

Amendment No. 01 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Representative(s) Bense offered the following:

Amendment (with title amendment)

On page 47, between lines 3&4 of the bill

insert:

Section 16. Paragraph (a) of subsection (11) of section 320.60, Florida Statutes, is amended and a new subsection (15) is added to read:

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

(11)(a) "Motor vehicle dealer" means any person, firm, company, or 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

1 offers, or attempts to negotiate a sale or exchange of any
2 interest in, motor vehicles, or

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

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

13 Section 17. Subsection (4) of section 320.61, Florida
14 Statutes, is amended to read:

15 320.61 Licenses required of motor vehicle
16 manufacturers, distributors, importers, etc.--

17 (4) When a complaint of unfair or prohibited
18 cancellation or nonrenewal of a dealer agreement is made by a
19 motor vehicle dealer against a licensee and such complaint is
20 pending is in the process of being heard pursuant to ss.
21 320.60-320.70 by the department, no replacement application
22 for such agreement shall be granted and no license shall be
23 issued by the department under s. 320.27 to any replacement
24 dealer until a final decision is rendered by the department on
25 the complaint of unfair cancellation, so long as the dealer
26 agreement of the complaining dealer is in effect as provided
27 under s. 320.641(7).

28 Section 18. Subsections (13) and (16) are stricken,
29 subsections (14), (15), and (17)-(23) are renumbered,
30 subsection (20) is amended and renumbered as (18), and
31 subsections (22)-(33) are added to section 320.64, Florida

1 Statutes, to read:

2 320.64 Denial, suspension, or revocation of license;
3 grounds.--A license of a licensee under s. 320.61 may be
4 denied, suspended, or revoked within the entire state or at
5 any specific location or locations within the state at which
6 the applicant or licensee engages or proposes to engage in
7 business, upon a proof that the section was violated with
8 sufficient frequency to establish a pattern of wrongdoing and
9 a licensee or applicant shall be liable for claims and
10 remedies provided in s. 320.695 and s. 320.697 for any
11 violation of any of the following provisions. A licensee is
12 prohibited from committing the following acts:upon proof that
13 an applicant or licensee has failed to comply with any of the
14 following provisions with sufficient frequency so as to
15 establish a pattern of wrongdoing on the part of the
16 applicant:

17 (18)(20) The applicant or licensee has established a
18 system of motor vehicle allocation or distribution or has
19 implemented a system of allocation or distribution of motor
20 vehicles to one or more of its franchised motor vehicle
21 dealers which is unfair, inequitable, unreasonably
22 discriminatory, or not supportable by reason and good cause
23 after considering the equities of the affected motor vehicles
24 dealer or dealers. An applicant or licensee shall maintain
25 for 3 years records that describe its methods or formula of
26 allocation and distribution of its motor vehicles and records
27 of its actual allocation and distribution of motor vehicles
28 to its motor vehicle dealers in this state.

29 (22) The applicant or licensee has refused to deliver,
30 in reasonable quantities and within a reasonable time, to any
31 duly licensed motor vehicle dealer who has an agreement with

1 such applicant or licensee for the retail sale of new motor
2 vehicles and parts for motor vehicles sold or distributed by
3 the applicant or licensee, any such motor vehicles or parts as
4 are covered by such agreement. Such refusal includes the
5 failure to offer to its same line-make franchised motor
6 vehicle dealers all models manufactured for that line-make, or
7 requiring a dealer to pay any extra fee, require a dealer to
8 execute a separate franchise agreement, purchase unreasonable
9 advertising displays or other materials, or remodel, renovate,
10 or recondition the dealer's existing facilities, or provide
11 exclusive facilities as a prerequisite to receiving a model or
12 series of vehicles. However, the failure to deliver any motor
13 vehicle or part will not be considered a violation of this
14 section if the failure is due to an act of God, work stoppage,
15 or delay due to a strike or labor difficulty, a freight
16 embargo, product shortage, or other cause over which the
17 applicant or licensee has no control. An applicant or
18 licensee may impose reasonable requirements on the motor
19 vehicle dealer, other than the items listed above, including,
20 but not limited to, the purchase of special tools required to
21 properly service a motor vehicle, the undertaking of sales
22 person or service person training related to the motor
23 vehicle.

24 (23) The applicant or licensee has competed or is
25 competing with respect to any activity covered by the
26 franchise agreement with a motor vehicle dealer of the same
27 line-make located in this state with whom the applicant or
28 licensee has entered into a franchise agreement, except as
29 permitted in s. 320.645.

30 (24) The applicant or licensee has sold a motor
31 vehicle to any retail consumer in the state except through a

1 motor vehicle dealer holding a franchise agreement for the
2 line-make that includes the motor vehicle. This section does
3 not apply to sales by the applicant or licensee of motor
4 vehicles to its current employees, employees of companies
5 affiliated by common ownership, charitable not-for-profit-
6 organizations, and the federal government.

7 (25) The applicant or licensee has undertaken an audit
8 of warranty payments or incentive payment previously paid to a
9 motor vehicle dealer in violation of this section or has
10 failed to comply with s. 320.696. An applicant or licensee
11 may reasonably and periodically audit a motor vehicle dealer
12 to determine the validity of paid claims. Audit of warranty
13 payments shall only be for the 1-year period immediately
14 following the date the claim was paid. Audit of incentive
15 payments shall only be for an 18-month period immediately
16 following the date the incentive was paid. An applicant or
17 licensee shall not deny a claim or charge a motor vehicle
18 dealer back subsequent to the payment of the claim unless the
19 applicant or licensee can show that the claim was false or
20 fraudulent or that the motor vehicle dealer failed to
21 substantially comply with the reasonable written and uniformly
22 applied procedures of the applicant or licensee for such
23 repairs or incentives.

24 (26) Notwithstanding the terms of any franchise
25 agreement, the applicant or licensee has refused to allocate,
26 sell, or deliver motor vehicles, charged back or withheld
27 payments or other things of value for which the dealer is
28 otherwise eligible under a sales promotion, program, or
29 contest, or prevented the motor vehicle dealer from
30 participating in any promotion, program, or contest for
31 selling a motor vehicle to a customer who was present at the

1 dealership and the motor vehicle dealer did not know or should
2 not have reasonably known that the vehicle would be shipped to
3 a foreign country. There will be a rebuttable presumption
4 that the dealer did not know or should not have reasonably
5 known that the vehicle would be shipped to a foreign country
6 if the vehicle is titled in one of the fifty United States.

7 (27) Notwithstanding the terms of any franchise
8 agreement, the applicant or licensee has failed or refused to
9 indemnify and hold harmless any motor vehicle dealer against
10 any judgment for damages, or settlements agreed to by the
11 applicant or licensee, including, without limitation, court
12 costs and reasonable attorneys fees, arising out of
13 complaints, claims, or lawsuits, including, without
14 limitation, strict liability, negligence, misrepresentation,
15 express or implied warranty, or revocation or rescission of
16 acceptance of the sale of a motor vehicle, to the extent the
17 judgment or settlement relates to the alleged negligent
18 manufacture, design, or assembly of motor vehicles, parts, or
19 accessories. Nothing herein shall obviate the licensee's
20 obligations pursuant to chapter 681.

21 (28) The applicant or licensee has published,
22 disclosed, or otherwise made available in any form information
23 provided by a motor vehicle dealer with respect to sales
24 prices of motor vehicles or profit per motor vehicle sold.
25 Other confidential financial information provided by motor
26 vehicle dealers shall not be published, disclosed, or
27 otherwise made publicly available except in composite form.
28 However, this information may be disclosed with the written
29 consent of the dealer or in response to a subpoena or order of
30 the Department, a court or a lawful tribunal, or introduced
31 into evidence in such a proceeding, after timely notice to an

1 affected dealer.

2 (29) The applicant or licensee has failed to reimburse
3 a motor vehicle dealer in full for the reasonable cost of
4 providing a loaner vehicle to any customer who is having a
5 vehicle serviced at the motor vehicle dealer, if a loaner is
6 required by the applicant or licensee, or a loaner is
7 expressly part of an applicant or licensee's customer
8 satisfaction index or computation.

9 (30) The applicant or licensee has conducted or
10 threatened to conduct any audit of a motor vehicle dealer in
11 order to coerce or attempt to coerce the dealer to forego any
12 rights granted to the dealer under ss. 320.60-320.70 or under
13 the agreement between the licensee and the motor vehicle
14 dealer. Nothing in this section shall prohibit an applicant
15 or licensee from reasonably and periodically auditing a dealer
16 to determine the validity of paid claims.

17 (31) From and after the effective date of enactment of
18 this provision, the applicant or licensee has offered to any
19 motor vehicle dealer a franchise agreement that:

20 (a) Requires that a motor vehicle dealer bring an
21 administrative or legal action in a venue outside of this
22 state, or

23 (b) Requires that any arbitration, mediation, or other
24 legal proceeding be conducted outside of this state, or

25 (c) Requires that a law of a state other than Florida
26 be applied to any legal proceeding between a motor vehicle
27 dealer and a licensee.

28 (32) Notwithstanding the terms of any franchise
29 agreement, the applicant or licensee has rejected or withheld
30 approval of any proposed transfer in violation of s. 320.643
31 or a proposed change of executive management in violation of

1 s. 320.644.

2 Section 19. Section 320.641, Florida Statutes, is
3 amended and a new subsection (8) is added to read:

4 320.641 Discontinuations, cancellations, nonrenewals,
5 modifications, and replacement~~Unfair cancellation~~ of franchise
6 agreements.--

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

19 (b) The failure by the licensee to comply with the
20 90-day notice period and procedure prescribed herein shall
21 render voidable, at the option of the motor vehicle dealer,
22 any discontinuation, cancellation, nonrenewal, modification,
23 or replacement of any franchise agreement. Designation of a
24 franchise agreement at a specific location as a "nondesignated
25 point" shall be deemed an evasion of this section and
26 constitutes an unfair cancellation.

27 (2) Franchise agreements are deemed to be continuing
28 unless the applicant or licensee has notified the department
29 of the discontinuation of, cancellation of, failure to renew,
30 modification of, or replacement of the agreement of any of its
31 motor vehicle dealers; and annual renewal of the license

1 provided for under ss. 320.60-320.70 is not necessary for any
2 cause of action against the licensee.

3 (3) Any motor vehicle dealer who receives a notice of
4 intent to discontinue, cancel, not renew, modify, or replace
5 whose franchise agreement is discontinued, canceled, not
6 renewed, modified, or replaced may, within the 90-day notice
7 period, file a petition or complaint for a determination of
8 whether such action is an unfair or prohibited
9 discontinuation, cancellation, nonrenewal, modification, or
10 replacement. Agreements and certificates of appointment shall
11 continue in effect until final determination of the issues
12 raised in such petition or complaint by the motor vehicle
13 dealer. A discontinuation, cancellation, or nonrenewal of a
14 franchise agreement is unfair if it is not clearly permitted
15 by the franchise agreement; is not undertaken in good faith;
16 is not undertaken for good cause; or is based on an alleged
17 breach of the franchise agreement which is not in fact a
18 material and substantial breach; or, if the grounds relied
19 upon for termination, cancellation, or nonrenewal have not
20 been applied in a uniform and consistent manner by the
21 licensee. A modification or replacement is unfair if it is
22 not clearly permitted by the franchise agreement; is not
23 undertaken in good faith; or is not undertaken for good cause.
24 The applicant or licensee shall have burden of proof that such
25 action is fair and not prohibited.

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

1 this section. For the purpose of this section, a dealer shall
2 be considered to be engaged in business with the public if a
3 sales and service facility is open and is performing such
4 services 8 hours a day, 5 days a week, excluding holidays.
5 However, it will not be considered abandonment if such failure
6 to engage in business is due to an act of God, a work
7 stoppage, or a delay due to a strike or labor difficulty, a
8 freight embargo, or other cause over which the motor vehicle
9 dealer has no control, including any violation of ss.
10 320.60-320.70.

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

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

27 (7) Except as provided in s. 320.643, no replacement
28 motor vehicle dealer shall be named for this point or location
29 to engage in business and the franchise agreement shall remain
30 in effect until a final judgment is entered after all appeals
31 are exhausted, provided that, when a motor vehicle dealer

1 appeals a decision upholding a discontinuation, cancellation,
2 or nonrenewal based upon abandonment or revocation of the
3 dealer's license pursuant to s. 320.27, as lawful reasons for
4 such discontinuation, cancellation, or nonrenewal, the
5 franchise agreement shall remain in effect pending exhaustion
6 of all appeals only if the motor vehicle dealer establishes a
7 likelihood of success on appeal and that the public interest
8 will not be harmed by keeping the franchise agreement in
9 effect pending entry of final judgment after such appeal.
10 ~~prior to the final adjudication by the department on the~~
11 ~~petition or complaint and the exhaustion of all appellate~~
12 ~~remedies by the canceled or discontinued dealer, if a stay is~~
13 ~~issued by either the department or an appellate court.~~
14 (8) If a transfer is proposed pursuant to s.
15 320.643(1) or (2) after a notice of intent to discontinue,
16 cancel, or not renew a franchise agreement is received but,
17 prior to the final determination, including exhaustion of all
18 appellate remedies of a motor vehicle dealer's complaint or
19 petition contesting such action, the termination proceedings
20 shall be stayed, without bond, during the period that the
21 transfer is being reviewed by the licensee pursuant to s.
22 320.643.7 During the period that the transfer is being
23 reviewed by the licensee, pursuant to s. 320.643, the
24 franchise agreement shall remain in full force and effect, and
25 the motor vehicle dealer shall retain all rights and remedies
26 pursuant to the terms and conditions of the franchise
27 agreement and applicable law, including all rights of transfer
28 until such time as the licensee has accepted or rejected the
29 proposed transfer. If the proposed transfer is rejected, the
30 motor vehicle dealer shall retain all of its rights pursuant
31 to s. 320.643 to an administrative determination as to whether

1 the licensee's rejection is in compliance with the provisions
2 of s. 320.643, and during the pendency of any such
3 administrative proceeding, and any related appellate
4 proceedings, the termination proceedings shall remain stayed
5 without bond, the franchise agreement shall remain in full
6 force and effect and the motor vehicle dealer shall retain all
7 rights and remedies pursuant to the terms and conditions of
8 the franchise agreement and applicable law, including all
9 rights of transfer. If a transfer is approved by the licensee
10 or mandated by law, the termination proceedings shall be
11 dismissed with prejudice as moot. The subsection (8) applies
12 only to the first two proposed transfers pursuant to s.
13 320.643(1) or (2) after notice of intent to discontinue,
14 cancel, or not renew is received.

15 Section 20. Section 320.643, Florida Statutes, is
16 amended to read:

17 320.643 Transfer, assignment, or sale of franchise
18 agreements.--

19 (1) A motor vehicle dealer shall not transfer, assign,
20 or sell a franchise agreement to another person unless the
21 dealer first notifies the licensee of the dealer's decision to
22 make such transfer, by written notice setting forth the
23 prospective transferee's name, address, financial
24 qualification, and business experience during the previous 5
25 years. The licensee shall, in writing, within 60 days after
26 receipt of such notice, inform the dealer either of the
27 licensee's approval of the transfer, assignment, or sale or of
28 the unacceptability of the proposed transferee, setting forth
29 the material reasons for the rejection. If the licensee does
30 not so inform the dealer within the 60-day period, its
31 approval of the proposed transfer is deemed granted. No such

1 transfer, assignment, or sale will be valid unless the
2 transferee agrees in writing to comply with all requirements
3 of the franchise then in effect. ~~Notwithstanding the terms of~~
4 ~~any franchise agreement, the acceptance by the licensee of the~~
5 ~~proposed transferee shall not be unreasonably withheld.~~ For
6 the purposes of this section, the refusal by the licensee to
7 accept a proposed transferee who is of good moral character
8 and who otherwise meets the written, reasonable, and uniformly
9 applied standards or qualifications, if any, of the licensee
10 relating to financial qualifications of the transferee and the
11 business experience of the transferee or the transferee's
12 executive management ~~required by the licensee of its motor~~
13 ~~vehicle dealers~~ is presumed to be unreasonable. A motor
14 vehicle dealer whose proposed sale is rejected ~~licensee who~~
15 ~~receives such notice~~ may, within 60 days following such
16 receipt of such rejection, file with the department a verified
17 complaint for a determination that the proposed transferee has
18 been rejected in violation of ~~is not a person qualified to be~~
19 ~~a transferee under~~ this section. The licensee has the burden
20 of proof with respect to all issues raised by such verified
21 complaint. The department shall determine, and enter an order
22 providing, that the proposed transferee is either qualified or
23 is not and cannot be qualified for specified reasons, or the
24 order may provide the conditions under which a proposed
25 transferee would be qualified. If the licensee fails to file
26 such a response to the motor vehicle dealer's verified
27 complaint within 30~~such 60~~days after receipt of the
28 complaint, unless the parties agree in writing to an
29 extension, period or if the department, after a hearing,
30 ~~dismisses the complaint or~~ renders a decision other than one
31 disqualifying the proposed transferee, the franchise agreement

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1 between the motor vehicle dealer and the licensee shall be
2 deemed amended to incorporate such transfer or amended in
3 accordance with the determination and order rendered,
4 effective upon compliance by the proposed transferee with any
5 conditions set forth in the determination or order.

6 (2)(a) Notwithstanding the terms of any franchise
7 agreement, a licensee shall not, by contract or otherwise,
8 fail or refuse to give effect to, prevent, prohibit, or
9 penalize, or attempt to refuse to give effect to, prevent,
10 prohibit, or penalize, any motor vehicle dealer or any
11 proprietor, partner, stockholder, owner, or other person who
12 holds or otherwise owns an interest therein from selling,
13 assigning, transferring, alienating, or otherwise disposing
14 of, in whole or in part, the equity interest of any of them in
15 such motor vehicle dealer to any other person or persons,
16 including a corporation established or existing for the
17 purpose of owning or holding the stock or ownership interests
18 of other entities, unless the licensee proves at a hearing
19 pursuant to this section that such sale, transfer, alienation,
20 or other disposition is to a person who is not, or whose
21 controlling executive management is not, of good moral
22 character. A motor vehicle dealer, or any proprietor,
23 partner, stockholder, owner, or other person who holds or
24 otherwise owns an interest in the motor vehicle dealer, who
25 desires to sell, assign, transfer, alienate, or otherwise
26 dispose of any interest in such motor vehicle dealer shall
27 notify, or cause the proposed transferee to so notify, the
28 licensee, in writing, of the identity and address of the
29 proposed transferee. A licensee who receives such notice may,
30 within 60 days following such receipt, notify the motor
31 vehicle dealer in writing ~~file with the department a verified~~

1 ~~complaint for a determination~~ that the proposed transferee is
2 not a person qualified to be a transferee under this section
3 and setting forth the material reasons for such rejection.
4 Failure of the licensee to notify the motor vehicle dealer
5 within the 60-day period of such rejection shall be deemed an
6 approval of the transfer. Any person whose proposed sale of
7 stock is rejected may file within 60 days of receipt of such
8 rejection a complaint with the Department alleging that the
9 rejection was in violation of the law or the franchise
10 agreement. The licensee has the burden of proof with respect
11 to all issues raised by such ~~verified~~ complaint. The
12 department shall determine, and enter an order providing, that
13 the proposed transferee either is qualified or is not and
14 cannot be qualified for specified reasons; or the order may
15 provide the conditions under which a proposed transferee would
16 be qualified. If the licensee fails to file a response to the
17 motor vehicle dealer's complaint within 30 days of receipt of
18 the complaint, unless the parties agree in writing to an
19 extension, or if the licensee fails to file such verified
20 ~~complaint within such 60-day period or if the department,~~
21 ~~after a hearing, dismisses the complaint or renders a decision~~
22 on the complaint other than one disqualifying the proposed
23 transferee, the transfer shall be deemed approved franchise
24 ~~agreement between the motor vehicle dealer and the licensee~~
25 ~~shall be deemed amended to incorporate such transfer or~~
26 ~~amended~~ in accordance with the determination and order
27 rendered, effective upon compliance by the proposed transferee
28 with any conditions set forth in the determination or order.

29 (b) During the pendency of any such hearing, the
30 franchise agreement of the motor vehicle dealer shall continue
31 in effect in accordance with its terms. The department shall

1 expedite any determination requested under this section.

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

8 Section 21. Section 320.645, Florida Statutes, is
9 amended to read:

10 320.645 Restriction upon ownership of dealership by
11 licensee.--

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

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

25 (b) When operating a motor vehicle dealership
26 temporarily for a reasonable period for the exclusive purpose
27 of broadening the diversity of its dealer body and enhancing
28 opportunities for qualified persons who are part of a group
29 that has historically been underrepresented in its dealer
30 body, or for other qualified persons who the licensee deems
31 lack the resources to purchase or capitalize the dealership

1 outright, not to exceed 1 year, or in a bona fide relationship
2 with an independent person, other than a licensee or its agent
3 or affiliate, who has made a significant investment that is
4 subject to loss in the dealership within the dealership's
5 first year of operation and who can reasonably expect to
6 acquire full ownership of the dealership on reasonable terms
7 and conditions; or

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

13
14 In any such case, the licensee must continue to make the motor
15 vehicle dealership available for sale to an independent person
16 at a fair and reasonable price. Approval of the sale of such a
17 motor vehicle dealership to a proposed motor vehicle dealer
18 shall not be unreasonably withheld.

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

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

22 (b) "Reasonable terms and conditions" requires that
23 profits from the dealership are reasonably expected to be
24 sufficient to allow full ownership of the dealership by the
25 independent person within a reasonable time period not to
26 exceed 10 years, which time period may be extended if there is
27 a reasonable basis to do so and is not being sought to evade
28 the purpose of this section; that the independent person has
29 sufficient control to permit acquisition of ownership; and
30 that the relationship cannot be terminated solely to avoid
31 full ownership. The terms and conditions are not reasonable

1 if they preclude the independent person from an expedited
2 purchase of the dealership using a monetary source other than
3 profits from the dealership's operation; provided, however,
4 that the independent person must pay or make an agreement to
5 pay to the licensee any and all reasonable prepayment charges
6 and costs, including all unrecouped restored losses,
7 associated with the expedited purchase of the dealership. For
8 the purpose of this section, unrecouped restored losses are
9 monies that the manufacturer has provided to the dealership to
10 restore losses of the dealership that the manufacturer has not
11 been paid back through profits of the dealership.

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

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

19 (a) The business activities, including, without
20 limitation, the dealings with motor vehicle manufacturers and
21 their representatives and affiliates, of any person that is
22 primarily engaged in the business of short term not to exceed
23 12 months rental of motor vehicles and industrial and
24 construction equipment and activities incidental to that
25 business, provided that:

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

31 2. Warranty repairs performed under any manufacturer's

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

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

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

15 (4) This section does not apply to any dealership that
16 is owned, controlled, or operated by a licensee on July 1,
17 2000.

18 ~~(2) This section shall not be construed to prohibit~~
19 ~~any licensee from owning or operating a motor vehicle~~
20 ~~dealership in this state if such dealership was owned or~~
21 ~~operated by the licensee on May 31, 1984.~~

22 Section 22. Subsection (2) of section 320.699, Florida
23 Statutes, is amended to read:

24 320.699 Administrative hearings and adjudications;
25 procedure.--

26 (2) If a written objection or notice of protest is
27 filed with the department under paragraph (1)(b), a hearing
28 shall be held not sooner than 180 days nor later than 240 days
29 from within 180 days of the date of filing of the first
30 objection or notice of protest, unless the time is extended by
31 the Administrative Law Judge for good cause shown. This

1 subsection shall govern the schedule of hearings in lieu of
 2 any other provision of law with respect to administrative
 3 hearings conducted by the Department of Highway Safety and
 4 Motor Vehicles or the Division of Administrative Hearings,
 5 including performance standards of state agencies, which may
 6 be included in current and future appropriations acts.~~hearing~~
 7 ~~officer for good cause shown. If a hearing is not scheduled~~
 8 ~~within said time, any party may request such hearing which~~
 9 ~~shall be held forthwith by the hearing officer.~~

10 Section 23. Section 320.6991, Florida Statutes, is
 11 created to read:

12 Section 320.6991 Severability.--If a provision of ss.
 13 320.60-320.70 or its application to any person or circumstance
 14 is held invalid, the invalidity does not affect other
 15 provisions or applications of ss. 320.60-320.70 that can be
 16 given effect without the invalid provision or application, and
 17 to this end the provisions of 320.60-320.70 are severable.

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 20 ===== T I T L E A M E N D M E N T =====

21 And the title is amended as follows:

22 On page 2, line 25,

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 24
 25 after the semicolon, insert:

26 amending s. 320.60, F.S.; revising definitions
 27 used in ss. 320.61-320.70, F.S.; amending s.
 28 320.61, F.S.; amending procedures to be
 29 followed when a complaint of unfair
 30 cancellation of a dealer agreement has been
 31 made by a motor vehicle dealer against a

1 licensee; defining the term "final decision";
2 amending s. 320.64, F.S.; providing penalties
3 and remedies for violations; deleting
4 subsections (13) and (16); amending subsection
5 (18); creating subsections (22) through (32)
6 and renumbering sections; amending s. 320.641,
7 F.S.; providing procedures relating to
8 discontinuations, cancellations, nonrenewals,
9 modifications, and replacements of franchise
10 agreements; amending s. 320.643, F.S.; amending
11 provisions relating to the transfer,
12 assignment, or sale of franchise agreements;
13 amending s. 320.645, F.S.; amending provisions
14 relating to restrictions upon a licensee's
15 owning a dealership; providing for "dealer
16 development arrangements"; providing
17 exceptions; amending s. 320.699, F.S.; amending
18 procedures for administrative hearings;
19 creating s. 320.6991; providing for
20 severability;

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