. 4, ch. 85-176; ss. 8, 9, ch. 86-185; s. 22, ch. 86-243; s. 14, ch. 87-161; ss. 2, 20, 21, ch. 88-395; s. 9, ch. 89-333; s. 3, ch. 90-163; s. 246, ch. 91-224; s. 4, ch. 91-429; s. 68, ch. 93-120; s. 16, ch. 93-219; s. 64, ch. 94-306; s. 916, ch. 95-148; ss. 18, 24, 65, ch. 95-333; s. 43, ch. 96-413; s. 52, ch. 97-100; s. 35, ch. 99-248; ss. 30, 31, ch. 2000-313; s. 69, ch. 2001-61; ss. 31, 40, ch. 2001-196; s. 44, ch. 2002-1; s. 14, ch. 2002-235; ss. 15, 66, ch. 2005-164; s. 32, ch. 2006-1, eff. July 4, 2006; s. 1, ch. 2006-183, eff. July 1, 2006; s. 35, ch. 2006-290, eff. Oct. 1, 2006; s. 24, ch. 2008-176, eff. Oct. 1, 2008; s. 11, ch. 2010-198, eff. July 1, 2010; s. 1, ch. 2012-151, eff. July 1, 2012; s. 42, ch. 2012-181, eff. Jan. 1, 2013; s. 42, ch. 2013-160, eff. July 1, 2013; s. 2, ch. 2018-42, effective October 1, 2018; s. 2, ch. 2018-42, effective October 1, 2018; s. 7, ch. 2021-188, effective July 1, 2021.

Annotations

LexisNexis® Notes

Notes

Amendment Notes

The 2005 amendment by s. 15, ch. 2005-164, effective July 1, 2005, added (9)(b)18.

The 2005 amendment by s. 66, ch. 2005-164, effective July 1, 2005, in (4)(a), inserted sentences eight through twelve and substituted “a licensed motor vehicle dealer training school” for “the department” at the end of the third to the last sentence; in (6), inserted “for a period of 5 years” in the first sentence; and, in (9)(b)16., added “or the provisions of s. 320.131(8).”

The 2006 amendment by s. 32, ch. 2006-1, effective July 4, 2006, in (9)(b)18., substituted “owed” for “owned” to conform to context, and substituted “s. 320.02(17)” for “s. 320.02(19).”

The 2006 amendment by s. 1, ch. 2006-183, effective July 1, 2006, in (4)(a), substituted “dealer (owner, partner...management-level position)” for “dealer principal (owner, partner, officer of the corporation, or director)” in the eighth sentence and inserted the third to the last sentence; and in (4)(b), substituted “applicant (owner, partner...management-level position)” for “applicant (owner, partner, officer of the corporation, or director)” in the first sentence and deleted the former fifth sentence.

The 2006 amendment by s. 35, ch. 2006-290, effective October 1, 2006, in (4)(a), in the eighth sentence, deleted “principal” following “dealer” and “of the corporation” following “officer,” and inserted “of the licensee, or a full-time employee of the licensee that holds a responsible management-level position,” and added the third-to-last sentence; in (4)(b), in the first sentence deleted “of the corporation” following “officer,” and inserted “of the licensee, or a full-time employee of the licensee that holds a responsible management-level position,” and deleted the former fifth sentence, relating to nonresident applicants; and added (9)(b)19.

The 2008 amendment by s. 24, ch. 2008-176, effective October 1, 2008, in (3), in the seventh sentence, inserted “or a general liability insurance policy coupled with a business automobile policy,” added the eighth sentence, and in the ninth sentence, twice substituted “applicant” for “person applying thereof”; and corrected the section reference in (9)(b)18.

The 2010 amendment deleted “commencing with the 2006 renewal period” at the end of the ninth sentence of (4)(a); in the fourth sentence of (4)(b), added “continuously,” added “prelicensing,” and substituted “section” for “paragraph”; deleted the former last sentence of (4)(b), which read: “This privatized method for training applicants for dealer licensing pursuant to subparagraph (1)(c)2. is a pilot program that shall be evaluated by the department after it has been in operation for a period of 2 years”; in (6), substituted “either paper or electronic form” for “such form” in the first sentence and added the last two sentences; in the introductory language of (9)(a), added “an applicant or” and deleted “committed any of the following activities” at the end; substituted “Committed” for “Commission of” in (9)(a)1.; added (9)(a)4.; and made stylistic changes.

The 2012 amendment by s. 1, ch. 2012-151, effective July 1, 2012, added the eighth sentence of (3).

The 2012 amendment by s. 42, ch. 2012-181, effective January 1, 2013, also added the eighth sentence of (3); and made stylistic changes throughout (3).

The 2013 amendment, in (3), deleted “now” after “other fees,” added the twelfth through fourteenth sentences, and deleted former twelfth sentence, which read: “Upon making a subsequent renewal application, the applicant shall pay to the department a fee of $75 in addition to any other fees now required by law”; in (4)(a), substituted “on December 31 of the year of its expiration” for “annually on December 31” in the fifth sentence and substituted “on April 30 of the year of its expiration” for “annually on April 30” in the sixth sentence; in (5), substituted “under this section” for “hereunder” in the first sentence, added the second through fourth sentence, and deleted former second sentence of (5), which read: “Upon making renewal applications for such supplemental licenses, such applicant shall pay $50 for each additional location”; and made stylistic changes.

The 2018 amendment by s. 2, ch. 2018-042 substituted “s. 320.02(17)” for “s. 320.02(16)” in (9)(b)18.

Case Notes

Administrative Law: Agency Rulemaking: General Overview

Antitrust & Trade Law: Consumer Protection: Deceptive Acts & Practices: General Overview

Antitrust & Trade Law: Consumer Protection: Vehicle Warranties: General Overview

Banking Law: Bonds, Guarantees & Letters of Credit: General Overview

Business & Corporate Law: Distributorships & Franchises: Causes of Action: General Overview

Civil Procedure: Justiciability: Standing: General Overview

Civil Procedure: Summary Judgment: Standards: General Overview

Civil Procedure: Remedies: Bonds: Sureties: General Overview

Civil Procedure: Remedies: Bonds: Sureties: Liability

Civil Procedure: Remedies: Costs & Attorney Fees: General Overview

Civil Procedure: Remedies: Costs & Attorney Fees: Attorney Expenses & Fees: Statutory Awards

Commercial Law (UCC): Secured Transactions (Article 9): General Overview

Commercial Law (UCC): Secured Transactions (Article 9): Default: Creditor Misbehavior

Contracts Law: Contract Conditions & Provisions: Waivers: General Overview

Contracts Law: Contract Interpretation: Good Faith & Fair Dealing

Contracts Law: Third Parties: Beneficiaries: Types: Intended Beneficiaries

Contracts Law: Types of Contracts: Bilateral Contracts

Governments: Legislation: Interpretation

Governments: Legislation: Statutory Remedies & Rights

Governments: State & Territorial Governments: Licenses

Insurance Law: Business Insurance: Fidelity Insurance: Damages

Insurance Law: Claims & Contracts: Costs & Attorney Fees: General Overview

Insurance Law: Motor Vehicle Insurance: Vehicle Ownership: Automobile Dealers

Transportation Law: Private Vehicles: Vehicle Registration: General Overview

Administrative Law: Agency Rulemaking: General Overview

Respondent motor vehicle division lacked authority to consider applications and issue dealer licenses pursuant to Fla. Stat. § 320.27 because authority rested in highway safety and motor vehicles department, of which respondent was a component, and such authority was not delegable to respondent. Kawasaki of Tampa, Inc. v. Calvin, 348 So. 2d 897, 1977 Fla. App. LEXIS 16389 (Fla. 1st DCA 1977).

Antitrust & Trade Law: Consumer Protection: Deceptive Acts & Practices: General Overview

Purchaser was not entitled to recovery for the surety's failure to disclose under Fla. Stat. § 320.27(9); Fla. Stat. § 320.27(9) required an affirmative act of misrepresentation or fraud; however, the purchaser should have been given an opportunity to amend in order to plead the action because the allegations in the original complaint showed that the purchaser may have had a cause of action under Fla. Stat. § 320.27(9). Newkirk v. Balboa Ins. Co., 397 So. 2d 937, 1981 Fla. App. LEXIS 19161 (Fla. 3rd DCA 1981).

Antitrust & Trade Law: Consumer Protection: Vehicle Warranties: General Overview

Fee award against an insurance company for attorney's fees and costs was reversed because it was wrongly issued under Fla. Stat. § 501.2105, in addition to the fact that it exceeded the bond amount, thus, the case was remanded to the trial court to enter a new fee award against it under Fla. Stat. § 627.428, that was capped at $ 25,000, which was less the damages owed to appellant for the successful underlying. Sanchez v. AN Luxury Imps. of Pembroke Pines, Inc., 216 So. 3d 723, 2017 Fla. App. LEXIS 5057 (Fla. 4th DCA 2017).

Banking Law: Bonds, Guarantees & Letters of Credit: General Overview

Trial court properly granted summary judgment to a surety, concluding that: (1) two debtors could not recover under a surety bond issued in the surety's favor; (2) the debtors were not proper claimants under the bond, because their contract had been assigned to a successor creditor; and (3) the successor creditor was the party who repossessed the vehicle. Furthermore, the debtors' claim that they did not know who actually repossessed their vehicle was insufficient to create a genuine issue of fact. Price v. RLI Ins. Co., 914 So. 2d 1010, 2005 Fla. App. LEXIS 17338 (Fla. 5th DCA 2005).

The language of Fla. Stat. § 320.27, requiring car dealers to post a surety bond or irrevocable letter of credit, is not limited to direct purchasers from a car dealer but requires that the bond extend such protection to "any person" in a retail or wholesale transaction who suffers any loss as a result of any violation of the specified conditions or conduct. United Pac. Ins. Co. v. Berryhill, 620 So. 2d 1077, 1993 Fla. App. LEXIS 6736 (Fla. 5th DCA 1993).

Business & Corporate Law: Distributorships & Franchises: Causes of Action: General Overview

Lender was entitled to recover under the surety bond required of a motor vehicle dealer by Fla. Stat. § 320.27(10), where the lender provided floor plan financing to enable the dealer to purchase three cars, where the dealer gave the lender the certificates of title to the cars as security, where the lender violated Fla. Stat. § 319.19 by fraudulently obtaining duplicate certificates of title to the cars, and where the dealer sold the cars and retained the monies from the sale instead of paying the sums to the lender pursuant to the agreement between the parties. Interstate Sec. Co. v. Hamrick's Auto Sales, Inc., 238 So. 2d 482, 1970 Fla. App. LEXIS 6007 (Fla. 1st DCA 1970).

Civil Procedure: Justiciability: Standing: General Overview

Under Fla. Stat. § 320.27(10)(b), a floor plan financier could not recover on a surety bond issued by a surety for a used car dealer because the financier's floor plan lending was not a retail or wholesale transaction; thus, the financier was not an intended beneficiary under the statute and lacked standing to proceed. Automotive Fin. Corp. v. RWO, Inc., 734 So. 2d 1104, 1999 Fla. App. LEXIS 5641 (Fla. 2nd DCA 1999).

Civil Procedure: Summary Judgment: Standards: General Overview

Purchaser was not entitled to recovery for the surety's failure to disclose under Fla. Stat. § 320.27(9); Fla. Stat. § 320.27(9) required an affirmative act of misrepresentation or fraud; however, the purchaser should have been given an opportunity to amend in order to plead the action because the allegations in the original complaint showed that the purchaser may have had a cause of action under Fla. Stat. § 320.27(9). Newkirk v. Balboa Ins. Co., 397 So. 2d 937, 1981 Fla. App. LEXIS 19161 (Fla. 3rd DCA 1981).

Civil Procedure: Remedies: Bonds: Sureties: General Overview

Because Fla. Stat. § 627.428 did apply to sureties that issued motor vehicle dealer bonds under Fla. Stat. § 320.27(10) and the surety fit the definition of insurer for purposes of applying the provisions of § 627.428, trial court erred in denying purchasers' motion for attorney's fees in action against a car dealer and its surety. Snow v. Jim Rathman Chevrolet, Inc., 39 So. 3d 368, 2010 Fla. App. LEXIS 8762 (Fla. 5th DCA 2010).

Civil Procedure: Remedies: Bonds: Sureties: Liability

Under Fla. Stat. § 320.27(10)(b), a floor plan financier could not recover on a surety bond issued by a surety for a used car dealer because the financier's floor plan lending was not a retail or wholesale transaction; thus, the financier was not an intended beneficiary under the statute and lacked standing to proceed. Automotive Fin. Corp. v. RWO, Inc., 734 So. 2d 1104, 1999 Fla. App. LEXIS 5641 (Fla. 2nd DCA 1999).

Consumer was not entitled to recover attorney's fees from a surety company because the surety bond did not have a provision for attorney's fees and because Fla. Stat. § 501.2105, the attorney fee provision of the Florida Deceptive and Unfair Trade Practices Act, did not reference Fla. Stat. § 320.27, which required auto dealers to post a bond to cover consumer losses. Aetna Cas. & Sur. Co. v. Hubbel, 704 So. 2d 1141, 1998 Fla. App. LEXIS 703 (Fla. 5th DCA 1998).

The language of Fla. Stat. § 320.27, requiring car dealers to post a surety bond or irrevocable letter of credit, is not limited to direct purchasers from a car dealer but requires that the bond extend such protection to "any person" in a retail or wholesale transaction who suffers any loss as a result of any violation of the specified conditions or conduct. United Pac. Ins. Co. v. Berryhill, 620 So. 2d 1077, 1993 Fla. App. LEXIS 6736 (Fla. 5th DCA 1993).

Lender was entitled to recover under the surety bond required of a motor vehicle dealer by Fla. Stat. § 320.27(10), where the lender provided floor plan financing to enable the dealer to purchase three cars, where the dealer gave the lender the certificates of title to the cars as security, where the lender violated Fla. Stat. § 319.19 by fraudulently obtaining duplicate certificates of title to the cars, and where the dealer sold the cars and retained the monies from the sale instead of paying the sums to the lender pursuant to the agreement between the parties. Interstate Sec. Co. v. Hamrick's Auto Sales, Inc., 238 So. 2d 482, 1970 Fla. App. LEXIS 6007 (Fla. 1st DCA 1970).

Civil Procedure: Remedies: Costs & Attorney Fees: General Overview

Fla. Stat. § 320.27 did not provide for attorney fees in consolidated cases where plaintiffs asserted losses covered by a motor vehicle dealer's bond. Hubbel v. Aetna Cas. & Sur. Co., 758 So. 2d 94, 2000 Fla. LEXIS 771 (Fla. 2000).

Where the buyer obtained a judgment against the seller of a car for fraud and deceptive trade practices and obtained payment under the seller's surety bond pursuant to Fla. Stat. § 320.27(10), the buyer was not entitled to collect attorney's fees under the bond if the bond did not contain a provision for an award of attorney's fees; attorney fees were not considered part of a plaintiff's damages, and thus could not be recovered pursuant to a bond unless the bond itself provided for such recovery. Aetna Cas. & Sur. Co. v. Hubbel, 704 So. 2d 1141, 1998 Fla. App. LEXIS 703 (Fla. 5th DCA 1998).

Civil Procedure: Remedies: Costs & Attorney Fees: Attorney Expenses & Fees: Statutory Awards

Fee award against an insurance company for attorney's fees and costs was reversed because it was wrongly issued under Fla. Stat. § 501.2105, in addition to the fact that it exceeded the bond amount, thus, the case was remanded to the trial court to enter a new fee award against it under Fla. Stat. § 627.428, that was capped at $ 25,000, which was less the damages owed to appellant for the successful underlying. Sanchez v. AN Luxury Imps. of Pembroke Pines, Inc., 216 So. 3d 723, 2017 Fla. App. LEXIS 5057 (Fla. 4th DCA 2017).

Commercial Law (UCC): Secured Transactions (Article 9): General Overview

Plaintiff financier could not file action under Fla. Stat. § 320.27(10)(b) against defendant auto dealer to recover funds advanced under a security agreement, because the lending of money was not a retail or wholesale transaction as defined in the statute. Automotive Fin. Corp. v. RWO, Inc., 734 So. 2d 1104, 1999 Fla. App. LEXIS 5641 (Fla. 2nd DCA 1999).

Commercial Law (UCC): Secured Transactions (Article 9): Default: Creditor Misbehavior

Whether Fla. Stat. § 320.27(9) provides for a private cause of action against a surety is neither dispositive of the litigation nor is it material in any way to a determination of the cause of action alleged in the complaint when the complaint relies upon the Bond itself. Williams v. CVT, LLC, 295 So. 3d 883, 2020 Fla. App. LEXIS 5925 (Fla. 2nd DCA 2020).

The trial court erred granting summary judgment to the dealership based on concluding that Fla. Stat. § 320.27(9) did not provide for a private cause of action on the bond to be brought by a vehicle purchaser against a surety who issues the bond as the complaint filed by the buyer arose under the terms of the Bond, as opposed to the statute. Williams v. CVT, LLC, 295 So. 3d 883, 2020 Fla. App. LEXIS 5925 (Fla. 2nd DCA 2020).

Contracts Law: Contract Conditions & Provisions: Waivers: General Overview

Sophisticated commercial exporter who negotiated a contract with a motor vehicle manufacturer at arm's length, and who neither applied for nor received a franchised motor vehicle dealer's license pursuant to Fla. Stat. § 320.27(2), was not protected under the Automobile Dealer Day in Court Act, 15 U.S.C.S. § 1221 et seq., the Florida Motor Vehicle Dealer Act, Fla. Stat. § 320.27, or the Florida Automobile Franchise Act, Fla. Stat. § 320.60 et seq., which were designed to protect a business whose relative size made it impossible to bargain effectively with a manufacturer, as was evidenced in Fla. Stat. § 320.64; thus, the contract's provision waiving relief under the statutes was valid because it was highly doubtful that they applied to the parties. Chrysler Int'l Corp. v. Cherokee Export Co., 134 F.3d 738, 1998 FED App. 0014P, 1998 U.S. App. LEXIS 415 (6th Cir. Mich. 1998).

Contracts Law: Contract Interpretation: Good Faith & Fair Dealing

Sophisticated commercial exporter who negotiated a contract with a motor vehicle manufacturer at arm's length, and who neither applied for nor received a franchised motor vehicle dealer's license pursuant to Fla. Stat. § 320.27(2), was not protected under the Automobile Dealer Day in Court Act, 15 U.S.C.S. § 1221 et seq., the Florida Motor Vehicle Dealer Act, Fla. Stat. § 320.27, or the Florida Automobile Franchise Act, Fla. Stat. § 320.60 et seq., which were designed to protect a business whose relative size made it impossible to bargain effectively with a manufacturer, as was evidenced in Fla. Stat. § 320.64; thus, the contract's provision waiving relief under the statutes was valid because it was highly doubtful that they applied to the parties. Chrysler Int'l Corp. v. Cherokee Export Co., 134 F.3d 738, 1998 FED App. 0014P, 1998 U.S. App. LEXIS 415 (6th Cir. Mich. 1998).

Contracts Law: Third Parties: Beneficiaries: Types: Intended Beneficiaries

Whether Fla. Stat. § 320.27(9) provides for a private cause of action against a surety is neither dispositive of the litigation nor is it material in any way to a determination of the cause of action alleged in the complaint when the complaint relies upon the Bond itself. Williams v. CVT, LLC, 295 So. 3d 883, 2020 Fla. App. LEXIS 5925 (Fla. 2nd DCA 2020).

The trial court erred granting summary judgment to the dealership based on concluding that Fla. Stat. § 320.27(9) did not provide for a private cause of action on the bond to be brought by a vehicle purchaser against a surety who

issues the bond as the complaint filed by the buyer arose under the terms of the Bond, as opposed to the statute. Williams v. CVT, LLC, 295 So. 3d 883, 2020 Fla. App. LEXIS 5925 (Fla. 2nd DCA 2020).

Contracts Law: Types of Contracts: Bilateral Contracts

Sophisticated commercial exporter who negotiated a contract with a motor vehicle manufacturer at arm's length, and who neither applied for nor received a franchised motor vehicle dealer's license pursuant to Fla. Stat. § 320.27(2), was not protected under the Automobile Dealer Day in Court Act, 15 U.S.C.S. § 1221 et seq., the Florida Motor Vehicle Dealer Act, Fla. Stat. § 320.27, or the Florida Automobile Franchise Act, Fla. Stat. § 320.60 et seq., which were designed to protect a business whose relative size made it impossible to bargain effectively with a manufacturer, as was evidenced in Fla. Stat. § 320.64; thus, the contract's provision waiving relief under the statutes was valid because it was highly doubtful that they applied to the parties. Chrysler Int'l Corp. v. Cherokee Export Co., 134 F.3d 738, 1998 FED App. 0014P, 1998 U.S. App. LEXIS 415 (6th Cir. Mich. 1998).

Governments: Legislation: Interpretation

Upon a car dealer's criminal convictions, the Florida Department of Highway Safety and Motor Vehicles, Division of Motor Vehicles, was authorized, pursuant to Fla. Stat. § 320.27(9), to require the dealer to divest himself of his ownership of 50 percent of the shares in his dealership, as such constituted a financial interest in the same. Roman Fedo, Inc. v. Dep't of Highway Safety & Motor Vehicles, Div. of Motor Vehicles, 889 So. 2d 179, 2004 Fla. App. LEXIS 19139 (Fla. 4th DCA 2004).

Governments: Legislation: Statutory Remedies & Rights

Plaintiff finance company was not eligible to make a claim for payment of defaulted contracts under a license bond issued to a motor vehicle dealer by dealer's insurance company pursuant to Fla. Stat. § 320.27; plaintiff was not within the class of persons afforded coverage by the bond under the statute. Dealers Acceptance Corp. v. United Pac. Ins. Co., 763 So. 2d 528, 2000 Fla. App. LEXIS 9434 (Fla. 4th DCA 2000).

Governments: State & Territorial Governments: Licenses

Director of motor vehicles division correctly construed application filed by car dealer as a new application under Fla. Stat. § 320.642 rather than an application for supplemental license by existing dealer to be processed under Fla. Stat. § 320.27(5) because Fla. Stat. § 320.642 could not be circumvented by construing Fla. Stat. § 320.27(5) to allow issuance under it of a supplemental license to a corporation other than the original licensee. Home Volkswagen, Inc. v. Calvin, 338 So. 2d 1287, 1976 Fla. App. LEXIS 15851 (Fla. 1st DCA 1976).

Insurance Law: Business Insurance: Fidelity Insurance: Damages

Where the buyer obtained a judgment against the seller of a car for fraud and deceptive trade practices and obtained payment under the seller's surety bond pursuant to Fla. Stat. § 320.27(10), the buyer was not entitled to collect attorney's fees under the bond if the bond did not contain a provision for an award of attorney's fees; attorney fees were not considered part of a plaintiff's damages, and thus could not be recovered pursuant to a bond unless the bond itself provided for such recovery. Aetna Cas. & Sur. Co. v. Hubbel, 704 So. 2d 1141, 1998 Fla. App. LEXIS 703 (Fla. 5th DCA 1998).

Consumer was not entitled to recover attorney's fees from a surety company because the surety bond did not have a provision for attorney's fees and because Fla. Stat. § 501.2105, the attorney fee provision of the Florida Deceptive and Unfair Trade Practices Act, did not reference Fla. Stat. § 320.27, which required auto dealers to post

a bond to cover consumer losses. Aetna Cas. & Sur. Co. v. Hubbel, 704 So. 2d 1141, 1998 Fla. App. LEXIS 703 (Fla. 5th DCA 1998).

Insurance Law: Claims & Contracts: Costs & Attorney Fees: General Overview

Consumer was not entitled to recover attorney's fees from a surety company because the surety bond did not have a provision for attorney's fees and because Fla. Stat. § 501.2105, the attorney fee provision of the Florida Deceptive and Unfair Trade Practices Act, did not reference Fla. Stat. § 320.27, which required auto dealers to post a bond to cover consumer losses. Aetna Cas. & Sur. Co. v. Hubbel, 704 So. 2d 1141, 1998 Fla. App. LEXIS 703 (Fla. 5th DCA 1998).

Insurance Law: Motor Vehicle Insurance: Vehicle Ownership: Automobile Dealers

Because Fla. Stat. § 627.428 did apply to sureties that issued motor vehicle dealer bonds under Fla. Stat. § 320.27(10) and the surety fit the definition of insurer for purposes of applying the provisions of § 627.428, trial court erred in denying purchasers' motion for attorney's fees in action against a car dealer and its surety. Snow v. Jim Rathman Chevrolet, Inc., 39 So. 3d 368, 2010 Fla. App. LEXIS 8762 (Fla. 5th DCA 2010).

Transportation Law: Private Vehicles: Vehicle Registration: General Overview

Director of motor vehicles division correctly construed application filed by car dealer as a new application under Fla. Stat. § 320.642 rather than an application for supplemental license by existing dealer to be processed under Fla. Stat. § 320.27(5) because Fla. Stat. § 320.642 could not be circumvented by construing Fla. Stat. § 320.27(5) to allow issuance under it of a supplemental license to a corporation other than the original licensee. Home Volkswagen, Inc. v. Calvin, 338 So. 2d 1287, 1976 Fla. App. LEXIS 15851 (Fla. 1st DCA 1976).

Opinion Notes

OPINIONS OF ATTORNEY GENERAL

Until and unless judicially or legislatively determined to the contrary: 1) a motor vehicle dealer may conduct his business at the same location in more than one fictitious name under a single license issued to the dealership pursuant to Fla. Stat. § 320.27(3), (1980 Supp.); 2) the Department of Highway Safety and Motor Vehicles is not authorized by the provisions of Fla. Stat. § 320.27(10), (1980 Supp.), to require an applicant for a motor vehicle dealer's license to submit one surety bond for each fictitious name used by the applicant-dealer. AGO 1981-95, 1981 Fla. AG LEXIS 8; 1981 Op. Att'y Gen. Fla. 254.

The provisions of Fla. Stat. §§ 320.27(10)(c), 320.77(14)(d) and 320.8225(5)(f), which require a surety company which cancels a surety bond of a licensed dealer or manufacturer or terminates its liability as surety thereunder to give the Department of Highway Safety and Motor Vehicles written notification thereof and the reason therefor, do not require such surety to give the Department of Highway Safety and Motor Vehicles such written notification prior to the cancellation of or the termination of its liability as surety under any such surety bond or contract, and do not make the giving of such written notification a condition precedent to the legal effectiveness of any such cancellation or termination of liability as surety. AGO 1981-35, 1981 Fla. AG LEXIS 70; 1981 Op. Att'y Gen. Fla. 111.

Fla. Stat. §§ 320.27(10)(c), 320.77(14)(d) and 320.8225(5)(f) do not require the prescribed notification procedure to be made a part of or to be recited in any surety bond or contract of suretyship entered into by a surety company and its principals/licensees, and such incorporation or recitation is not necessary to implement the provisions of these statutes. AGO 1981-35, 1981 Fla. AG LEXIS 70; 1981 Op. Att'y Gen. Fla. 111.

Unless and until legislatively or judicially determined otherwise, mobile home brokers who act as agents or middlemen on behalf of the sellers of mobile homes and who take neither title nor possession of mobile homes are not authorized or required to be licensed as mobile home and recreational vehicle “dealers” under Fla. Stat. § 320.77. AGO 1981-16, 1981 Fla. AG LEXIS 87; 1981 Op. Att'y Gen. Fla. 458.

Except as modified by the fact that s. 2, ch. 80-217, Laws of Florida, and Fla. Stat. § 320.27(1)(c), specifically excludes new motor vehicle dealers from the licensure requirements contained in Fla. Stat. § 320.27. AGO 1981-16 is reaffirmed; mobile home brokers who act as agents or middlemen on behalf of the sellers of mobile homes, neither taking title nor possession of mobile homes, are not authorized or required to be licensed as mobile home or recreational vehicle “dealers” under Fla. Stat. § 320.77. AGO 1981-16A (Supplement to 081-16), 1981 Fla. AG LEXIS 74; 1981 Op. Att'y Gen. Fla. 478.

An automobile brokerage service is a motor vehicle dealer as defined in s. 320.27, F.S., for which a license is required in order to operate. AGO 1975-3, 1975 Fla. AG LEXIS 23.

A motor vehicle dealer who sells as a new car a motor vehicle that has been repossessed by him from the original purchaser is guilty of a deceptive trade practice, as defined in § 817.71, F. S., and of a misrepresentation with regard to the sale of motor vehicles, as denounced by § 320.27(9)(e), id., AGO 1972-369, 1972 Fla. AG LEXIS 372; 1972 Op. Att'y Gen. Fla. 635.

Research References & Practice Aids

RESEARCH REFERENCES & PRACTICE AIDS

Florida Statutes references.

Chapter 316. State Uniform Traffic Control, F.S. § 316.1951. Parking for certain purposes prohibited; sale of motor vehicles; prohibited acts.

Chapter 316. State Uniform Traffic Control, F.S. § 316.2935. Air pollution control equipment; tampering prohibited; penalty.

Chapter 319. Title Certificates, F.S. § 319.001. Definitions.

Chapter 319. Title Certificates, F.S. § 319.21. Necessity of manufacturer’s statement of origin and certificate of title.

Chapter 319. Title Certificates, F.S. § 319.30. Definitions; dismantling, destruction, change of identity of motor vehicle or mobile home; salvage.

Chapter 319. Title Certificates, F.S. § 319.33. Offenses involving vehicle identification numbers, applications, certificates, papers; penalty.

Chapter 320. Motor Vehicle Licenses, F.S. § 320.02. Registration required; application for registration; forms.

Chapter 320. Motor Vehicle Licenses, F.S. § 320.131. Temporary tags.

Chapter 320. Motor Vehicle Licenses, F.S. § 320.1316. Failure to surrender vehicle or vessel.

Chapter 320. Motor Vehicle Licenses, F.S. § 320.273. Reinstatement of license of motor vehicle dealers.

Chapter 320. Motor Vehicle Licenses, F.S. § 320.28. Nonresident dealers in secondhand motor vehicles, recreational vehicles, or mobile homes.

Chapter 320. Motor Vehicle Licenses, F.S. § 320.60. Definitions for ss. 320.61-320.70.

Chapter 320. Motor Vehicle Licenses, F.S. § 320.61. Licenses required of motor vehicle manufacturers, distributors, importers, etc.

Chapter 320. Motor Vehicle Licenses, F.S. § 320.641. Discontinuations, cancellations, nonrenewals, modifications, and replacement of franchise agreements.

Chapter 320. Motor Vehicle Licenses, F.S. § 320.6415. Changes in plan or system of distribution.

Chapter 320. Motor Vehicle Licenses, F.S. § 320.645. Restriction upon ownership of dealership by licensee.

Chapter 320. Motor Vehicle Licenses, F.S. § 320.77. License required of mobile home dealers.

Chapter 320. Motor Vehicle Licenses, F.S. § 320.771. License required of recreational vehicle dealers.

Chapter 320. Motor Vehicle Licenses, F.S. § 320.865. Maintenance of records by the department.

Chapter 501. Consumer Protection, F.S. § 501.021. Home solicitation sale; definitions.

Chapter 501. Consumer Protection, F.S. § 501.975. Definitions.

Chapter 537. Title Loans, F.S. § 537.012. Repossession, disposal of pledged property; excess proceeds.

Chapter 538. Secondhand Dealers and Secondary Metals Recyclers, F.S. § 538.03. Definitions; applicability.

Chapter 559. Regulation of Trade, Commerce, and Investments, Generally, F.S. § 559.902. Scope and application.

Chapter 559. Regulation of Trade, Commerce, and Investments, Generally, F.S. § 559.9221. Motor Vehicle Repair Advisory Council.

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Chapter 12A-1 Sales and Use Tax, F.A.C. 12A-1.039 Sales for Resale.

Chapter 12A-13 Fee on the Sale or Lease of Motor Vehicles, F.A.C. 12A-13.002 Collection and Remittance of Fee.

Chapter 15C-1 General, F.A.C. 15C-1.003 Temporary Tags; Definitions and Use.

Chapter 15C-7 Motor Vehicle Dealers, F.A.C. 15C-7.002 Motor Vehicle, Mobile Home and Recreational Vehicle Dealers' Records; Maintenance Requirements; Accessibility; Retention; Penalties.

Chapter 15C-7 Motor Vehicle Dealers, F.A.C. 15C-7.003 Application for License; Requirements for Office, Display Space and Operation; Denial, Suspension or Revocation; Implementation.

Chapter 15C-7 Motor Vehicle Dealers, F.A.C. 15C-7.004 Special Requirements for the Licensing of a Franchise Motor Vehicle Dealer.

Chapter 15C-7 Motor Vehicle Dealers, F.A.C. 15C-7.005 Unauthorized Additional Motor Vehicle Dealerships — Unauthorized Supplemental Dealership Locations.

Chapter 15C-8 Illegal Parking of Vehicles for Purpose of Sale or Rental, F.A.C. 15C-8.002 Written Notice, Content.

Chapter 15C-17 Electronic Temporary Plate Transfer, F.A.C. 15C-17.002 Exemptions, Restrictions and Enforcement.

Chapter 15C-18 Electronic Filing System, F.A.C. 15C-18.007 Enforcement; Service Providers; EFS Agents; Tax Collectors.

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Chapter 62-243 Tampering with Motor Vehicle Air Pollution Control Equipment, F.A.C. 62-243.400 Prohibitions.

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Fla. Stat. § 320.273

Current through sections amended effective May 6, 2022.

LexisNexis® Florida Annotated Statutes > Title XXIII. Motor Vehicles. (Chs. 316 — 325) > Chapter 320. Motor Vehicle Licenses. (§§ 320.01 — 320.96)

§ 320.273. Reinstatement of license of motor vehicle dealers.

When the license of a motor vehicle dealer has been revoked or suspended by the department pursuant to the provisions of s. 320.27, the department may for good cause reinstate the license of any former licensee under this law if it determines that said former licensee is rehabilitated, meets the requirements of s. 320.27, files an application for license pursuant to s. 320.27(3), and complies with said section.

History

S. 2, ch. 70-424; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 20, ch. 78-95; ss. 15, 17, ch. 80-217; ss. 2, 3, ch. 81-318; ss. 20, 21, ch. 88-395; s. 4, ch. 91-429.

Annotations

Research References & Practice Aids

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Review of Florida Legislation; New Regulations For Motor Vehicle Manufacturers and New Protections For Their Franchisees, Mary E. Haskins and Walter E. Forehand, Fall 1988, 16 Fla. St. U.L. Rev. 763.

End of Document

Fla. Stat. § 320.275

Current through sections amended effective May 6, 2022.

LexisNexis® Florida Annotated Statutes > Title XXIII. Motor Vehicles. (Chs. 316 — 325) > Chapter 320. Motor Vehicle Licenses. (§§ 320.01 — 320.96)

§ 320.275. Automobile Dealers Industry Advisory Board.

(1) Automobile Dealers Industry Advisory Board. — The Automobile Dealers Industry Advisory Board is created within the Department of Highway Safety and Motor Vehicles. The board shall make recommendations on proposed legislation, make recommendations on proposed rules and procedures, present licensed motor vehicle dealer industry issues to the department for its consideration, consider any matters relating to the motor vehicle dealer industry presented to it by the department, and submit an annual report to the executive director of the department and file copies with the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(2) Membership, terms, meetings.

(a) The board shall be composed of 12 members. The executive director of the Department of Highway Safety and Motor Vehicles shall appoint the members from names submitted by the entities for the designated categories the member will represent. The executive director shall appoint one representative of the Department of Highway Safety and Motor Vehicles; two representatives of the independent motor vehicle industry as recommended by the Florida Independent Automobile Dealers Association; two representatives of the franchise motor vehicle industry as recommended by the Florida Automobile Dealers Association; one representative of the auction motor vehicle industry who is from an auction chain and is recommended by a group affiliated with the National Auto Auction Association; one representative of the auction motor vehicle industry who is from an independent auction and is recommended by a group affiliated with the National Auto Auction Association; one representative from the Department of Revenue; a Florida tax collector representative recommended by the Florida Tax Collectors Association; one representative from the Better Business Bureau; one representative from the Department of Agriculture and Consumer Services, who must represent the Division of Consumer Services; and one representative of the insurance industry who writes motor vehicle dealer surety bonds.

(b)

1. The executive director shall appoint the following initial members to 1-year terms: one representative from the motor vehicle auction industry who represents an auction chain, one representative from the independent motor vehicle industry, one representative from the franchise motor vehicle industry, one representative from the Department of Revenue, one Florida tax collector, and one representative from the Better Business Bureau.

2. The executive director shall appoint the following initial members to 2-year terms: one representative from the motor vehicle auction industry who represents an independent auction, one representative from the independent motor vehicle industry, one representative from the franchise motor vehicle industry, one representative from the Division of Consumer Services, one representative from the insurance industry, and one representative from the department.

3. As the initial terms expire, the executive director shall appoint successors from the same designated category for terms of 2 years. If renominated, a member may succeed himself or herself.

4. The board shall appoint a chair and vice chair at its initial meeting and every 2 years thereafter.

(c) The board shall meet at least two times per year. Meetings may be called by the chair of the board or by the executive director of the department. One meeting shall be held in the fall of the year to review legislative proposals. The board shall conduct all meetings in accordance with applicable Florida Statutes and shall keep minutes of all meetings. Meetings may be held in locations around the state in department facilities or in other appropriate locations.

(3) Per diem, travel, and staffing. — Members of the board from the private sector are not entitled to per diem or reimbursement for travel expenses. However, members of the board from the public sector are entitled to reimbursement, if any, from their respective agency. Members of the board may request assistance from the Department of Highway Safety and Motor Vehicles as necessary.

History

S. 27, ch. 2001-196; s. 19, ch. 2011-66, eff. July 1, 2011.

Annotations

Notes

Amendments.

The 2011 amendment deleted “who must represent the Division of Motor Vehicles” following “and Motor Vehicles” in the third sentence of (2)(a) and substituted “department” for “Division of Motor Vehicles” in (2)(b)2.

End of Document

Fla. Stat. § 320.31

Current through sections amended effective May 6, 2022.

LexisNexis® Florida Annotated Statutes > Title XXIII. Motor Vehicles. (Chs. 316 — 325) > Chapter 320. Motor Vehicle Licenses. (§§ 320.01 — 320.96)

§ 320.31. Definitions covering ss. 320.28 and 320.30.

The terms “dealer” and “vendor,” used in ss. 320.28 and 320.30, shall be construed to include every individual, partnership, corporation or trust whose business in whole or in part, is that of selling new or used motor vehicles and likewise shall be construed to include every agent, representative, or consignee of any such dealer as defined above, as fully as if same had been herein expressly set out.

History

S. 4, ch. 17113, 1935; s. 4, ch. 18032, 1937; CGL 1940 Supp. 1317(4), (9); s. 7, ch. 24337, 1947; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 15, 17, ch. 80-217; ss. 2, 3, ch. 81-318; ss. 20, 21, ch. 88-395; s. 4, ch. 91-429.

End of Document

Fla. Stat. § 320.3201

Current through sections amended effective May 6, 2022.

LexisNexis® Florida Annotated Statutes > Title XXIII. Motor Vehicles. (Chs. 316 — 325) > Chapter 320. Motor Vehicle Licenses. (§§ 320.01 — 320.96)

§ 320.3201. Legislative intent.

(1) It is the intent of the Legislature to protect the public health, safety, and welfare of the residents of the state by regulating the relationship between recreational vehicle dealers and manufacturers, maintaining competition, and providing consumer protection and fair trade.

(2) It is the intent of the Legislature that the provisions of ss. 320.3201-320.3211 be applied to manufacturer/dealer agreements entered into on or after October 1, 2007.

History

S. 1, ch. 2007-258, eff. Oct. 1, 2007.

End of Document

Fla. Stat. § 320.3202

Current through sections amended effective May 6, 2022.

LexisNexis® Florida Annotated Statutes > Title XXIII. Motor Vehicles. (Chs. 316 — 325) > Chapter 320. Motor Vehicle Licenses. (§§ 320.01 — 320.96)

§ 320.3202. Definitions.

As used in ss. 320.3201-320.3211, the term:

(1) "Area of sales responsibility" means the geographical area agreed to by the dealer and the manufacturer in the manufacturer/dealer agreement within which the dealer has the exclusive right to display or sell the manufacturer's new recreational vehicles of a particular line-make.

(2) "Dealer" means any person, firm, corporation, or business entity licensed or required to be licensed under s. 320.771.

(3) "Distributor" means any person, firm, corporation, or business entity that purchases new recreational vehicles for resale to dealers.

(4) "Factory campaign" means an effort on the part of a warrantor to contact recreational vehicle owners or dealers in order to address a part or equipment issue.

(5) "Family member" means a spouse, child, grandchild, parent, sibling, niece, or nephew, or the spouse thereof.

(6) "Line-make" means a specific series of recreational vehicle products that:

(a) Are identified by a common series trade name or trademark;

(b) Are targeted to a particular market segment, as determined by their decor, features, equipment, size, weight, and price range;

(c) Have lengths and interior floor plans that distinguish the recreational vehicles from other recreational vehicles with substantially the same decor, equipment, features, price, and weight;

(d) Belong to a single, distinct classification of recreational vehicle product type having a substantial degree of commonality in the construction of the chassis, frame, and body; and

(e) The manufacturer/dealer agreement authorizes a dealer to sell.

(7) "Manufacturer" means any person, firm, corporation, or business entity that engages in the manufacturing of recreational vehicles.

(8) "Manufacturer/dealer agreement" means a written agreement or contract entered into between a manufacturer and a dealer that fixes the rights and responsibilities of the parties and pursuant to which the dealer sells new recreational vehicles.

(9) "Proprietary part" means any part manufactured by or for and sold exclusively by the manufacturer.

(10) "Recreational vehicle" means the category of motor vehicle described in s. 320.01(1)(b).

(11) "Transient customer" means a customer who is temporarily traveling through a dealer's area of sales responsibility.

(12) "Warrantor" means any person, firm, corporation, or business entity that gives a warranty in connection with a new recreational vehicle or parts, accessories, or components thereof. The term

does not include service contracts, mechanical or other insurance, or extended warranties sold for separate consideration by a dealer or other person not controlled by a manufacturer.

History

S. 2, ch. 2007-258, eff. Oct. 1, 2007.

End of Document

Fla. Stat. § 320.3203

Current through sections amended effective May 6, 2022.

LexisNexis® Florida Annotated Statutes > Title XXIII. Motor Vehicles. (Chs. 316 — 325) > Chapter 320. Motor Vehicle Licenses. (§§ 320.01 — 320.96)

§ 320.3203. Requirement for a written manufacturer/dealer agreement; area of sales responsibility.

(1) A manufacturer or distributor may not sell a recreational vehicle in this state to or through a dealer without having first entered into a manufacturer/dealer agreement with a dealer which has been signed by both parties.

(2) The manufacturer shall designate the area of sales responsibility exclusively assigned to a dealer in the manufacturer/dealer agreement and may not change such area or contract with another dealer for sale of the same line-make in the designated area during the duration of the agreement.

(3) The area of sales responsibility may not be reviewed or changed until 1 year after the execution of the manufacturer/dealer agreement.

(4) A motor vehicle dealer may not sell a new recreational vehicle in this state without having first entered into a manufacturer/dealer agreement with a manufacturer or distributor and may not sell outside of the area of sales responsibility designated in the agreement.

(5) Notwithstanding subsection (4), a dealer may sell outside of its designated area of sales responsibility if the dealer obtains an offsite/supplemental license pursuant to s. 320.771(7) and meets any one of the following conditions:

(a) For sales of the same line-make within another dealer's designated area of sales responsibility, the dealer must obtain in advance of the off-premise sale a written agreement signed by the dealer, the manufacturer of the recreational vehicles to be sold at the off-premise sale, and the dealer in whose designated area of sales responsibility the off-premise sale will occur which:

1. Designates the line-make of the recreational vehicles to be sold;

2. Sets forth the time period for the off-premise sale; and

3. Affirmatively authorizes the sale of the same line-make of the recreational vehicles.

(b) The off-premise sale is not located within any dealer's designated area of sales responsibility and is in conjunction with a public vehicle show.

(c) The off-premise sale is in conjunction with a public vehicle show in which more than 35 dealers are participating and the show is predominantly funded by manufacturers. For the purposes of this subsection, the term "public vehicle show" means an event sponsored by an organization approved under s. 501(c)(6) of the Internal Revenue Code which has the purpose of promoting the welfare of the recreational vehicle industry and is located at a site that:

1. Will be used to display and sell recreational vehicles;

2. Is not used for off-premise sales for more than 10 days in a calendar year; and

3. Is not the location set forth on any dealer's license as its place of business.

History

S. 3, ch. 2007-258, eff. Oct. 1, 2007.

Annotations

LexisNexis® Notes

Notes

Editor's notes.

Section 501(c)(6) of the Internal Revenue Code, referred to in this section, is codified as 26 U.S.C.S. § 501(c)(6).

Case Notes

Business & Corporate Law: Distributorships & Franchises: Remedies: Injunctive Relief

Because there had been a preliminary showing that appellants violated Fla. Stat. § 320.3203(2) in that the recreational vehicle models they were selling were the same line-make as the models that were the subject of appellee's dealership agreement, appellee was entitled to a temporary injunction under Fla. Stat. § 320.3210. REV Rec. Grp., Inc. v. LDRV Holdings Corp., 2018 Fla. App. LEXIS 16017 (Fla. 2nd DCA Nov. 9, 2018).

Research References & Practice Aids

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Chapter 320. Motor Vehicle Licenses, F.S. § 320.3210. Civil dispute resolution; mediation; relief.

Fla. Stat. § 320.3205

Current through sections amended effective May 6, 2022.

LexisNexis® Florida Annotated Statutes > Title XXIII. Motor Vehicles. (Chs. 316 — 325) > Chapter 320. Motor Vehicle Licenses. (§§ 320.01 — 320.96)

§ 320.3205. Termination, cancellation, and nonrenewal of a manufacturer/dealer agreement.

(1) A manufacturer or distributor, directly or through any officer, agent, or employee, may not terminate, cancel, or fail to renew a manufacturer/dealer agreement without good cause, and, upon renewal, may not require additional inventory stocking requirements or increased retail sales targets in excess of the market growth in the dealer's area of sales responsibility.

(a) The manufacturer or distributor has the burden of showing good cause for terminating, canceling, or failing to renew a manufacturer/dealer agreement with a dealer. For purposes of determining whether there is good cause for the proposed action, any of the following factors may be considered:

1. The extent of the affected dealer's penetration in the relevant market area.

2. The nature and extent of the dealer's investment in its business.

3. The adequacy of the dealer's service facilities, equipment, parts, supplies, and personnel.

4. The effect of the proposed action on the community.

5. The extent and quality of the dealer's service under recreational vehicle warranties.

6. The failure to follow agreed-upon procedures or standards related to the overall operation of the dealership.

7. The dealer's performance under the terms of its manufacturer/dealer agreement.

(b) Except as otherwise provided in this section, a manufacturer or distributor shall provide a dealer with at least 120 days' prior written notice of termination, cancellation, or nonrenewal of the manufacturer/dealer agreement.

1. The notice must state all reasons for the proposed termination, cancellation, or nonrenewal and must further state that if, within 30 days following receipt of the notice, the dealer provides to the manufacturer or distributor a written notice of intent to cure all claimed deficiencies, the dealer will then have 120 days following receipt of the notice to rectify the deficiencies. If the deficiencies are rectified within 120 days, the manufacturer's or distributor's notice is voided. If the dealer fails to provide the notice of intent to cure the deficiencies in the prescribed time period, the termination, cancellation, or nonrenewal takes effect 30 days after the dealer's receipt of the notice unless the dealer has new and untitled inventory on hand that may be disposed of pursuant to subsection (3).

2. The notice period may be reduced to 30 days if the grounds for termination, cancellation, or nonrenewal are due to:

a. A dealer or one of its owners being convicted of, or entering a plea of nolo contendere to, a felony;

b. The abandonment or closing of the business operations of the dealer for 10 consecutive business days unless the closing is due to an act of God, strike, labor difficulty, or other cause over which the dealer has no control;

c. A significant misrepresentation by the dealer materially affecting the business relationship; or

d. A suspension or revocation of the dealer's license, or refusal to renew the dealer's license, by the department.

3. The notice provisions of this paragraph do not apply if the reason for termination, cancellation, or nonrenewal is insolvency, the occurrence of an assignment for the benefit of creditors, or bankruptcy.

(2) A dealer may terminate, cancel, or not renew its manufacturer/dealer agreement with a manufacturer or distributor with or without cause at any time by giving 30 days' written notice to the manufacturer. If the termination, cancellation, or nonrenewal is for cause, the dealer has the burden of showing good cause. Any of the following items shall be deemed good cause for the proposed action by a dealer:

(a) A manufacturer being convicted of, or entering a plea of nolo contendere to, a felony.

(b) The business operations of the manufacturer have been abandoned or closed for 10 consecutive business days, unless the closing is due to an act of God, strike, labor difficulty, or other cause over which the manufacturer has no control.

(c) A significant misrepresentation by the manufacturer materially affecting the business relationship.

(d) A material violation of ss. 320.3201-320.3211 which is not cured within 30 days after written notice by the dealer.

(e) A declaration by the manufacturer of bankruptcy, insolvency, or the occurrence of an assignment for the benefit of creditors or bankruptcy.

(3) If the manufacturer/dealer agreement is terminated, canceled, or not renewed by the manufacturer or distributor without cause or by the dealer for cause, the manufacturer shall, at the election of the dealer and within 45 days after termination, cancellation, or nonrenewal, repurchase:

(a) All new, untitled recreational vehicles that were acquired from the manufacturer or distributor within 18 months before the date of the notice of termination, cancellation, or nonrenewal that have not been used, except for demonstration purposes, and that have not been altered or damaged, at 100 percent of the net invoice cost, including transportation, less applicable rebates and discounts to the dealer. If any of the vehicles repurchased is damaged, the amount due to the dealer shall be reduced by the cost to repair the damaged vehicle. Damage prior to delivery to the dealer will not disqualify repurchase under this subsection;

(b) All undamaged accessories and proprietary parts sold to the dealer for resale within the 12 months prior to termination, cancellation, or nonrenewal, if accompanied by the original invoice, at 105 percent of the original net price paid to the manufacturer or distributor to compensate the dealer for handling, packing, and shipping the parts; and

(c) Any properly functioning diagnostic equipment, special tools, current signage, and other equipment and machinery at 100 percent of the dealer's net cost plus freight, destination, delivery, and distribution charges and sales taxes, if any, if it was purchased by the dealer within 5 years before termination, cancellation, or nonrenewal and upon the manufacturer's or distributor's request and can no longer be used in the normal course of the dealer's ongoing business.

The manufacturer or distributor shall pay the dealer within 30 days after receipt of the returned items.

(4) When taking on an additional line-make of recreational vehicle, a dealer shall notify in writing any manufacturer with whom the dealer has a manufacturer/dealer agreement of the same line-make at least 30 days prior to entering into a manufacturer/dealer agreement with the manufacturer of the additional line-make.

History

S. 4, ch. 2007-258, eff. Oct. 1, 2007.

Fla. Stat. § 320.3206

Current through sections amended effective May 6, 2022.

LexisNexis® Florida Annotated Statutes > Title XXIII. Motor Vehicles. (Chs. 316 — 325) > Chapter 320. Motor Vehicle Licenses. (§§ 320.01 — 320.96)

§ 320.3206. Transfer of ownership; family succession.

(1) If a dealer desires to make a change in ownership by the sale of the business assets, stock transfer, or otherwise, the dealer shall give the manufacturer or distributor written notice at least 10 business days before the closing, including all supporting documentation as may be reasonably required by the manufacturer or distributor to determine if an objection to the sale may be made. In the absence of a breach by the selling dealer of its dealer agreement or this chapter, the manufacturer or distributor shall not object to the proposed change in ownership unless the prospective transferee:

(a) Has previously been terminated by the manufacturer for breach of its dealer agreement;

(b) Has been convicted of a felony or any crime of fraud, deceit, or moral turpitude;

(c) Lacks any license required by law;

(d) Does not have an active line of credit sufficient to purchase a manufacturer's product; or

(e) Has undergone in the last 10 years bankruptcy, insolvency, a general assignment for the benefit of creditors, or the appointment of a receiver, trustee, or conservator to take possession of the transferee's business or property.

(2) If the manufacturer or distributor objects to a proposed change of ownership, the manufacturer or distributor shall give written notice of its reasons to the dealer within 7 business days after receipt of the dealer's notification and complete documentation. The manufacturer or distributor has the burden of proof with regard to its objection. If the manufacturer or distributor does not give timely notice of its objection, the change or sale shall be deemed approved.

(3)

(a) It is unlawful for a manufacturer or distributor to fail to provide a dealer an opportunity to designate, in writing, a family member as a successor to the dealership in the event of the death, incapacity, or retirement of the dealer. It is unlawful to prevent or refuse to honor the succession to a dealership by a family member of the deceased, incapacitated, or retired dealer unless the manufacturer or distributor has provided to the dealer written notice of its objections within 10 days after receipt of the dealer's modification of the dealer's succession plan. In the absence of a breach of the dealer agreement, the manufacturer may object to the succession for the following reasons only:

1. Conviction of the successor of a felony or any crime of fraud, deceit, or moral turpitude;

2. Bankruptcy or insolvency of the successor during the past 10 years;

3. Prior termination by the manufacturer of the successor for breach of a dealer agreement;

4. The lack of an active line of credit for the successor sufficient to purchase the manufacturer's product; or

5. The lack of any license for the successor required by law.

(b) The manufacturer or distributor has the burden of proof regarding its objection. However, a family member may not succeed to a dealership if the succession involves, without the manufacturer's or

distributor's consent, a relocation of the business or an alteration of the terms and conditions of the manufacturer/dealer agreement.

History

S. 5, ch. 2007-258, eff. Oct. 1, 2007.

End of Document

Fla. Stat. § 320.3207

Current through sections amended effective May 6, 2022.

LexisNexis® Florida Annotated Statutes > Title XXIII. Motor Vehicles. (Chs. 316 — 325) > Chapter 320. Motor Vehicle Licenses. (§§ 320.01 — 320.96)

§ 320.3207. Warranty obligations.

(1) Each warrantor shall:

(a) Specify in writing to each of its dealer obligations, if any, for preparation, delivery, and warranty service on its products;

(b) Compensate the dealer for warranty service required of the dealer by the warrantor; and

(c) Provide the dealer the schedule of compensation to be paid and the time allowances for the performance of any work and service.

The schedule of compensation must include reasonable compensation for diagnostic work as well as warranty labor.

(2) Time allowances for the diagnosis and performance of warranty labor must be reasonable for the work to be performed. The compensation of a dealer for warranty labor may not be less than the lowest retail labor rates actually charged by the dealer for like nonwarranty labor as long as such rates are reasonable.

(3) The warrantor shall reimburse the dealer for warranty parts at actual wholesale cost plus a minimum 30-percent handling charge and the cost, if any, of freight to return warranty parts to the warrantor.

(4) Warranty audits of dealer records may be conducted by the warrantor on a reasonable basis, and dealer claims for warranty compensation may not be denied except for cause, such as performance of nonwarranty repairs, material noncompliance with the warrantor's published policies and procedures, lack of material documentation, fraud, or misrepresentation.

(5) The dealer shall submit warranty claims within 45 days after completing work.

(6) The dealer shall notify the warrantor verbally or in writing if the dealer is unable to perform material or repetitive warranty repairs as soon as is reasonably possible.

(7) The warrantor shall disapprove warranty claims in writing within 45 days after the date of submission by the dealer in the manner and form prescribed by the warrantor. Claims not specifically disapproved in writing within 45 days shall be construed to be approved and must be paid within 60 days.

(8) It is a violation of ss. 320.3201-320.3211 for any warrantor to:

(a) Fail to perform any of its warranty obligations with respect to its warranted products;

(b) Fail to include, in written notices of factory campaigns to recreational vehicle owners and dealers, the expected date by which necessary parts and equipment, including tires and chassis or chassis parts, will be available to dealers to perform the campaign work. The warrantor may ship parts to the dealer to effect the campaign work, and, if such parts are in excess of the dealer's requirements, the dealer may return unused parts to the warrantor for credit after completion of the campaign;

(c) Fail to compensate any of its dealers for authorized repairs effected by the dealer of merchandise damaged in manufacture or transit to the dealer, if the carrier is designated by the warrantor, factory branch, distributor, or distributor branch;

(d) Fail to compensate any of its dealers for authorized warranty service in accordance with the schedule of compensation provided to the dealer pursuant to this section if performed in a timely and competent manner;

(e) Intentionally misrepresent in any way to purchasers of recreational vehicles that warranties with respect to the manufacture, performance, or design of the vehicle are made by the dealer as warrantor or cowarrantor; or

(f) Require the dealer to make warranties to customers in any manner related to the manufacture of the recreational vehicle.

(9) It is a violation of ss. 320.3201-320.3211 for any dealer to:

(a) Fail to perform predelivery inspection functions, as specified by the warrantor, in a competent and timely manner;

(b) Fail to perform warranty service work authorized by the warrantor in a reasonably competent and timely manner on any transient customer's vehicle of the same line-make; or

(c) Misrepresent the terms of any warranty.

(10) Notwithstanding the terms of any manufacturer/dealer agreement, it is a violation of ss. 320.3201-320.3211 for:

(a) A warrantor to fail to indemnify and hold harmless its dealer against any losses or damages to the extent such losses or damages are caused by the negligence or willful misconduct of the warrantor. The dealer may not be denied indemnification for failing to discover, disclose, or remedy a defect in the design or manufacturing of the recreational vehicle. The dealer shall provide to the warrantor a copy of any suit in which allegations are made that come within this subsection within 10 days after receiving such suit.

(b) A dealer to fail to indemnify and hold harmless its warrantor against any losses or damages to the extent such losses or damages are caused by the negligence or willful misconduct of the dealer. The warrantor shall provide to the dealer a copy of any suit in which allegations are made that come within this subsection within 10 days after receiving such suit.

History

S. 6, ch. 2007-258, eff. Oct. 1, 2007.

Fla. Stat. § 320.3208

Current through sections amended effective May 6, 2022.

LexisNexis® Florida Annotated Statutes > Title XXIII. Motor Vehicles. (Chs. 316 — 325) > Chapter 320. Motor Vehicle Licenses. (§§ 320.01 — 320.96)

§ 320.3208. Inspection and rejection by the dealer.

(1) Whenever a new recreational vehicle is damaged prior to transit to the dealer or is damaged in transit to the dealer when the carrier or means of transportation has been selected by the manufacturer or distributor, the dealer shall notify the manufacturer or distributor of the damage within the timeframe specified in the manufacturer/dealer agreement and:

(a) Request from the manufacturer or distributor authorization to replace the components, parts, and accessories damaged or otherwise correct the damage; or

(b) Reject the vehicle within the timeframe set forth in subsection (3).

If the manufacturer or distributor refuses or fails to authorize repair of such damage within 10 days after receipt of notification or if the dealer rejects the recreational vehicle because of damage, ownership of the new recreational vehicle reverts to the manufacturer or distributor.

(2) The dealer shall exercise due care in custody of the damaged recreational vehicle, but the dealer shall have no other obligations, financial or otherwise, with respect to that recreational vehicle.

(3) The timeframe for inspection and rejection by the dealer must be part of the manufacturer/dealer agreement and may not be less than 2 business days after the physical delivery of the recreational vehicle.

(4) Any recreational vehicle that has, at the time of delivery to the dealer, an unreasonable amount of miles on its odometer, as determined by the dealer, may be subject to rejection by the dealer and reversion of the vehicle to the manufacturer or distributor. In no instance shall a dealer deem an amount less than the distance between the dealer and the manufacturer’s factory or a distributor’s point of distribution, plus 100 miles, as unreasonable.

History

S. 7, ch. 2007-258, eff. Oct. 1, 2007.

Fla. Stat. § 320.3209

Current through sections amended effective May 6, 2022.

LexisNexis® Florida Annotated Statutes > Title XXIII. Motor Vehicles. (Chs. 316 — 325) > Chapter 320. Motor Vehicle Licenses. (§§ 320.01 — 320.96)

§ 320.3209. Coercion of dealer prohibited.

(1) A manufacturer or distributor may not coerce or attempt to coerce a dealer to:

(a) Purchase a product that the dealer did not order;

(b) Enter into an agreement with the manufacturer or distributor;

(c) Take any action that is unfair or unreasonable to the dealer; or

(d) Enter into an agreement that requires the dealer to submit its disputes to binding arbitration or otherwise waive rights or responsibilities provided under ss. 320.3201-320.3211.

(2) As used in this section, the term “coerce” includes, but is not limited to, threatening to terminate, cancel, or not renew a manufacturer/dealer agreement without good cause or threatening to withhold product lines or delay product delivery as an inducement to amending the manufacturer/dealer agreement.

History

S. 8, ch. 2007-258, eff. Oct. 1, 2007.

Fla. Stat. § 320.3210

Current through sections amended effective May 6, 2022.

LexisNexis® Florida Annotated Statutes > Title XXIII. Motor Vehicles. (Chs. 316 — 325) > Chapter 320. Motor Vehicle Licenses. (§§ 320.01 — 320.96)

§ 320.3210. Civil dispute resolution; mediation; relief.

(1) A dealer, manufacturer, distributor, or warrantor injured by another party's violation of ss. 320.3201-320.3211 may bring a civil action in circuit court to recover actual damages. The court shall award attorney's fees and costs to the prevailing party in such action. Venue for any civil action authorized by this section must exclusively be in the county in which the dealership is located. In an action involving more than one dealer, venue may be in any county in which a dealer who is party to the action is located.

(2) Before bringing suit under this section, the party bringing suit for an alleged violation shall serve a written demand for mediation upon the offending party.

(a) The demand for mediation shall be served upon the offending party via certified mail at the address stated within the agreement between the parties. In the event of a civil action between two dealers, the demand must be mailed to the address on the dealer's license filed with the department.

(b) The demand for mediation must contain a brief statement of the dispute and the relief sought by the party filing the demand.

(c) Within 20 days after the date a demand for mediation is served, the parties shall mutually select an independent certified mediator and meet with the mediator for the purpose of attempting to resolve the dispute. The meeting place must be in this state in a location selected by the mediator. The mediator may extend the date of the meeting for good cause shown by either party or upon stipulation of both parties.

(d) The service of a demand for mediation under this subsection stays the time for the filing of any complaint, petition, protest, or action under ss. 320.3201-320.3211 until representatives of both parties have met with a mutually selected mediator for the purpose of attempting to resolve the dispute. If a complaint, petition, protest, or action is filed before that meeting, the court shall enter an order suspending the proceeding or action until the meeting has occurred and may, upon written stipulation of all parties to the proceeding or action that they wish to continue to mediate under this subsection, enter an order suspending the proceeding or action for as long a period as the court considers appropriate. A suspension order issued under this paragraph may be revoked by the court.

(e) The parties to the mediation shall bear their own costs for attorney's fees and divide equally the cost of the mediator.

(3) In addition to the remedies provided in this section and notwithstanding the existence of any additional remedy at law, a dealer or manufacturer may apply to a circuit court for the grant, upon a hearing and for cause shown, of a temporary or permanent injunction, or both, restraining any person from acting as a dealer, manufacturer, distributor, or importer without being properly licensed pursuant to this chapter, from violating or continuing to violate any of the provisions of ss. 320.3201-320.3211, or from failing or refusing to comply with the requirements of ss. 320.3201-320.3211. Such injunction shall be issued without bond. A single act in violation of s. 320.3203 is sufficient to authorize the issuance of an injunction.

History

S. 9, ch. 2007-258, eff. Oct. 1, 2007.

Annotations

LexisNexis® Notes

Case Notes

Business & Corporate Law: Distributorships & Franchises: Remedies: Injunctive Relief

Because there had been a preliminary showing that appellants violated Fla. Stat. § 320.3203(2) in that the recreational vehicle models they were selling were the same line-make as the models that were the subject of appellee's dealership agreement, appellee was entitled to a temporary injunction under Fla. Stat. § 320.3210. REV Rec. Grp., Inc. v. LDRV Holdings Corp., 2018 Fla. App. LEXIS 16017 (Fla. 2nd DCA Nov. 9, 2018).

Because Fla. Stat. § 320.3210(3) plainly stated that a injunction "shall" be issued without bond, the trial court erred in imposing an injunction bond. REV Rec. Grp., Inc. v. LDRV Holdings Corp., 2018 Fla. App. LEXIS 16017 (Fla. 2nd DCA Nov. 9, 2018).

Fla. Stat. § 320.3211

Current through sections amended effective May 6, 2022.

LexisNexis® Florida Annotated Statutes > Title XXIII. Motor Vehicles. (Chs. 316 — 325) > Chapter 320. Motor Vehicle Licenses. (§§ 320.01 — 320.96)

§ 320.3211. Penalties.

(1) The department may suspend or revoke any license issued under s. 320.771 upon a finding that the dealer, manufacturer, distributor, or importer violated any provision of ss. 320.3201-320.3211. The department may impose, levy, and collect by legal process fines, in an amount not to exceed $1,000 for each violation, against any person if it finds that such person has violated any provision of ss. 320.3201-320.3211. Such person is entitled to an administrative hearing pursuant to chapter 120 to contest the action or fine levied, or about to be levied, against the person.

(2) In addition to the civil and administrative remedies, a person who violates any provision of ss. 320.3201-320.3211 commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History

S. 10, ch. 2007-258, eff. Oct. 1, 2007.

End of Document

Fla. Stat. § 320.60

Current through sections amended effective May 6, 2022.

LexisNexis® Florida Annotated Statutes > Title XXIII. Motor Vehicles. (Chs. 316 — 325) > Chapter 320. Motor Vehicle Licenses. (§§ 320.01 — 320.96)

§ 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:

(1) "Agreement" or "franchise agreement" means a contract, franchise, new motor vehicle franchise, sales and service agreement, or dealer agreement or any other terminology used to describe the contractual relationship between a manufacturer, factory branch, distributor, or importer, and a motor vehicle dealer, pursuant to which the motor vehicle dealer is authorized to transact business pertaining to motor vehicles of a particular line-make.

(2) "Common entity" means a person:

(a) Who is either controlled or owned, beneficially or of record, by one or more persons who also control or own more than 40 percent of the voting equity interests of a manufacturer; or

(b) Who shares directors or officers or partners with a manufacturer.

(3) "Demonstrator" means any new motor vehicle that 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 driven by prospective customers for the purpose of demonstrating vehicle characteristics in the sale or display of motor vehicles sold by the dealer.

(4) "Department" means the Department of Highway Safety and Motor Vehicles.

(5) "Distributor" means a person, resident or nonresident, who, in whole or in part, sells or distributes motor vehicles to motor vehicle dealers or who maintains distributor representatives.

(6) "Factory branch" means a branch office maintained by a manufacturer, distributor, or importer for the sale of motor vehicles to distributors or to motor vehicle dealers, or for directing or supervising, in whole or in part, its representatives in this state.

(7) "Importer" means any person who imports vehicles from a foreign country into the United States or into this state for the purpose of sale or lease.

(8) "Licensee" means any person licensed or required to be licensed under s. 320.61.

(9) "Manufacturer" means any person, whether a resident or nonresident of this state, who manufactures or assembles motor vehicles or who manufactures or installs on previously assembled truck chassis special bodies or equipment which, when installed, form an integral part of the motor vehicle and which constitute a major manufacturing alteration. The term "manufacturer" includes a central or principal sales corporation or other entity through which, by contractual agreement or otherwise, it distributes its products.

(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.

(11)

(a) “Motor vehicle dealer” means any person, firm, company, corporation, or other entity, who,

1. Is licensed pursuant to s. 320.27 as a “franchised motor vehicle dealer” and, for commission, money, or other things of value, repairs or services motor vehicles or used motor vehicles pursuant to an agreement as defined in subsection (1), or

2. Who sells, exchanges, buys, leases or rents, or offers, or attempts to negotiate a sale or exchange of any interest in, motor vehicles, or

3. Who is engaged wholly or in part in the business of selling motor vehicles, whether or not such motor vehicles are owned by such person, firm, company, or corporation.

(b) Any person who repairs or services three or more motor vehicles or used motor vehicles as set forth in paragraph (a), or who buys, sells, or deals in three or more motor vehicles in any 12-month period or who offers or displays for sale three or more motor vehicles in any 12-month period shall be prima facie presumed to be a motor vehicle dealer. The terms “selling” and “sale” include lease-purchase transactions.

(c) The term “motor vehicle dealer” does not include:

1. Public officers while performing their official duties;

2. Receivers, trustees, administrators, executors, guardians, or other persons appointed by, or acting under the judgment or order of, any court;

3. Banks, finance companies, or other loan agencies that acquire motor vehicles as an incident to their regular business; or

4. Motor vehicle rental and leasing companies that sell motor vehicles to motor vehicle dealers licensed under s. 320.27.

(12) “Person” means any natural person, partnership, firm, corporation, association, joint venture, trust, or other legal entity.

(13) “Used motor vehicle” means any motor vehicle the title to which has been transferred, at least once, by a manufacturer, distributor, importer, or dealer to an ultimate purchaser.

(14) “Line-make vehicles” are those motor vehicles which are offered for sale, lease, or distribution under a common name, trademark, service mark, or brand name of the manufacturer of same. However, motor vehicles sold or leased under multiple brand names or marks shall constitute a single line-make when they are included in a single franchise agreement and every motor vehicle dealer in this state authorized to sell or lease any such vehicles has been offered the right to sell or lease all of the multiple brand names or marks covered by the single franchise agreement. Except, such multiple brand names or marks shall be considered individual franchises for purposes of s. 320.64(36).

(15) “Sell,” “selling,” “sold,” “exchange,” “retail sales,” and “leases” includes any transaction where the title of motor vehicle or used motor vehicle is transferred to a retail consumer, and also any retail lease transaction where a retail customer leases a vehicle for a period of at least 12 months. Establishing a price for sale pursuant to s. 320.64(24) does not constitute a sale or lease.

(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.

History

S. 1, ch. 20236, 1941; s. 7, ch. 22858, 1945; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106; s. 4, ch. 70-424; s. 1, ch. 70-439; s. 95, ch. 71-377; s. 1, ch. 72-112; s. 3, ch. 76-168; s. 28, ch. 77-357; s. 1, ch. 77-457; s. 129, ch. 79-400; ss. 16, 17, 18, ch. 80-217; ss. 2, 3, ch. 81-318; s. 1, ch. 84-69; ss. 3, 20, 21, ch. 88-395; s. 4, ch. 91-429; s. 17, ch. 93-219; s. 368, ch. 95-148; s. 32, ch. 2000-313; s. 19, ch. 2001-196; s. 1, ch. 2003-269; s. 2, ch. 2006-183, eff. July 1, 2006; s. 1, ch. 2011-230, eff. July 1, 2011; s. 3, ch. 2017-187, eff. June 26, 2017.

Annotations

LexisNexis® Notes

Notes

Amendment Notes

The 2003 amendment by s. 1, ch. 2003-269, effective June 26, 2003, in (3) made a stylistic change; in (10) inserted “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)”; in (13) substituted “the title to which has been transferred, at least once, by a manufacturer, distributor, importer, or dealer to an ultimate purchaser” for “title to or possession of which has been transferred from the person who first acquired it from the manufacturer, distributor, importer, or dealer and which is commonly known as “secondhand” within the ordinary meaning thereof”; and added (16).

The 2006 amendment by s. 2, ch. 2006-183, effective July 1, 2006, in (3), substituted “vehicle that” for vehicle which” and inserted “driven by” preceding “prospective.”

The 2011 amendment added the second and third sentences of (14).

The 2017 amendment reenacted this section for the purpose of incorporating the amendment made by that Act to Fla. Stat. § 320.64, in a reference thereto.

Case Notes

Administrative Law: Agency Adjudication: General Overview

Administrative Law: Judicial Review: Standards of Review: Clearly Erroneous Review

Antitrust & Trade Law: Consumer Protection: Deceptive Acts & Practices: General Overview

Business & Corporate Law: Distributorships & Franchises: Causes of Action

Business & Corporate Law: Distributorships & Franchises: Causes of Action: General Overview

Business & Corporate Law: Distributorships & Franchises: Franchise Relationships

Business & Corporate Law: Distributorships & Franchises: Franchise Relationships: General Overview

Civil Procedure: Justiciability: Standing: General Overview

Civil Procedure: Summary Judgment: Standards: General Overview

Commercial Law (UCC): Sales (Article 2): Subject Matter: General Overview

Contracts Law: Contract Conditions & Provisions: Waivers: General Overview

Contracts Law: Contract Interpretation: Good Faith & Fair Dealing

Contracts Law: Secured Transactions: Installment Contracts: General Overview

Contracts Law: Types of Contracts: Bailments

Contracts Law: Types of Contracts: Bilateral Contracts

Governments: Legislation: Interpretation

Mergers & Acquisitions Law: General Business Considerations: Brokers & Finders Claims

Administrative Law: Agency Adjudication: General Overview

There is no statutory limitation on the availability of an action for civil damages by dealers for the purpose of enforcing compliance by licensees, plus costs and attorney's fees; on the contrary, by its own terms Fla. Stat. §§ 320.60-320.70 authorizes court action notwithstanding the existence of any other remedies under the statute. Barry Cook Ford, Inc. v. Ford Motor Co., 616 So. 2d 512, 1993 Fla. App. LEXIS 3213 (Fla. 1st DCA 1993).

Administrative Law: Judicial Review: Standards of Review: Clearly Erroneous Review

Any doubt as to whether a distributorship agreement is governed by the franchised dealer law should be resolved in favor of the right to freely contract. Aero Prods. Corp. v. Department of Highway Safety & Motor Vehicles, 675 So. 2d 661, 1996 Fla. App. LEXIS 6303 (Fla. 5th DCA 1996).

Antitrust & Trade Law: Consumer Protection: Deceptive Acts & Practices: General Overview

In an action for fraud and unfair trade practices, car purchasers' action was not barred by the economic loss rule because they were able to allege that a car dealership perpetrated a fraud independent of the parties' contract. Delgado v. J.W. Courtesy Pontiac GMC-Truck, 693 So. 2d 602, 1997 Fla. App. LEXIS 2722 (Fla. 2nd DCA 1997).

Business & Corporate Law: Distributorships & Franchises: Causes of Action

Former automotive dealership franchisee failed to state a claim against a financing company under the Florida Motor Vehicle Dealer Act because the company was not a "dealer"; the company was not an agent of the auto manufacturer, which had lost its controlling interest in the company. Hopkins Pontiac GMC, Inc. v. Ally Fin. Inc., 60 F. Supp. 3d 1252, 2014 U.S. Dist. LEXIS 163334 (N.D. Fla. 2014).

Business & Corporate Law: Distributorships & Franchises: Causes of Action: General Overview

Florida Motor Vehicle Dealer Act, Fla. Stat. §§ 320.60-320.70 did not give right of action to dealership president, doing business under the corporate form, because he was not a dealer under the act, and right of action was in the corporation. Pearson v. Ford Motor Co., 694 So. 2d 61, 1997 Fla. App. LEXIS 4115 (Fla. 1st DCA 1997).

Business & Corporate Law: Distributorships & Franchises: Franchise Relationships

Former automotive dealership franchisee failed to state a claim against a financing company under the Florida Motor Vehicle Dealer Act because the company was not a "dealer"; the company was not an agent of the auto manufacturer, which had lost its controlling interest in the company. Hopkins Pontiac GMC, Inc. v. Ally Fin. Inc., 60 F. Supp. 3d 1252, 2014 U.S. Dist. LEXIS 163334 (N.D. Fla. 2014).

Business & Corporate Law: Distributorships & Franchises: Franchise Relationships: General Overview

Automotive franchisee lacked standing under Fla. Stat. § 320.642(3) of the Florida Motor Vehicle Dealer Protection Act to protest a warranty service agreement between a rental car company and the franchisee's manufacturer, because the franchisee had standing to protest only when vehicles were to be sold to the public by the proposed additional dealer; the rental car company only sold its retired fleet to motor vehicle dealers, an activity that removed it from the definition of motor vehicle dealer in Fla. Stat. § 320.60(11)(a) of the Act. Meteor Motors, Inc. v. Hyundai Motor Am. Corp., 1999 U.S. Dist. LEXIS 23297 (S.D. Fla. Mar. 9, 1999).

To be a motor vehicle dealer within the meaning of Fla. Stat. § 320.60(11)(a) and Fla. Stat. § 320.641(4) of the Florida Motor Vehicle Dealer Protection Act, an entity is required to engage in business with the public; a rental car company that serviced its own vehicles under agreement with the manufacturer, and sold used vehicles to used car dealers, was not engaged in business with the public. Meteor Motors, Inc. v. Hyundai Motor Am. Corp., 1999 U.S. Dist. LEXIS 23297 (S.D. Fla. Mar. 9, 1999).

Rental car company that did not sell its retired fleet to the public but only to motor vehicle dealers, and provided warranty service to its own fleet, was not a "motor vehicle dealer" within the meaning of Fla. Stat. § 320.60(11)(a) of the Florida Motor Vehicle Dealer Protection Act. Meteor Motors, Inc. v. Hyundai Motor Am. Corp., 1999 U.S. Dist. LEXIS 23297 (S.D. Fla. Mar. 9, 1999).

Any doubt as to whether a distributorship agreement is governed by the franchised dealer law should be resolved in favor of the right to freely contract. Aero Prods. Corp. v. Department of Highway Safety & Motor Vehicles, 675 So. 2d 661, 1996 Fla. App. LEXIS 6303 (Fla. 5th DCA 1996).

Civil Procedure: Justiciability: Standing: General Overview

Automotive franchisee lacked standing under Fla. Stat. § 320.642(3) of the Florida Motor Vehicle Dealer Protection Act to protest a warranty service agreement between a rental car company and the franchisee's manufacturer, because the franchisee had standing to protest only when vehicles were to be sold to the public by the proposed additional dealer; the rental car company only sold its retired fleet to motor vehicle dealers, an activity that removed it from the definition of motor vehicle dealer in Fla. Stat. § 320.60(11)(a) of the Act. Meteor Motors, Inc. v. Hyundai Motor Am. Corp., 1999 U.S. Dist. LEXIS 23297 (S.D. Fla. Mar. 9, 1999).

Civil Procedure: Summary Judgment: Standards: General Overview

In a lawsuit between a buyer and a car dealership on the buyer's third amended complaint resulting from his purchase of a new car and execution of two Florida Simple Interest Vehicle Retail Installment Contracts, the circuit court properly granted summary judgment to the dealer, where the buyer failed to present a material fact issue that it was improper for the dealer to have him execute two retail installment contracts and a bailment agreement, and because the use of conditional sales contracts was standard in the auto sales industry; furthermore, the court believed that conditional delivery was approved by the Florida legislature under Fla. Stat. § 319.001(8), Fla. Stat. § 320.60, and Fla. Stat. § 520.02(14). King v. King Motor Co. of Fort Lauderdale, Inc., 900 So. 2d 619, 2005 Fla. App. LEXIS 3054 (Fla. 4th DCA 2005).

Commercial Law (UCC): Sales (Article 2): Subject Matter: General Overview

In an action for fraud and unfair trade practices, car purchasers' action was not barred by the economic loss rule because they were able to allege that a car dealership perpetrated a fraud independent of the parties' contract. Delgado v. J.W. Courtesy Pontiac GMC-Truck, 693 So. 2d 602, 1997 Fla. App. LEXIS 2722 (Fla. 2nd DCA 1997).

Contracts Law: Contract Conditions & Provisions: Waivers: General Overview

Sophisticated commercial exporter who negotiated a contract with a motor vehicle manufacturer at arm's length, and who neither applied for nor received a franchised motor vehicle dealer's license pursuant to Fla. Stat. § 320.27(2), was not protected under the Automobile Dealer Day in Court Act, 15 U.S.C.S. § 1221 et seq., the Florida Motor Vehicle Dealer Act, Fla. Stat. § 320.27, or the Florida Automobile Franchise Act, Fla. Stat. § 320.60 et seq., which were designed to protect a business whose relative size made it impossible to bargain effectively with a manufacturer, as was evidenced in Fla. Stat. § 320.64; thus, the contract's provision waiving relief under the statutes was valid because it was highly doubtful that they applied to the parties. Chrysler Int'l Corp. v. Cherokee Export Co., 134 F.3d 738, 1998 FED App. 0014P, 1998 U.S. App. LEXIS 415 (6th Cir. Mich. 1998).

Contracts Law: Contract Interpretation: Good Faith & Fair Dealing

Sophisticated commercial exporter who negotiated a contract with a motor vehicle manufacturer at arm's length, and who neither applied for nor received a franchised motor vehicle dealer's license pursuant to Fla. Stat. § 320.27(2), was not protected under the Automobile Dealer Day in Court Act, 15 U.S.C.S. § 1221 et seq., the Florida Motor Vehicle Dealer Act, Fla. Stat. § 320.27, or the Florida Automobile Franchise Act, Fla. Stat. § 320.60 et seq., which were designed to protect a business whose relative size made it impossible to bargain effectively with a manufacturer, as was evidenced in Fla. Stat. § 320.64; thus, the contract's provision waiving relief under the statutes was valid because it was highly doubtful that they applied to the parties. Chrysler Int'l Corp. v. Cherokee Export Co., 134 F.3d 738, 1998 FED App. 0014P, 1998 U.S. App. LEXIS 415 (6th Cir. Mich. 1998).

Contracts Law: Secured Transactions: Installment Contracts: General Overview

In a lawsuit between a buyer and a car dealership on the buyer's third amended complaint resulting from his purchase of a new car and execution of two Florida Simple Interest Vehicle Retail Installment Contracts, the circuit court properly granted summary judgment to the dealer, where the buyer failed to present a material fact issue that it was improper for the dealer to have him execute two retail installment contracts and a bailment agreement, and because the use of conditional sales contracts was standard in the auto sales industry; furthermore, the court believed that conditional delivery was approved by the Florida legislature under Fla. Stat. § 319.001(8), Fla. Stat. § 320.60, and Fla. Stat. § 520.02(14). King v. King Motor Co. of Fort Lauderdale, Inc., 900 So. 2d 619, 2005 Fla. App. LEXIS 3054 (Fla. 4th DCA 2005).

Contracts Law: Types of Contracts: Bailments

In a lawsuit between a buyer and a car dealership on the buyer's third amended complaint resulting from his purchase of a new car and execution of two Florida Simple Interest Vehicle Retail Installment Contracts, the circuit court properly granted summary judgment to the dealer, where the buyer failed to present a material fact issue that it was improper for the dealer to have him execute two retail installment contracts and a bailment agreement, and because the use of conditional sales contracts was standard in the auto sales industry; furthermore, the court believed that conditional delivery was approved by the Florida legislature under Fla. Stat. § 319.001(8), Fla. Stat. § 320.60, and Fla. Stat. § 520.02(14). King v. King Motor Co. of Fort Lauderdale, Inc., 900 So. 2d 619, 2005 Fla. App. LEXIS 3054 (Fla. 4th DCA 2005).

Contracts Law: Types of Contracts: Bilateral Contracts

Sophisticated commercial exporter who negotiated a contract with a motor vehicle manufacturer at arm's length, and who neither applied for nor received a franchised motor vehicle dealer's license pursuant to Fla. Stat. § 320.27(2), was not protected under the Automobile Dealer Day in Court Act, 15 U.S.C.S. § 1221 et seq., the Florida Motor Vehicle Dealer Act, Fla. Stat. § 320.27, or the Florida Automobile Franchise Act, Fla. Stat. § 320.60 et seq., which were designed to protect a business whose relative size made it impossible to bargain effectively with a manufacturer, as was evidenced in Fla. Stat. § 320.64; thus, the contract's provision waiving relief under the statutes was valid because it was highly doubtful that they applied to the parties. Chrysler Int'l Corp. v. Cherokee Export Co., 134 F.3d 738, 1998 FED App. 0014P, 1998 U.S. App. LEXIS 415 (6th Cir. Mich. 1998).

Governments: Legislation: Interpretation

To be a motor vehicle dealer within the meaning of Fla. Stat. § 320.60(11)(a) and Fla. Stat. § 320.641(4) of the Florida Motor Vehicle Dealer Protection Act, an entity is required to engage in business with the public; a rental car company that serviced its own vehicles under agreement with the manufacturer, and sold used vehicles to used car dealers, was not engaged in business with the public. Meteor Motors, Inc. v. Hyundai Motor Am. Corp., 1999 U.S. Dist. LEXIS 23297 (S.D. Fla. Mar. 9, 1999).

Rental car company that did not sell its retired fleet to the public but only to motor vehicle dealers, and provided warranty service to its own fleet, was not a "motor vehicle dealer" within the meaning of Fla. Stat. § 320.60(11)(a) of the Florida Motor Vehicle Dealer Protection Act. Meteor Motors, Inc. v. Hyundai Motor Am. Corp., 1999 U.S. Dist. LEXIS 23297 (S.D. Fla. Mar. 9, 1999).

Mergers & Acquisitions Law: General Business Considerations: Brokers & Finders Claims

Because Fla. Stat. § 475.01(1)(a) was not limited to real estate brokers and because Fla. Stat. § 320.60 — Fla. Stat. § 320.70, dealing with automobile dealership sales, did not regulate brokers, the broker was precluded from recovering a brokerage fee because it did not comply with the licensing requirements of Fla. Stat. § 475.41. Meteor Motors, Inc. v. Thompson Halbach & Assocs., 914 So. 2d 479, 2005 Fla. App. LEXIS 17258 (Fla. 4th DCA 2005).

Research References & Practice Aids

RESEARCH REFERENCES & PRACTICE AIDS

Florida Statutes references.

Chapter 320. Motor Vehicle Licenses, F.S. § 320.27. Motor vehicle dealers.

Chapter 320. Motor Vehicle Licenses, F.S. § 320.61. Licenses required of motor vehicle manufacturers, distributors, importers, etc.

Chapter 320. Motor Vehicle Licenses, F.S. § 320.615. Agent for service of process.

Chapter 320. Motor Vehicle Licenses, F.S. § 320.62. Licenses; amount; disposition of proceeds.

Chapter 320. Motor Vehicle Licenses, F.S. § 320.63. Application for license; contents.

Chapter 320. Motor Vehicle Licenses, F.S. § 320.64. Denial, suspension, or revocation of license; grounds.

Chapter 320. Motor Vehicle Licenses, F.S. § 320.6405. Franchise agreements; obligations of manufacturer and its agent.

Chapter 320. Motor Vehicle Licenses, F.S. § 320.641. Discontinuations, cancellations, nonrenewals, modifications, and replacement of franchise agreements.

Chapter 320. Motor Vehicle Licenses, F.S. § 320.6415. Changes in plan or system of distribution.

Chapter 320. Motor Vehicle Licenses, F.S. § 320.642. Dealer licenses in areas previously served; procedure.

Chapter 320. Motor Vehicle Licenses, F.S. § 320.645. Restriction upon ownership of dealership by licensee.

Chapter 320. Motor Vehicle Licenses, F.S. § 320.664. Reinstatement of license.

Chapter 320. Motor Vehicle Licenses, F.S. § 320.695. Injunction.

Chapter 320. Motor Vehicle Licenses, F.S. § 320.697. Civil damages.

Chapter 320. Motor Vehicle Licenses, F.S. § 320.698. Civil fines; procedure.

Chapter 320. Motor Vehicle Licenses, F.S. § 320.699. Administrative hearings and adjudications; procedure.

Chapter 320. Motor Vehicle Licenses, F.S. § 320.69915. Severability.

Chapter 320. Motor Vehicle Licenses, F.S. § 320.6992. Application.

Chapter 501. Consumer Protection, F.S. § 501.976. Actionable, unfair, or deceptive acts or practices.

Chapter 681. Motor Vehicle Sales Warranties, F.S. § 681.102. Definitions.

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End of Document

Fla. Stat. § 320.605

Current through sections amended effective May 6, 2022.

LexisNexis® Florida Annotated Statutes > Title XXIII. Motor Vehicles. (Chs. 316 — 325) > Chapter 320. Motor Vehicle Licenses. (§§ 320.01 — 320.96)

§ 320.605. Legislative intent.

It is the intent of the Legislature to protect the public health, safety, and welfare of the citizens of the state by regulating the licensing of motor vehicle dealers and manufacturers, maintaining competition, providing consumer protection and fair trade and providing minorities with opportunities for full participation as motor vehicle dealers.

History

S. 3, ch. 2017-187, eff. June 26, 2017.

Annotations

Notes

Amendment Notes

The 2017 amendment reenacted this section for the purpose of incorporating the amendment made by that Act to Fla. Stat. § 320.64, in a reference thereto.

End of Document

Fla. Stat. § 320.61

Current through sections amended effective May 6, 2022.

LexisNexis® Florida Annotated Statutes > Title XXIII. Motor Vehicles. (Chs. 316 — 325) > Chapter 320. Motor Vehicle Licenses. (§§ 320.01 — 320.96)

§ 320.61. Licenses required of motor vehicle manufacturers, distributors, importers, etc.

(1) No manufacturer, factory branch, distributor, or importer (all sometimes referred to hereinafter as "licensee") shall engage in business in this state without a license therefor as provided in ss. 320.60-320.70. No motor vehicle, foreign or domestic, may be sold, leased, or offered for sale or lease in this state unless the manufacturer, importer, or distributor of such motor vehicle, which issues an agreement to a motor vehicle dealer in this state, is licensed under ss. 320.60-320.70.

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

(3) All licenses shall be granted or refused within 30 days after application.

(4) When a complaint of unfair or prohibited cancellation or nonrenewal of a dealer agreement is made by a motor vehicle dealer against a licensee and such complaint is pending pursuant to ss. 320.60-320.70, no replacement application for such agreement shall be granted and no license shall be issued by the department under s. 320.27 to any replacement dealer until a final decision is rendered on the complaint of unfair cancellation, so long as the dealer agreement of the complaining dealer is in effect as provided under s. 320.641(7).

(5) Any manufacturer, distributor, or importer, who obtains a license under this section, is engaged in business in this state and is subject to the jurisdiction of the courts of this state pursuant to chapter 48. Any manufacturer not licensed under this section, who is a manufacturer of motor vehicles of a recognized line-make which are sold or leased in this state pursuant to a plan, system, or channel of distribution established, approved, authorized or known to the manufacturer, shall be subject to the jurisdiction of the courts of this state in any action seeking relief under or to enforce any of the remedies or penalties provided in ss. 320.60-320.70.

History

S. 3, ch. 2017-187, eff. June 26, 2017.

Annotations

Notes

Amendment Notes

The 2017 amendment reenacted this section for the purpose of incorporating the amendment made by that Act to Fla. Stat. § 320.64, in a reference thereto.

End of Document

Fla. Stat. § 320.6403

Current through sections amended effective May 6, 2022.

LexisNexis® Florida Annotated Statutes > Title XXIII. Motor Vehicles. (Chs. 316 — 325) > Chapter 320. Motor Vehicle Licenses. (§§ 320.01 — 320.96)

§ 320.6403. Distributor agreements; obligations of manufacturer and importer.

Notwithstanding the terms of any agreement to the contrary, no manufacturer or importer subject to the jurisdiction of this state shall:

(1) Prevent or refuse to accept the succession to any interest in any distributor's agreement with the manufacturer or importer by any legal heir, beneficiary, devisee, or distributee who has duly established his or her right to the decedent's interest in any distribution agreement; provided, the manufacturer or importer is not required to accept a succession which is demonstrated to be significantly detrimental to the public interest or to the interest of the manufacturer or importer.

(2) Refuse to honor any duly qualified designated successor to a distributor's agreement with the manufacturer or importer, who has been designated as such by the distributor during his or her lifetime and accepted in writing by the manufacturer or importer. Any such designation shall be binding upon the heirs, successors, assigns, and personal and legal representatives of the distributor, unless expressly revoked in writing, executed, and delivered by the distributor to the manufacturer or importer prior to his or her death.

A manufacturer or importer who rejects a successor transferee under this section shall have the burden of establishing in any proceeding where such rejection is in issue that the rejection of the successor transferee was reasonable.

History

S. 3, ch. 2017-187, eff. June 26, 2017.

Annotations

Notes

Amendment Notes

The 2017 amendment reenacted this section for the purpose of incorporating the amendment made by that Act to Fla. Stat. § 320.64, in a reference thereto.

Fla. Stat. § 320.6405

Current through sections amended effective May 6, 2022.

LexisNexis® Florida Annotated Statutes > Title XXIII. Motor Vehicles. (Chs. 316 — 325) > Chapter 320. Motor Vehicle Licenses. (§§ 320.01 — 320.96)

§ 320.6405. Franchise agreements; obligations of manufacturer and its agent.

Any parent, subsidiary, or common entity of a manufacturer; distributor; importer; or other entity, which by contractual arrangement or otherwise pursuant to the direction of the manufacturer, engages in the distribution in this state of line-make motor vehicles manufactured or substantially manufactured by such manufacturer, shall be deemed to be the agent of the manufacturer for the purposes of any franchise agreement entered into between such agent and a motor vehicle dealer engaged in business in this state and shall be bound by the terms and provisions of such franchise agreement as if it were the principal. A manufacturer of line-make motor vehicles which are offered for sale or lease in this state under any franchise agreement executed by an agent of such manufacturer is bound by the terms and provisions of such franchise agreement as if it and not the agent had executed the franchise agreement and, notwithstanding whether it is licensed pursuant to s. 320.61, said manufacturer shall be subject to all of the restrictions, limitations, remedies, and penalties of ss. 320.60-320.70 related to such franchise agreement, the performance thereof, or any cause of action pertaining thereto. The agency relationship established in this section is not intended to apply to a person or entity that engages in the distribution of motor vehicles in this state under its own brand name which are substantially manufactured by another person or entity, provided the distributing person or entity is substantially engaged in the manufacture of other line-make motor vehicles and is licensed in this state as a manufacturer.

History

S. 3, ch. 2017-187, eff. June 26, 2017.

Annotations

Notes

Amendment Notes

The 2017 amendment reenacted this section for the purpose of incorporating the amendment made by that Act to Fla. Stat. § 320.64, in a reference thereto.

Fla. Stat. § 320.6407

Current through sections amended effective May 6, 2022.

LexisNexis® Florida Annotated Statutes > Title XXIII. Motor Vehicles. (Chs. 316 — 325) > Chapter 320. Motor Vehicle Licenses. (§§ 320.01 — 320.96)

§ 320.6407. Recall notices under franchise agreements; compensation.

(1) As provided in subsection (3), a licensee that has entered into a franchise agreement with a motor vehicle dealer must compensate the motor vehicle dealer for a used motor vehicle:

(a) That is of the same make and model manufactured, imported, or distributed by the licensee;

(b) That is subject to a recall notice issued by the licensee or an authorized governmental agency, including a recall notice issued before July 1, 2017, regardless of whether the vehicle is identified by its vehicle identification number;

(c) That is held by the motor vehicle dealer in the dealer's inventory at the time the recall notice is issued or that is taken by the motor vehicle dealer into the dealer's inventory after the recall notice as a result of a retail consumer trade-in or a lease return to the dealer inventory in accordance with an applicable lease contract;

(d) That cannot be repaired due to the unavailability, within 30 days after issuance of the recall notice, of a remedy or parts necessary for the motor vehicle dealer to make the recall repair; and

(e) For which the licensee has not issued a written statement to the motor vehicle dealer indicating that the used motor vehicle may be sold or delivered to a retail customer before completion of the recall repair. The purpose of such written statement is to provide notice to the motor vehicle dealer that the vehicle may be sold or delivered based solely on the specific recall notice and is not intended to address any other aspect of the vehicle unrelated to the recall notice.

(2) The licensee shall pay the required compensation within 30 days after the motor vehicle dealer's application for payment. Applications for payment must be submitted monthly, as necessary, through the licensee's existing warranty application system or another system or process established by the licensee which is not unduly burdensome or which does not require information unnecessary for the payment.

(3) Compensation under this section must be the greater of:

(a) Payment at a rate of at least 1.5 percent per month of the motor vehicle value, as determined by the average Black Book value of the corresponding model year vehicle of average condition, of each eligible used motor vehicle in the motor vehicle dealer's inventory for each month that the dealer does not receive a remedy and parts to complete the required recall repair. Such payment must be prorated for any period less than 1 month based on the number of days during the month each eligible used motor vehicle is in the motor vehicle dealer's inventory. Payment shall be calculated from the 31st day after the recall was issued, the 31st day after the vehicle was acquired, or July 1, 2017, whichever is latest.

(b) Payment under a national program applicable to all motor vehicle dealers holding a franchise agreement with the licensee for the motor vehicle dealer's costs associated with holding the eligible used motor vehicles.

(4) For purposes of this section, a licensee does not include a motorcycle manufacturer, distributor, or importer.

History

S. 2, ch. 2017-141, eff. July 1, 2017.

End of Document

Fla. Stat. § 320.641

Current through sections amended effective May 6, 2022.

LexisNexis® Florida Annotated Statutes > Title XXIII. Motor Vehicles. (Chs. 316 — 325) > Chapter 320. Motor Vehicle Licenses. (§§ 320.01 — 320.96)

§ 320.641. Discontinuations, cancellations, nonrenewals, modifications, and replacement of franchise agreements.

(1)

(a) An applicant or licensee shall give written notice to the motor vehicle dealer and the department of the licensee's intention to discontinue, cancel, or fail to renew a franchise agreement or of the licensee's intention to modify a franchise or replace a franchise with a succeeding franchise, which modification or replacement will adversely alter the rights or obligations of a motor vehicle dealer under an existing franchise agreement or will substantially impair the sales, service obligations, or investment of the motor vehicle dealer, at least 90 days before the effective date thereof, together with the specific grounds for such action.

(b) The failure by the licensee to comply with the 90-day notice period and procedure prescribed herein shall render voidable, at the option of the motor vehicle dealer, any discontinuation, cancellation, nonrenewal, modification, or replacement of any franchise agreement. Designation of a franchise agreement at a specific location as a "nondesignated point" shall be deemed an evasion of this section and constitutes an unfair cancellation.

(2) Franchise agreements are deemed to be continuing unless the applicant or licensee has notified the department of the discontinuation of, cancellation of, failure to renew, modification of, or replacement of the agreement of any of its motor vehicle dealers; and annual renewal of the license provided for under ss. 320.60-320.70 is not necessary for any cause of action against the licensee.

(3) Any motor vehicle dealer who receives a notice of intent to discontinue, cancel, not renew, modify, or replace may, within the 90-day notice period, file a petition or complaint for a determination of whether such action is an unfair or prohibited discontinuation, cancellation, nonrenewal, modification, or replacement. Agreements and certificates of appointment shall continue in effect until final determination of the issues raised in such petition or complaint by the motor vehicle dealer. A discontinuation, cancellation, or nonrenewal of a franchise agreement is unfair if it is not clearly permitted by the franchise agreement; is not undertaken in good faith; is not undertaken for good cause; or is based on an alleged breach of the franchise agreement which is not in fact a material and substantial breach; or, if the grounds relied upon for termination, cancellation, or nonrenewal have not been applied in a uniform and consistent manner by the licensee. If the notice of discontinuation, cancellation, or nonrenewal relates to an alleged failure of the new motor vehicle dealer's sales or service performance obligations under the franchise agreement, the new motor vehicle dealer must first be provided with at least 180 days to correct the alleged failure before a licensee may send the notice of discontinuation, cancellation, or nonrenewal. A modification or replacement is unfair if it is not clearly permitted by the franchise agreement; is not undertaken in good faith; or is not undertaken for good cause. The applicant or licensee shall have the burden of proof that such action is fair and not prohibited.

(4) Notwithstanding any other provision of this section, the failure of a motor vehicle dealer to be engaged in business with the public for 10 consecutive business days constitutes abandonment by the dealer of his or her franchise agreement. If any motor vehicle dealer abandons his or her franchise agreement, he or she has no cause of action under this section. For the purpose of this section, a dealer shall be considered to

be engaged in business with the public if a sales and service facility is open and is performing such services 8 hours a day, 5 days a week, excluding holidays. However, it will not be considered abandonment if such failure to engage in business is due to an act of God, a work stoppage, or a delay due to a strike or labor difficulty, a freight embargo, or other cause over which the motor vehicle dealer has no control, including any violation of ss. 320.60-320.70.

(5) Notwithstanding any other provision of this section, if a motor vehicle dealer has abandoned his or her franchise agreement as provided in subsection (4), the licensee may give written notice to the dealer and the department of the licensee's intention to discontinue, cancel, or fail to renew the franchise agreement with the dealer at least 15 days before the effective date thereof, specifying the grounds for such action. A motor vehicle dealer receiving such notice may file a petition or complaint for determination of whether in fact there has been an abandonment of the franchise.

(6) If the complainant motor vehicle dealer prevails, he or she shall have a cause of action against the licensee for reasonable attorneys' fees and costs incurred by him or her in such proceeding, and he or she shall have a cause of action under s. 320.697.

(7) Except as provided in s. 320.643, no replacement motor vehicle dealer shall be named for this point or location to engage in business and the franchise agreement shall remain in effect until a final judgment is entered after all appeals are exhausted, provided that, when a motor vehicle dealer appeals a decision upholding a discontinuation, cancellation, or nonrenewal based upon abandonment or revocation of the dealer's license pursuant to s. 320.27, as lawful reasons for such discontinuation, cancellation, or nonrenewal, the franchise agreement shall remain in effect pending exhaustion of all appeals only if the motor vehicle dealer establishes a likelihood of success on appeal and that the public interest will not be harmed by keeping the franchise agreement in effect pending entry of final judgment after such appeal.

(8) If a transfer is proposed pursuant to s. 320.643(1) or (2) after a notice of intent to discontinue, cancel, or not renew a franchise agreement is received but, prior to the final determination, including exhaustion of all appellate remedies of a motor vehicle dealer's complaint or petition contesting such action, the termination proceedings shall be stayed, without bond, during the period that the transfer is being reviewed by the licensee pursuant to s. 320.643. During the period that the transfer is being reviewed by the licensee, pursuant to s. 320.643, the franchise agreement shall remain in full force and effect, and the motor vehicle dealer shall retain all rights and remedies pursuant to the terms and conditions of the franchise agreement and applicable law, including all rights of transfer until such time as the licensee has accepted or rejected the proposed transfer. If the proposed transfer is rejected, the motor vehicle dealer shall retain all of its rights pursuant to s. 320.643 to an administrative determination as to whether the licensee's rejection is in compliance with the provisions of s. 320.643, and during the pendency of any such administrative proceeding, and any related appellate proceedings, the termination proceedings shall remain stayed without bond, the franchise agreement shall remain in full force and effect, and the motor vehicle dealer shall retain all rights and remedies pursuant to the terms and conditions of the franchise agreement and applicable law, including all rights of transfer. If a transfer is approved by the licensee or mandated by law, the termination proceedings shall be dismissed with prejudice as moot. This subsection applies only to the first two proposed transfers pursuant to s. 320.643(1) or (2) after notice of intent to discontinue, cancel, or not renew is received.

History

S. 3, ch. 2017-187, eff. June 26, 2017.

Annotations

Notes

Amendment Notes

The 2017 amendment reenacted this section for the purpose of incorporating the amendment made by that Act to Fla. Stat. § 320.64, in a reference thereto.

Fla. Stat. § 320.6412

Current through sections amended effective May 6, 2022.

LexisNexis® Florida Annotated Statutes > Title XXIII. Motor Vehicles. (Chs. 316 — 325) > Chapter 320. Motor Vehicle Licenses. (§§ 320.01 — 320.96)

§ 320.6412. Franchise termination based on fraud; standard of proof.

Notwithstanding the provisions of any franchise agreement, a franchise agreement of a motor vehicle dealer may not be terminated, canceled, discontinued, or not renewed by a licensee on the basis of misrepresentation or fraud, or the filing of any false or fraudulent statements or claims with the licensee, unless the licensee proves by a preponderance of the evidence before a trier of fact either that the majority owner, or if there is no majority owner, the person designated as the dealer-principal in the franchise agreement, knew of such acts at the time they allegedly were committed, or that the licensee provided written notice detailing such alleged acts to the majority owner or dealer-principal who, within a reasonable time after receipt of such written notice, failed to take actions reasonably calculated to prevent such acts from continuing or recurring.

History

S. 2, ch. 2008-62, eff. May 28, 2008; s. 3, ch. 2017-187, eff. June 26, 2017.

Annotations

Notes

Amendment Notes

The 2017 amendment reenacted this section for the purpose of incorporating the amendment made by that Act to Fla. Stat. § 320.64, in a reference thereto.

Fla. Stat. § 320.6415

Current through sections amended effective May 6, 2022.

LexisNexis® Florida Annotated Statutes > Title XXIII. Motor Vehicles. (Chs. 316 — 325) > Chapter 320. Motor Vehicle Licenses. (§§ 320.01 — 320.96)

§ 320.6415. Changes in plan or system of distribution.

(1) A motor vehicle dealer franchise agreement shall continue in full force and operation notwithstanding a change, in whole or in part, of an established plan or system of distribution of the motor vehicles offered for sale under such franchise agreement. The appointment of a new importer or distributor for motor vehicles offered for sale under such franchise agreement shall be deemed to be a change of an established plan or system of distribution.

(2) Upon the occurrence of such change, the department shall deny an application:

(a) For any license filed pursuant to ss. 320.60-320.70 unless the applicant offers to each motor vehicle dealer who is a party to the franchise agreement a new franchise agreement containing substantially the same provisions which were contained in the previous franchise agreement or files an affidavit with the department acknowledging its undertaking to assume and fulfill the rights, duties, and obligations of its predecessor under the previous franchise agreement.

(b) For any license filed pursuant to s. 320.27 in any community or territory in which such franchise or selling agreement is continuing in full force and operation hereunder, until this section has been complied with.

History

SS. 7, 13, ch. 84-69; ss. 20, 21, ch. 88-395; s. 4, ch. 91-429; s. 3, ch. 2017-187, eff. June 26, 2017.

Annotations

Notes

Amendment Notes

The 2017 amendment reenacted this section for the purpose of incorporating the amendment made by that Act to Fla. Stat. § 320.64, in a reference thereto.

Research References & Practice Aids

RESEARCH REFERENCES & PRACTICE AIDS

Law Reviews & Journals

Review Of Florida Legislation; The Fragility of Good Ideas: A Case For Abolishing Sunset Review of Florida's Motor Vehicle Manufacturer Licensing Statute, Barbara Balzer, Fall 1988, 16 Fla. St. U.L. Rev. 697.

End of Document

Fla. Stat. § 320.642

Current through sections amended effective May 6, 2022.

LexisNexis® Florida Annotated Statutes > Title XXIII. Motor Vehicles. (Chs. 316 — 325) > Chapter 320. Motor Vehicle Licenses. (§§ 320.01 — 320.96)

§ 320.642. Dealer licenses in areas previously served; procedure.

(1) Any licensee who proposes to establish an additional motor vehicle dealership or permit the relocation of an existing dealer to a location within a community or territory where the same line-make vehicle is presently represented by a franchised motor vehicle dealer or dealers shall give written notice of its intention to the department. The notice must state:

(a) The specific location at which the additional or relocated motor vehicle dealership will be established.

(b) The date on or after which the licensee intends to be engaged in business with the additional or relocated motor vehicle dealer at the proposed location.

(c) The identity of all motor vehicle dealers who are franchised to sell the same line-make vehicle with licensed locations in the county and any contiguous county to the county where the additional or relocated motor vehicle dealer is proposed to be located.

(d) The names and addresses of the dealer-operator and principal investors in the proposed additional or relocated motor vehicle dealership.

Immediately upon receipt of the notice the department shall cause a notice to be published in the Florida Administrative Register. The published notice must state that a petition or complaint by any dealer with standing to protest pursuant to subsection (3) must be filed within 30 days following the date of publication of the notice in the Florida Administrative Register. The published notice must describe and identify the proposed dealership sought to be licensed, and the department shall cause a copy of the notice to be mailed to those dealers identified in the licensee's notice under paragraph (c). The licensee shall pay a fee of $75 and a service charge of $2.50 for each publication. Proceeds from the fee and service charge shall be deposited into the Highway Safety Operating Trust Fund.

(2)

(a) An application for a motor vehicle dealer license in any community or territory shall be denied when:

1. A timely protest is filed by a presently existing franchised motor vehicle dealer with standing to protest as defined in subsection (3); and

2. The licensee fails to show that the existing franchised dealer or dealers who register new motor vehicle retail sales or retail leases of the same line-make in the community or territory of the proposed dealership are not providing adequate representation of such line-make motor vehicles in such community or territory. The burden of proof in establishing inadequate representation shall be on the licensee.

(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 licensees 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 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 when 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, the 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 the 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.

(4) The department's decision to deny issuance of a license under this section shall remain in effect for a period of 12 months. The department shall not issue a license for the proposed additional or relocated motor vehicle dealer until a final decision by the department is rendered determining that the application for the motor vehicle dealer's license should be granted.

(5)

(a) The opening or reopening of the same or a successor motor vehicle dealer within 12 months is not considered an additional motor vehicle dealer subject to protest within the meaning of this section, if:

1. The opening or reopening is within the same or an adjacent county and is within 2 miles of the former motor vehicle dealer location;

2. There is no dealer within 25 miles of the proposed location or the proposed location is further from each existing dealer of the same line-make than the prior location is from each dealer of the same line-make within 25 miles of the new location;

3. The opening or reopening is within 6 miles of the prior location and, if any existing motor vehicle dealer of the same line-make is located within 15 miles of the former location, the proposed location is no closer to any existing dealer of the same line-make within 15 miles of the proposed location; or

4. The opening or reopening is within 6 miles of the prior location and, if all existing motor vehicle dealers of the same line-make are beyond 15 miles of the former location, the proposed location is further than 15 miles from any existing motor vehicle dealer of the same line-make.

(b) Any other such opening or reopening shall constitute an additional motor vehicle dealer within the meaning of this section.

(c) If a motor vehicle dealer has been opened or reopened pursuant to this subsection, the licensee may not propose a motor vehicle dealer of the same line-make to be located within 4 miles of the previous location of such dealer for 2 years after the date the relocated dealership opens.

(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.

(7) Measurements of the distance between proposed or existing dealer locations required by this section shall be taken from the geometric centroid of the property that encompasses all of the existing or proposed motor vehicle dealer operations.

(8) The department shall not be obligated to determine the accuracy of any distance asserted by any party in a notice submitted to it. Any dispute concerning a distance measurement asserted by a party shall be resolved by a hearing conducted in accordance with ss. 120.569 and 120.57.

History

S. 3, ch. 2017-187, effective June 26, 2017.

Annotations

Notes

Amendment Notes

The 2017 amendment reenacted this section for the purpose of incorporating the amendment made by that Act to Fla. Stat. § 320.64, in a reference thereto.

End of Document

Fla. Stat. § 320.643

Current through sections amended effective May 6, 2022.

LexisNexis® Florida Annotated Statutes > Title XXIII. Motor Vehicles. (Chs. 316 — 325) > Chapter 320. Motor Vehicle Licenses. (§§ 320.01 — 320.96)

§ 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 the 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, assignment, or sale shall be valid unless the transferee agrees in writing to comply with all requirements of the franchise then in effect, but with the ownership changed to the transferee.

(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 the 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 is 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 the 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.

(b) Notwithstanding paragraph (a), a licensee may not reject a proposed transfer of a legal, equitable, or beneficial interest in a motor vehicle dealer to a trust or other entity, or to any beneficiary thereof, which is established by an owner of any interest in a motor vehicle dealer for purposes of estate planning, if the controlling person of the trust or entity, or the beneficiary, is of good moral character.

(3) A licensee may not condition any proposed transfer under this section upon a relocation of a dealer, construction of any addition or modification to, or any refurbishing or remodeling of any dealership structure, facility, or building of the existing motor vehicle dealer, or upon any modification of the existing franchise agreement, except for the change of ownership.

(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) 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, in a timely manner, a proposed transferee who satisfies the criteria set forth in subsection (1) or subsection (2) is presumed to be unreasonable.

(6) 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 not in violation of or precluded by this section and was reasonable. The determination of whether such rejection or withholding was not in violation of or precluded by this section and 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.

History

S. 3, ch. 2017-187, eff. June 26, 2017.

Annotations

Notes

Amendment Notes

The 2017 amendment reenacted this section for the purpose of incorporating the amendment made by that Act to Fla. Stat. § 320.64, in a reference thereto.

End of Document

Fla. Stat. § 320.644

Current through sections amended effective May 6, 2022.

LexisNexis® Florida Annotated Statutes > Title XXIII. Motor Vehicles. (Chs. 316 — 325) > Chapter 320. Motor Vehicle Licenses. (§§ 320.01 — 320.96)

§ 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 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, 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.

(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 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.

History

S. 3, ch. 2017-187, eff. June 26, 2017.

Annotations

Notes

Amendment Notes

The 2017 amendment reenacted this section for the purpose of incorporating the amendment made by that Act to Fla. Stat. § 320.64, in a reference thereto.

Fla. Stat. § 320.645

Current through sections amended effective May 6, 2022.

LexisNexis® Florida Annotated Statutes > Title XXIII. Motor Vehicles. (Chs. 316 — 325) > Chapter 320. Motor Vehicle Licenses. (§§ 320.01 — 320.96)

§ 320.645. Restriction upon ownership of dealership by licensee.

(1) No licensee, distributor, manufacturer, or agent of a manufacturer or distributor, or any parent, subsidiary, common entity, or officer or representative of the licensee shall own or operate, either directly or indirectly, a motor vehicle dealership in this state for the sale or service of motor vehicles which have been or are offered for sale under a franchise agreement with a motor vehicle dealer in this state. A licensee may not be issued a motor vehicle dealer license pursuant to s. 320.27. However, no such licensee will be deemed to be in violation of this section:

(a) When operating a motor vehicle dealership for a temporary period, not to exceed 1 year, during the transition from one owner of the motor vehicle dealership to another;

(b) When operating a motor vehicle dealership temporarily for a reasonable period for the exclusive purpose of broadening the diversity of its dealer body and enhancing opportunities for qualified persons who are part of a group that has historically been underrepresented in its dealer body, or for other qualified persons who the licensee deems lack the resources to purchase or capitalize the dealership outright, in a bona fide relationship with an independent person, other than a licensee or its agent or affiliate, who has made a significant investment that is subject to loss in the dealership within the dealership's first year of operation and who can reasonably expect to acquire full ownership of the dealership on reasonable terms and conditions; or

(c) If the department determines, after a hearing on the matter, pursuant to chapter 120, at the request of any person, that there is no independent person available in the community or territory to own and operate the motor vehicle dealership in a manner consistent with the public interest.

In any such case, the licensee must continue to make the motor vehicle dealership available for sale to an independent person at a fair and reasonable price. Approval of the sale of such a motor vehicle dealership to a proposed motor vehicle dealer shall not be unreasonably withheld.

(2) As used in this section, the term:

(a) "Independent person" is a person who is not an officer, director, or employee of the licensee.

(b) "Reasonable terms and conditions" requires that profits from the dealership are reasonably expected to be sufficient to allow full ownership of the dealership by the independent person within a reasonable time period not to exceed 10 years, which time period may be extended if there is a reasonable basis to do so and is not being sought to evade the purpose of this section; that the independent person has sufficient control to permit acquisition of ownership; and that the relationship cannot be terminated solely to avoid full ownership. The terms and conditions are not reasonable if they preclude the independent person from an expedited purchase of the dealership using a monetary source other than profits from the dealership's operation; provided, however, that the independent person must pay or make an agreement to pay to the licensee any and all reasonable prepayment charges and costs, including all unrecouped restored losses, associated with the expedited purchase of the dealership. For the purpose of this section, unrecouped restored losses are moneys that the manufacturer has provided to the dealership to restore losses of the dealership that the manufacturer has not been paid back through profits of the dealership.

(c) "Significant investment" means a reasonable amount, considering the reasonable capital requirements of the dealership, acquired and obtained from sources other than the licensee or any of its affiliates and not encumbered by the person's interest in the dealership.

(3) Nothing in this section shall prohibit, limit, restrict, or impose conditions on:

(a) The business activities, including, without limitation, the dealings with motor vehicle manufacturers and their representatives and affiliates, of any person that is primarily engaged in the business of short-term not to exceed 12 months rental of motor vehicles and industrial and construction equipment and activities incidental to that business, provided that:

1. Any motor vehicles sold by such person are limited to used motor vehicles that have been previously used exclusively and regularly by such person in the conduct of its rental business and used motor vehicles traded in on motor vehicles sold by such person;

2. Warranty repairs performed under any manufacturer's new vehicle warranty by such person on motor vehicles are limited to those motor vehicles that it owns. As to previously owned vehicles, warranty repairs can be performed only if pursuant to a motor vehicle service agreement as defined in part I of chapter 634, issued by such person or an express warranty issued by such person on the retail sale of those vehicles previously owned; and

3. Motor vehicle financing provided by such person to retail consumers for motor vehicles is limited to used motor vehicles sold by such person in the conduct of its business; or

(b) The direct or indirect ownership, affiliation or control of a person described in paragraph (a) of this subsection.

(4) Nothing in this chapter shall prohibit a 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), from receiving a license or licenses as defined in s. 320.27 and owning and operating a motor vehicle dealership or dealerships that sell or service motor vehicles other than any line-make of motor vehicles distributed by the distributor.

History

S. 3, ch. 2017-187, eff. June 26, 2017.

Annotations

Notes

Amendment Notes

The 2017 amendment reenacted this section for the purpose of incorporating the amendment made by that Act to Fla. Stat. § 320.64, in a reference thereto.

Fla. Stat. § 320.646

Current through sections amended effective May 6, 2022.

LexisNexis® Florida Annotated Statutes > Title XXIII. Motor Vehicles. (Chs. 316 — 325) > Chapter 320. Motor Vehicle Licenses. (§§ 320.01 — 320.96)

§ 320.646. Consumer data protection.

(1) As used in this section, the term:

(a) "Consumer data" means "nonpublic personal information" as such term is defined in 15 U.S.C. s. 6809(4) collected by a motor vehicle dealer and which is provided by the motor vehicle dealer directly to a licensee or third party acting on behalf of a licensee. Consumer data does not include the same or similar data which is obtained by a licensee from any other source.

(b) "Data management system" means a computer hardware or software system that is owned, leased, or licensed by a motor vehicle dealer, including a system of web-based applications, computer software, or computer hardware, whether located at the motor vehicle dealership or hosted remotely, and that stores and provides access to consumer data collected or stored by a motor vehicle dealer. The term includes, but is not limited to, dealership management systems and customer relations management systems.

(2) Notwithstanding the provisions of any franchise agreement, with respect to consumer data a licensee or a third party acting on behalf of a licensee:

(a) Shall comply with all, and not knowingly cause a motor vehicle dealer to violate any, applicable restrictions on reuse or disclosure of the consumer data established by federal or state law and must provide a written statement to the motor vehicle dealer upon request describing the established procedures adopted by the licensee or third party acting on behalf of the licensee which meet or exceed any federal or state requirements to safeguard the consumer data, including, but not limited to, those established in the Gramm-Leach-Bliley Act, 15 U.S.C. ss. 6801 et seq.

(b) Shall, upon the written request of the motor vehicle dealer, provide a written list of the consumer data obtained from the motor vehicle dealer and all persons to whom any consumer data has been provided by the licensee or a third party acting on behalf of a licensee during the preceding 6 months. The dealer may make such a request no more than once every 6 months. The list must indicate the specific fields of consumer data which were provided to each person. Notwithstanding the foregoing, such a list need not include:

1. A person to whom consumer data was provided, or the specific consumer data provided to such person, if the person was, at the time the consumer data was provided, one of the licensee's service providers, subcontractors or consultants acting in the course of such person's performance of services on behalf of or for the benefit of the licensee or motor vehicle dealer, provided that the licensee has entered into an agreement with such person requiring that the person comply with the safeguard requirements of applicable state and federal law, including, but not limited to, those established in the Gramm-Leach-Bliley Act, 15 U.S.C. ss. 6801 et seq.; or

2. A person to whom consumer data was provided, or the specific consumer data provided to such person, if the motor vehicle dealer has previously consented in writing to such person receiving the consumer data provided and the motor vehicle dealer has not withdrawn such consent in writing.

(c) May not require that a motor vehicle dealer grant the licensee or a third party direct or indirect access to the dealer's data management system to obtain consumer data. A licensee must permit a

motor vehicle dealer to furnish consumer data in a widely accepted file format, such as comma delimited, and through a third-party vendor selected by the motor vehicle dealer. However, a licensee may access or obtain consumer data directly from a motor vehicle dealer's data management system with the express consent of the dealer. The consent must be in the form of a written document that is separate from the parties' franchise agreement, is executed by the motor vehicle dealer, and may be withdrawn by the dealer upon 30 days' written notice to the licensee.

(d) Must indemnify the motor vehicle dealer for any third-party claims asserted against or damages incurred by the motor vehicle dealer to the extent caused by access to, use of, or disclosure of consumer data in violation of this section by the licensee, a third party acting on behalf of the licensee, or a third party to whom the licensee has provided consumer data.

(3) In any cause of action against a licensee pursuant to s. 320.697 for a violation of paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c), the person bringing the action has the burden of proving that the violation was willful or with sufficient frequency to establish a pattern of wrongdoing with respect to such person's consumer data.

History

S. 3, ch. 2017-187, eff. June 26, 2017.

Annotations

Notes

Amendment Notes

The 2017 amendment reenacted this section for the purpose of incorporating the amendment made by that Act to Fla. Stat. § 320.64, in a reference thereto.

Fla. Stat. § 320.68

Current through sections amended effective May 6, 2022.

LexisNexis® Florida Annotated Statutes > Title XXIII. Motor Vehicles. (Chs. 316 — 325) > Chapter 320. Motor Vehicle Licenses. (§§ 320.01 — 320.96)

§ 320.68. Revocation of license held by firms or corporations.

If an applicant or licensee is a firm or corporation, it shall be sufficient cause for the denial, suspension, or revocation of a license that any officer, director, or trustee of the firm or corporation, or any member in case of a partnership, has been guilty of an act or omission which would be cause for refusing, suspending, or revoking a license to such party as an individual. Each licensee shall be responsible for the acts of any of its employees while acting as its agent if the licensee approved of or had knowledge of the acts or other similar acts and after such approval or knowledge retained the benefits, proceeds, profits, or advantages accruing from the acts or otherwise ratified the acts.

History

S. 3, ch. 2017-187, eff. June 26, 2017.

Annotations

Notes

Amendment Notes

The 2017 amendment reenacted this section for the purpose of incorporating the amendment made by that Act to Fla. Stat. § 320.64, in a reference thereto.

End of Document

Fla. Stat. § 320.695

Current through sections amended effective May 6, 2022.

LexisNexis® Florida Annotated Statutes > Title XXIII. Motor Vehicles. (Chs. 316 — 325) > Chapter 320. Motor Vehicle Licenses. (§§ 320.01 — 320.96)

§ 320.695. Injunction.

In addition to the remedies provided in this chapter, and notwithstanding the existence of any adequate remedy at law, the department, or any motor vehicle dealer in the name of the department and state and for the use and benefit of the motor vehicle dealer, is authorized to make application to any circuit court of the state for the grant, upon a hearing and for cause shown, of a temporary or permanent injunction, or both, restraining any person from acting as a licensee under the terms of ss. 320.60-320.70 without being properly licensed hereunder, or from violating or continuing to violate any of the provisions of ss. 320.60-320.70, or from failing or refusing to comply with the requirements of this law or any rule or regulation adopted hereunder. Such injunction shall be issued without bond. A single act in violation of the provisions of ss. 320.60-320.70 shall be sufficient to authorize the issuance of an injunction. However, this statutory remedy shall not be applicable to any motor vehicle dealer after final determination by the department under s. 320.641(3).

History

S. 15, ch. 70-424; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 16, 17, ch. 80-217; ss. 2, 3, ch. 81-318; ss. 20, 21, ch. 88-395; s. 4, ch. 91-429; s. 3, ch. 2017-187, eff. June 26, 2017.

Annotations

LexisNexis® Notes

Notes

Amendments.

The 2017 amendment reenacted this section for the purpose of incorporating the amendment made by that Act to Fla. Stat. § 320.64, in a reference thereto.

Case Notes

Business & Corporate Law: Distributorships & Franchises: Terminations: General Overview

Civil Procedure: Settlements: Offers of Judgment: General Overview

Civil Procedure: Settlements: Offers of Judgment: Making of Offers

Business & Corporate Law: Distributorships & Franchises: Terminations: General Overview

Fla. Stat. § 320.695 was improperly applied to a franchise agreement where Fla. Stat. § 320.695 did not indicate it was to operate retroactively on its face and the use of state police power to enforce the law would have resulted in an unconstitutional impairment of the contract. Yamaha Parts Distributors, Inc. v. Ehrman, 316 So. 2d 557, 1975 Fla. LEXIS 3544 (Fla. 1975).

Civil Procedure: Settlements: Offers of Judgment: General Overview

Defendants were not entitled to attorneys' fees based on plaintiffs' rejection of their offers of judgment because plaintiffs' claims under the Florida Motor Vehicle Dealer Act (Act), Fla. Stat. §§ 320.60-.70, arose from alleged violations that, if proven, would have permitted both monetary and injunctive relief; as the claim sought both monetary damages and injunctive relief, Fla. Stat. § 768.79 did not apply. Defendants' purported compliance with Fla. R. Civ. P. 1.442 did not create a right to an attorney's fees award as entitlement to fees only existed if § 768.79 applied. Winter Park Imps., Inc. v. JM Family Enters., 66 So. 3d 336, 2011 Fla. App. LEXIS 10379 (Fla. 5th DCA 2011).

Civil Procedure: Settlements: Offers of Judgment: Making of Offers

Defendants were not entitled to attorneys' fees based on plaintiffs' rejection of their offers of judgment because plaintiffs' claims under the Florida Motor Vehicle Dealer Act (Act), Fla. Stat. §§ 320.60-.70, arose from alleged violations that, if proven, would have permitted both monetary and injunctive relief; as the claim sought both monetary damages and injunctive relief, Fla. Stat. § 768.79 did not apply. Defendants' purported compliance with Fla. R. Civ. P. 1.442 did not create a right to an attorney's fees award as entitlement to fees only existed if § 768.79 applied. Winter Park Imps., Inc. v. JM Family Enters., 66 So. 3d 336, 2011 Fla. App. LEXIS 10379 (Fla. 5th DCA 2011).

Research References & Practice Aids

RESEARCH REFERENCES & PRACTICE AIDS

Florida Statutes references.

Chapter 320. Motor Vehicle Licenses, F.S. § 320.64. Denial, suspension, or revocation of license; grounds.

Florida Administrative Code references.

Chapter 15C-7 Motor Vehicle Dealers, F.A.C. 15C-7.005 Unauthorized Additional Motor Vehicle Dealerships — Unauthorized Supplemental Dealership Locations.

Law Reviews & Journals

Motor Vehicle Dealers and Motor Vehicle Manufacturers: Florida Reacts To Pressures in the Marketplace, Walter E. Forehand and John W. Forehand, Spring 2002, 29 Fla. St. U.L. Rev. 1057.

Review Of Florida Legislation; The Fragility of Good Ideas: A Case For Abolishing Sunset Review of Florida's Motor Vehicle Manufacturer Licensing Statute, Barbara Balzer, Fall 1988, 16 Fla. St. U.L. Rev. 697.

End of Document

Fla. Stat. § 320.696

Current through sections amended effective May 6, 2022.

LexisNexis® Florida Annotated Statutes > Title XXIII. Motor Vehicles. (Chs. 316 — 325) > Chapter 320. Motor Vehicle Licenses. (§§ 320.01 — 320.96)

§ 320.696. Warranty responsibility.

(1)

(a) A licensee shall timely compensate a motor vehicle dealer who performs work to maintain or repair a licensee's product under a warranty or maintenance plan, extended warranty, certified pre-owned warranty, or a service contract, issued by the licensee or its common entity, unless issued by a common entity that is not a manufacturer; to fulfill a licensee's delivery or preparation procedures; or to repair a motor vehicle as a result of a licensee's or common entity's recall, campaign service, authorized goodwill, directive, or bulletin.

(b) As used in this section, the terms "compensate" and "compensation" shall include all labor and parts included in the work as provided in this section. The term "labor" shall include time spent by employees for diagnosis and repair of a vehicle. The term "parts" shall include replacement parts and accessories. The term "retail customer repair" means work, including parts and labor, performed by a dealer which does not come within the provisions of a licensee's or its common entity's warranty, extended warranty, certified pre-owned warranty, service contract, or maintenance plan, and excludes parts and labor described in paragraphs (3)(b) and (4)(c).

(c) Compensation not paid to a motor vehicle dealer within 30 days after receipt of a claim is not timely. A licensee shall not establish or implement a term, policy, or procedure different from those described in this section for any motor vehicle dealer to obtain compensation under this section, and shall not pay a motor vehicle dealer less than amounts due pursuant to this section.

(2) A licensee shall not take or threaten to take adverse action against a motor vehicle dealer who seeks to obtain compensation pursuant to this section. As used in this subsection, the term "adverse action" includes, without limitation, acting or failing to act, other than in good faith; creating or implementing an obstacle or process that is inconsistent with the licensee's obligations to the dealer under this section; hindering, delaying, or rejecting the proper and timely payment of compensation due under this section to a dealer; establishing, implementing, enforcing, or applying any policy, standard, rule, program, or incentive regarding compensation due under this section other than in a uniform and nondisparate manner among the licensee's dealers in this state; conducting or threatening to conduct any warranty, retail customer repair, or other service-related audit more frequently than once each calendar year; or denying, reducing, or charging back a warranty claim because of a dealer's failure to comply with all of the licensee's requirements for describing or processing a claim.

(3)

(a) A licensee shall compensate a motor vehicle dealer for parts used in any work described in subsection (1). The compensation may be an agreed percentage markup over the licensee's dealer cost, but if an agreement is not reached within 30 days after a dealer's written request, compensation for the parts is the greater of:

1. The dealer's arithmetical mean percentage markup over dealer cost for all parts charged by the dealer in 50 consecutive retail customer repairs made by the dealer within a 3-month period before the dealer's written request for a change in reimbursement pursuant to this section, or all of the retail customer repair orders over that 3-month period if there are fewer than 50 retail customer

repair orders in that period. The motor vehicle dealer shall give the licensee 10 days' written notice that it intends to make a written request to the licensee for a warranty parts reimbursement increase and permit the licensee, within that 10-day period, to select the initial retail customer repair for the consecutive repair orders that will be attached to the written request used for the markup computation, provided that if the licensee fails to provide a timely selection, the dealer may make that selection. No repair order shall be excluded from the markup computation because it contains both warranty, extended warranty, certified pre-owned warranty, maintenance, recall, campaign service, or authorized goodwill work and a retail customer repair. However, only the retail customer repair portion of the repair order shall be included in the computation, and the parts described in paragraph (b) shall be excluded from the computation;

2. The licensee's highest suggested retail or list price for the parts; or

3. An amount equal to the dealer's markup over dealer cost that results in the same gross profit percentage for parts used in work done under subsection (1) as the dealer receives for parts used in the customer retail repairs, as evidenced by the average of said dealer's gross profit percentage in the dealer's financial statements for the 2 months preceding the dealer's request.

If a licensee reduces the suggested retail or list price for any replacement part or accessory, it also shall reduce, by at least the same percentage, the cost to the dealer for the part or accessory. The dealer's markup or gross profit percentage shall be uniformly applied to all of the licensee's parts used by the dealer in performing work covered by subsection (1).

(b) In calculating the compensation to be paid for parts by the arithmetical mean percentage markup over dealer cost method in paragraph (a), parts discounted by a dealer for repairs made in group, fleet, insurance, or other third-party payer service work; parts used in repairs of government agencies' repairs for which volume discounts have been negotiated; parts used in special events, specials, or promotional discounts for retail customer repairs; parts sold at wholesale; parts used for internal repairs; engine assemblies and transmission assemblies; parts used in retail customer repairs for routine maintenance, such as fluids, filters and belts; nuts, bolts, fasteners, and similar items that do not have an individual part number; and tires shall be excluded in determining the percentage markup over dealer cost.

(c) If a licensee furnishes a part or component to a motor vehicle dealer at no cost to use in performing repairs under a recall, campaign service action, or warranty repair, the licensee shall compensate the dealer for the part or component in the same manner as warranty parts compensation under this subsection, less the dealer cost for the part or component as listed in the licensee's price schedule.

(d) A licensee shall not establish or implement a special part or component number for parts used in predelivery, dealer preparation, warranty, extended warranty, certified pre-owned warranty, recall, campaign service, authorized goodwill, or maintenance-only applications if that results in lower compensation to the dealer than as calculated in this subsection.

(4)

(a) A licensee shall compensate a motor vehicle dealer for labor performed in connection with work described in subsection (1) as calculated in this subsection.

(b) Compensation paid by a licensee to a motor vehicle dealer may be an agreed hourly labor rate. If, however, an agreement is not reached within 30 days after the dealer's written request, the dealer may choose to be paid the greater of:

1. The dealer's hourly labor rate for retail customer repairs, determined by dividing the amount of the dealer's total labor sales for retail customer repairs by the number of total labor hours that generated those sales for the month preceding the request, excluding the work in paragraph (c); or

2. An amount equal to the dealer's markup over dealer cost that results in the same gross profit percentage for labor hours performed in work covered by subsection (1) as the dealer receives for labor performed in its customer retail repairs, as evidenced by the average of said dealer's gross

profit percentage in the dealer's financial statements provided to the licensee for the 2 months preceding the dealer's written request, if the dealer provides in the written request the arithmetical mean of the hourly wage paid to all of its technicians during that preceding month. The arithmetical mean shall be the dealer cost used in that calculation.

After an hourly labor rate is agreed or determined, the licensee shall uniformly apply and pay that hourly labor rate for all labor used by the dealer in performing work under subsection (1). However, a licensee shall not pay an hourly labor rate less than the hourly rate it was paying to the dealer for work done under subsection (1) on January 2, 2008. A licensee shall not eliminate flat-rate times from or establish an unreasonable flat-rate time in its warranty repair manual, warranty time guide, or any other similarly named document. A licensee shall establish reasonable flat-rate labor times in its warranty repair manuals and warranty time guides for newly introduced model motor vehicles which are at least consistent with its existing documents. As used in this subsection, the terms "retail customer repair" and "similar work" are not limited to a repair to the same model vehicle or model year, but include prior repairs that resemble but are not identical to the repair for which the dealer is making a claim for compensation.

(c) In determining the hourly labor rate calculated under subparagraph (b)1., a dealer's labor charges for internal vehicle repairs; vehicle reconditioning; repairs performed for group, fleet, insurance, or other third-party payers; discounted repairs of motor vehicles for government agencies; labor used in special events, specials, or express service; and promotional discounts shall not be included as retail customer repairs and shall be excluded from such calculations.

(5) A licensee shall not review, change, or fail to pay a motor vehicle dealer for parts or labor determined under this section unless the dealer has requested a change, or the action is pursuant to the licensee's written, predetermined schedule for increasing parts or labor compensation that is not contrary to any provision of this section. A dealer may make written requests for changes in compensation for parts or labor performed under this section not more than semiannually. The dealer shall attach supporting documentation to each written request. Any increase in parts or labor reimbursement determined thereafter to be owed to the dealer shall be paid pursuant to this section retroactively for all claims filed by a dealer 15 days after the date of the licensee's receipt of the dealer's written request.

(6) A licensee shall not recover or attempt to recover, directly or indirectly, any of its costs for compensating a motor vehicle dealer under this section.

(7) A licensee shall not require, influence, or attempt to influence a motor vehicle dealer to implement or change the prices for which it sells parts or labor in retail customer repairs. A licensee shall not implement or continue a policy, procedure, or program to any of its dealers in this state for compensation under this section which is inconsistent with this section.

(8) If a court determines with finality that any provision of this section is void or unenforceable, the remaining provisions shall not be affected but shall remain in effect.

History

S. 3, ch. 2017-187, eff. June 26, 2017.

Annotations

Notes

Amendment Notes

The 2017 amendment reenacted this section for the purpose of incorporating the amendment made by that Act to Fla. Stat. § 320.64, in a reference thereto.

End of Document

Fla. Stat. § 320.697

Current through sections amended effective May 6, 2022.

LexisNexis® Florida Annotated Statutes > Title XXIII. Motor Vehicles. (Chs. 316 — 325) > Chapter 320. Motor Vehicle Licenses. (§§ 320.01 — 320.96)

§ 320.697. Civil damages.

Any person who has suffered pecuniary loss or who has been otherwise adversely affected because of a violation by a licensee of ss. 320.60-320.70, notwithstanding the existence of any other remedies under ss. 320.60-320.70, has a cause of action against the licensee for damages and may recover damages therefor in any court of competent jurisdiction in an amount equal to 3 times the pecuniary loss, together with costs and a reasonable attorney's fee to be assessed by the court. Upon a prima facie showing by the person bringing the action that such a violation by the licensee has occurred, the burden of proof shall then be upon the licensee to prove that such violation or unfair practice did not occur.

History

S. 3, ch. 2017-187, eff. June 26, 2017.

Annotations

Notes

Amendment Notes

The 2017 amendment reenacted this section for the purpose of incorporating the amendment made by that Act to Fla. Stat. § 320.64, in a reference thereto.

End of Document

Fla. Stat. § 320.699

Current through sections amended effective May 6, 2022.

LexisNexis® Florida Annotated Statutes > Title XXIII. Motor Vehicles. (Chs. 316 — 325) > Chapter 320. Motor Vehicle Licenses. (§§ 320.01 — 320.96)

§ 320.699. Administrative hearings and adjudications; procedure.

(1) A motor vehicle dealer, or person with entitlements to or in a motor vehicle dealer, who is directly and adversely affected by the action or conduct of an applicant or licensee which is alleged to be in violation of any provision of ss. 320.60-320.70, may seek a declaration and adjudication of its rights with respect to the alleged action or conduct of the applicant or licensee by:

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

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

(2) If a written objection or notice of protest is filed with the department under paragraph (1)(b), a hearing shall be held not sooner than 180 days nor later than 240 days from the date of filing of the first objection or notice of protest, unless the time is extended by the administrative law judge for good cause shown. This subsection shall govern the schedule of hearings in lieu of any other provision of law with respect to administrative hearings conducted by the Department of Highway Safety and Motor Vehicles or the Division of Administrative Hearings, including performance standards of state agencies, which may be included in current and future appropriations acts.

History

S. 3, ch. 2017-187, eff. June 26, 2017.

Annotations

Notes

Amendment Notes

The 2017 amendment reenacted this section for the purpose of incorporating the amendment made by that Act to Fla. Stat. § 320.64, in a reference thereto.

Fla. Stat. § 320.6992

Current through sections amended effective May 6, 2022.

LexisNexis® Florida Annotated Statutes > Title XXIII. Motor Vehicles. (Chs. 316 — 325) > Chapter 320. Motor Vehicle Licenses. (§§ 320.01 — 320.96)

§ 320.6992. Application.

Sections 320.60-320.70, including amendments to ss. 320.60-320.70, apply to all presently existing or hereafter established systems of distribution of motor vehicles in this state, except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution. Sections 320.60-320.70 do not apply to any judicial or administrative proceeding pending as of October 1, 1988. All agreements renewed, amended, or entered into subsequent to October 1, 1988, shall be governed by ss. 320.60-320.70, including any amendments to ss. 320.60-320.70 which have been or may be from time to time adopted, unless the amendment specifically provides otherwise, and except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution.

History

S. 3, ch. 2017-141, eff. July 1, 2017; s. 2, ch. 2017-187, eff. June 26, 2017.

Annotations

Notes

Amendment Notes

The 2017 amendment by s. 2, ch. 2017-187, reenacted this section for the purpose of incorporating the amendment made by that Act to Fla. Stat. § 320.64, in a reference thereto.

The 2017 amendment by s. 3, ch. 2017-141, reenacted this section for the purpose of incorporating the amendment made by that Act to Fla. Stat. § 320.6407, in a reference thereto.

End of Document

Fla. Stat. § 320.70

Current through sections amended effective May 6, 2022.

LexisNexis® Florida Annotated Statutes > Title XXIII. Motor Vehicles. (Chs. 316 — 325) > Chapter 320. Motor Vehicle Licenses. (§§ 320.01 — 320.96)

§ 320.70. Penalties for violation.

Any person being a manufacturer, factory branch, or factory representative, who violates any provision of ss. 320.61-320.70, or who does any act enumerated in s. 320.64 as a ground for the denial, suspension or revocation of a license, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History

S. 3, ch. 2017-187, eff. June 26, 2017.

Annotations

Notes

Amendment Notes

The 2017 amendment reenacted this section for the purpose of incorporating the amendment made by that Act to Fla. Stat. § 320.64, in a reference thereto.

End of Document

Fla. Stat. § 320.701

Current through sections amended effective May 6, 2022.

LexisNexis® Florida Annotated Statutes > Title XXIII. Motor Vehicles. (Chs. 316 — 325) > Chapter 320. Motor Vehicle Licenses. (§§ 320.01 — 320.96)

§ 320.701. Applicability of ch. 84-69.

This act applies to all presently existing or established systems of distribution of motor vehicles in this state, except to the extent that such application would impair contractual agreements in violation of the Florida Constitution or Federal Constitution. All agreements renewed or entered into subsequent to May 31, 1984, will be governed by this act.

History

S. 12, ch. 84-69.

Annotations

Research References & Practice Aids

RESEARCH REFERENCES & PRACTICE AIDS

Law Reviews & Journals

Review of Florida Legislation; New Regulations For Motor Vehicle Manufacturers and New Protections For Their Franchisees, Mary E. Haskins and Walter E. Forehand, Fall 1988, 16 Fla. St. U.L. Rev. 763.

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