

By the Committee on Transportation and Senator Villalobos

306-1837-01

1 A bill to be entitled
2 An act relating to motor vehicle dealer
3 franchise agreements; amending s. 320.60, F.S.;
4 revising definitions used in ss. 320.61-320.70,
5 F.S.; amending s. 320.61, F.S.; amending
6 procedures to be followed when a complaint of
7 unfair cancellation of a dealer agreement has
8 been made by a motor vehicle dealer against a
9 licensee; defining the term "final decision";
10 amending s. 320.64, F.S.; revising provisions
11 relating to the denial, suspension, or
12 revocation of a license; amending s. 320.641,
13 F.S.; providing procedures relating to
14 discontinuations, cancellations, nonrenewals,
15 modifications, and replacements of franchise
16 agreements; amending s. 320.643, F.S.; amending
17 provisions relating to the transfer,
18 assignment, or sale of franchise agreements;
19 amending s. 320.645, F.S.; amending provisions
20 relating to restrictions upon a licensee's
21 owning a dealership; providing for dealer
22 development arrangements; providing exceptions;
23 amending s. 320.699, F.S.; amending procedures
24 for administrative hearings; creating s.
25 320.69905; providing for severability;
26 providing an effective date.

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28 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Paragraph (a) of subsection (11) of section
2 320.60, Florida Statutes, is amended and subsection (15) is
3 added to that section to read:

4 320.60 Definitions for ss. 320.61-320.70.--Whenever
5 used in ss. 320.61-320.70, unless the context otherwise
6 requires, the following words and terms have the following
7 meanings:

8 (11)(a) "Motor vehicle dealer" means any person, firm,
9 company, or corporation, or other entity who:

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

15 2. Sells, exchanges, buys, leases, or rents, or
16 offers, or attempts to negotiate a sale or exchange of any
17 interest in, motor vehicles, or

18 3. who Is engaged wholly or in part in the business of
19 selling motor vehicles, whether or not such motor vehicles are
20 owned by such person, firm, company, or corporation.

21 (15) "Sell," "selling," "sold," "exchange," "retail
22 sales," and "leases" includes any transaction where the title
23 of motor vehicle or used motor vehicle is transferred to a
24 retail consumer, and also includes any retail lease
25 transaction in which a retail customer leases a vehicle for a
26 period of at least 12 months.

27 Section 2. Subsection (4) of section 320.61, Florida
28 Statutes, is amended to read:

29 320.61 Licenses required of motor vehicle
30 manufacturers, distributors, importers, etc.--

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1 (4) When a complaint of unfair or prohibited
2 cancellation or nonrenewal of a dealer agreement is made by a
3 motor vehicle dealer against a licensee and such complaint is
4 pending is in the process of being heard pursuant to ss.
5 320.60-320.70 ~~by the department~~, no replacement application
6 for such agreement shall be granted and no license shall be
7 granted by the department under s. 320.27 to any replacement
8 dealer until a final decision is rendered ~~by the department~~ on
9 the complaint of unfair cancellation so long as the dealer
10 agreement of the complaining dealer is in effect as provided
11 under s. 320.641(7).

12 Section 3. Section 320.64, Florida Statutes, is
13 amended to read:

14 320.64 Denial, suspension, or revocation of license;
15 grounds.--A license of a licensee under s. 320.61 may be
16 denied, suspended, or revoked within the entire state or at
17 any specific location or locations within the state at which
18 the applicant or licensee engages or proposes to engage in
19 business, upon proof that this section was violated with
20 sufficient frequency to establish a pattern of wrongdoing, and
21 a license or applicant shall be liable for claims and remedies
22 provided in ss. 320.695 and 320.697 for any violation of any
23 of the following provisions. A licensee is prohibited from
24 committing the following acts ~~an applicant or licensee has~~
25 ~~failed to comply with any of the following provisions with~~
26 ~~sufficient frequency so as to establish a pattern of~~
27 ~~wrongdoing on the part of the applicant:~~

28 (1) The applicant or licensee is determined to be
29 unable to carry out contractual obligations with its motor
30 vehicle dealers.

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1 (2) The applicant or licensee has knowingly made a
2 material misstatement in its application for a license.

3 (3) The applicant or licensee willfully has failed to
4 comply with significant provisions of ss. 320.60-320.70 or
5 with any lawful rule or regulation adopted or promulgated by
6 the department.

7 (4) The applicant or licensee has indulged in any
8 illegal act relating to his or her business.

9 (5) The applicant or licensee has coerced or attempted
10 to coerce any motor vehicle dealer into accepting delivery of
11 any motor vehicle or vehicles or parts or accessories therefor
12 or any other commodities which have not been ordered by the
13 dealer.

14 (6) The applicant or licensee has coerced or attempted
15 to coerce any motor vehicle dealer to enter into any agreement
16 with the licensee.

17 (7) The applicant or licensee has threatened to
18 discontinue, cancel, or not to renew a franchise agreement of
19 a licensed motor vehicle dealer, where the threatened
20 discontinuation, cancellation, or nonrenewal, if implemented,
21 would be in violation of any of the provisions of s. 320.641.

22 (8) The applicant or licensee discontinued, canceled,
23 or failed to renew, a franchise agreement of a licensed motor
24 vehicle dealer in violation of any of the provisions of s.
25 320.641.

26 (9) The applicant or licensee has threatened to modify
27 or replace, or has modified or replaced, a franchise agreement
28 with a succeeding franchise agreement which would adversely
29 alter the rights or obligations of a motor vehicle dealer
30 under an existing franchise agreement or which substantially
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1 impairs the sales, service obligations, or investment of the
2 motor vehicle dealer.

3 (10) The applicant or licensee has attempted to enter,
4 or has entered, into a franchise agreement with a motor
5 vehicle dealer who does not, at the time of the franchise
6 agreement, have proper facilities to provide the services to
7 his or her purchasers of new motor vehicles which are covered
8 by the new motor vehicle warranty issued by the applicant or
9 licensee.

10 (11) The applicant or licensee has coerced a motor
11 vehicle dealer to provide installment financing for the motor
12 vehicle dealer's purchasers with a specified financial
13 institution.

14 (12) The applicant or licensee has advertised,
15 printed, displayed, published, distributed, broadcast, or
16 televised, or caused or permitted to be advertised, printed,
17 displayed, published, distributed, broadcast, or televised, in
18 any manner whatsoever, any statement or representation with
19 regard to the sale or financing of motor vehicles which is
20 false, deceptive, or misleading.

21 ~~(13) The applicant or licensee has refused to deliver,~~
22 ~~in reasonable quantities and within a reasonable time, to any~~
23 ~~duly licensed motor vehicle dealer who has an agreement with~~
24 ~~such applicant or licensee for the retail sale of new motor~~
25 ~~vehicles and parts for motor vehicles sold or distributed by~~
26 ~~the applicant or licensee, any such motor vehicles or parts as~~
27 ~~are covered by such agreement specifically publicly advertised~~
28 ~~by such applicant or licensee to be available for immediate~~
29 ~~delivery. However, the failure to deliver any motor vehicle~~
30 ~~or part will not be considered a violation of this section if~~
31 ~~the failure is due to act of God, work stoppage, or delay due~~

1 ~~to a strike or labor difficulty, a freight embargo, product~~
2 ~~shortage, or other cause over which the applicant or licensee~~
3 ~~has no control. The failure to deliver parts or components for~~
4 ~~the current and 5 preceding years' models within 60 days from~~
5 ~~date of order shall be deemed prima facie unreasonable.~~

6 (13)~~(14)~~ The applicant or licensee has sold,
7 exchanged, or rented a motorcycle which produces in excess of
8 5 brake horsepower, knowing the use thereof to be by, or
9 intended for, the holder of a restricted Florida driver's
10 license.

11 (14)~~(15)~~ The applicant or licensee has engaged in
12 previous conduct which would have been a ground for revocation
13 or suspension of a license if the applicant or licensee had
14 been licensed.

15 ~~(16) Notwithstanding the terms of any franchise~~
16 ~~agreement, and unless it can be shown that the licensee's~~
17 ~~franchised dealer is actively negligent, the applicant or~~
18 ~~licensee has failed to indemnify and hold harmless its~~
19 ~~franchised motor vehicle dealer against any judgment for~~
20 ~~damages or settlement agreed to in writing by the applicant or~~
21 ~~licensee, including, but not limited to, court costs and~~
22 ~~reasonable attorney's fees of the motor vehicle dealer, which~~
23 ~~judgment or settlement arose out of complaints, claims, or~~
24 ~~lawsuits based upon such grounds as strict liability;~~
25 ~~negligence; misrepresentation; warranty, express or implied;~~
26 ~~or rescission of the sale as described in s. 672.608, less any~~
27 ~~offset for use recovered by the licensee's franchised motor~~
28 ~~vehicle dealer, and only to the extent that the judgment or~~
29 ~~settlement relates to the alleged defective or negligent~~
30 ~~manufacture, assembly, or design of new motor vehicles, parts,~~
31 ~~or accessories or other functions of the manufacturer.~~

1 (15)~~(17)~~ The applicant or licensee, directly or
2 indirectly, through the actions of any parent of the licensee,
3 subsidiary of the licensee, or common entity causes a
4 termination, cancellation, or nonrenewal of a franchise
5 agreement by a present or previous distributor or importer
6 unless, by the effective date of such action, the applicant or
7 licensee offers the motor vehicle dealer whose franchise
8 agreement is terminated, canceled, or not renewed a franchise
9 agreement containing substantially the same provisions
10 contained in the previous franchise agreement or files an
11 affidavit with the department acknowledging its undertaking to
12 assume and fulfill the rights, duties, and obligations of its
13 predecessor distributor or importer under the terminated,
14 canceled, or nonrenewed franchise agreement and the same is
15 reinstated.

16 (16)~~(18)~~ Notwithstanding the terms of any franchise
17 agreement, the applicant or licensee prevents or refuses to
18 accept the succession to any interest in a franchise agreement
19 by any legal heir or devisee under the will of a motor vehicle
20 dealer or under the laws of descent and distribution of this
21 state; provided, the applicant or licensee is not required to
22 accept a succession where such heir or devisee does not meet
23 licensee's written, reasonable, and uniformly applied minimal
24 standard qualifications for dealer applicants or which, after
25 notice and administrative hearing pursuant to chapter 120, is
26 demonstrated to be detrimental to the public interest or to
27 the representation of the applicant or licensee. Nothing
28 contained herein, however, shall prevent a motor vehicle
29 dealer, during his or her lifetime, from designating any
30 person as his or her successor in interest by written
31 instrument filed with and accepted by the applicant or

1 licensee. A licensee who rejects the successor transferee
2 under this subsection shall have the burden of establishing in
3 any proceeding where such rejection is in issue that the
4 rejection of the successor transferee complies with this
5 subsection.

6 ~~(17)~~~~(19)~~ The applicant or licensee has included in any
7 franchise agreement with a motor vehicle dealer terms or
8 provisions that are contrary to, prohibited by, or otherwise
9 inconsistent with the provisions contained in ss.
10 320.60-320.70, or has failed to include in such franchise
11 agreement a provision conforming to the requirements of s.
12 320.63(3).

13 ~~(18)~~~~(20)~~ The applicant or licensee has established a
14 system of motor vehicle allocation or distribution or has
15 implemented a system of allocation or distribution of motor
16 vehicles to one or more of its franchised motor vehicle
17 dealers which is unfair, inequitable, unreasonably
18 discriminatory, or not supportable by reason and good cause
19 after considering the equities of the affected motor vehicles
20 dealer or dealers. An applicant or licensee shall maintain for
21 3 years records that describe its methods or formula of
22 allocation and distribution of its motor vehicles and records
23 of its actual allocation and distribution of motor vehicles to
24 its motor vehicle dealers in this state.

25 ~~(19)~~~~(21)~~ The applicant or licensee, without good and
26 fair cause, has delayed, refused, or failed to provide a
27 supply of motor vehicles by series in reasonable quantities,
28 including the models publicly advertised by the applicant or
29 licensee as being available, or has delayed, refused, or
30 failed to deliver motor vehicle parts and accessories within a
31 reasonable time after receipt of an order by a franchised

1 dealer. However, this subsection is not violated if such
2 failure is caused by acts or causes beyond the control of the
3 applicant or licensee.

4 ~~(20)(22)~~ The applicant or licensee has required, or
5 threatened to require, a motor vehicle dealer to prospectively
6 assent to a release, assignment, novation, waiver, or
7 estoppel, which instrument or document operates, or is
8 intended by the applicant or licensee to operate, to relieve
9 any person from any liability or obligation under the
10 provisions of ss. 320.60-320.70.

11 ~~(21)(23)~~ The applicant or licensee has threatened or
12 coerced a motor vehicle dealer toward conduct or action
13 whereby the dealer would waive or forego its right to protest
14 the establishment or relocation of a motor vehicle dealer in
15 the community or territory serviced by the threatened or
16 coerced dealer.

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

24 (22) The applicant or licensee has refused to deliver,
25 in reasonable quantities and within a reasonable time, to any
26 duly licensed motor vehicle dealer who has an agreement with
27 such applicant or licensee for the retail sale of new motor
28 vehicles and parts for motor vehicles sold or distributed by
29 the applicant or licensee, any such motor vehicles or parts as
30 are covered by such agreement. Such refusal includes the
31 failure to offer to its same line-make franchised motor

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

19 (23) The applicant or licensee has, directly or
20 indirectly, competed or is competing with a motor vehicle
21 dealer of the same line-make located in this state with whom
22 the applicant or licensee has entered into a franchise
23 agreement, except as permitted in s. 320.645.

24 (24) The applicant or licensee has sold a motor
25 vehicle to any retail consumer in the state except through a
26 motor vehicle dealer holding a franchise agreement for the
27 line-make that includes the motor vehicle. This section does
28 not apply to sales by the applicant or licensee of motor
29 vehicles to its current employees and the Federal Government.
30 This subsection expires July 1, 2006.

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

17 (26) Notwithstanding the terms of any franchise
18 agreement, the applicant or licensee has refused to allocate,
19 sell, or deliver motor vehicles, has charged back or withheld
20 payments or other things of value for which the dealer is
21 otherwise eligible under a sales promotion, program, or
22 contest, or has prevented the motor vehicle dealer from
23 participating in any promotion, program, or contest for
24 selling a motor vehicle to a customer who was present at the
25 dealership and the motor vehicle dealer did not know or should
26 not have reasonably known that the vehicle would be shipped to
27 a foreign country. There will be a rebuttable presumption
28 that the dealer did not know or should not have reasonably
29 known that the vehicle would be shipped to a foreign country
30 if the vehicle is titled in the United States.

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

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

26 (29) The applicant or licensee has failed to reimburse
27 a motor vehicle dealer in full for the reasonable cost of
28 providing a loaner vehicle to any customer who is having a
29 vehicle serviced at the motor vehicle dealer, if a loaner is
30 required by the applicant or licensee or if a loaner is

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1 expressly part of an applicant or licensee's
2 customer-satisfaction index or computation.

3 (30) The applicant or licensee has conducted or
4 threatened to conduct any audit of a motor vehicle dealer in
5 order to coerce or attempt to coerce the dealer to forego any
6 rights granted to the dealer under ss. 320.60-320.70 or under
7 the agreement between the licensee and the motor vehicle
8 dealer. Nothing in this subsection shall prohibit an
9 applicant or licensee from reasonably and periodically
10 auditing a dealer to determine the validity of paid claims.

11 (31) The applicant or licensee has, on or after the
12 effective date of this subsection, offered to any motor
13 vehicle dealer a franchise agreement that:

14 (a) At the time of execution of that franchise
15 agreement fails to provide a motor vehicle dealer with an
16 option not to submit to binding arbitration or mediation for
17 any dispute between the licensee and the motor vehicle dealer;

18 (b) Requires that a motor vehicle dealer bring an
19 administrative or legal action in a venue outside this state;

20 (c) Requires that any arbitration, mediation, or other
21 legal proceeding be conducted outside this state; or

22 (d) Fails to provide that the law of the State of
23 Florida, to the exclusion of any other jurisdiction, shall be
24 applied in any arbitration or other legal proceeding between a
25 motor vehicle dealer and licensee.

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27 The licensee shall, at the time it offers the franchise
28 agreement to a motor vehicle dealer, provide the motor vehicle
29 dealer with a copy of the licensee's arbitration and mediation
30 rules and procedures, including the composition of the finders
31 of fact.

1 (32) The applicant or licensee has varied the price
2 charged to any of its motor vehicle dealers located in this
3 state by offering rebates, credits, incentives, or other
4 consideration that has the effect of varying the price based
5 on the volume of vehicles purchased by the motor vehicle
6 dealer or based on the motor vehicle dealer's geographic
7 location within this state.

8 Section 4. Section 320.641, Florida Statutes, is
9 amended to read:

10 320.641 Discontinuations, cancellations, nonrenewals,
11 modifications, and replacements ~~Unfair cancellation~~ of
12 franchise agreements.--

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

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

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

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

1 shall have the burden of proof that such action is fair and
2 not prohibited.

3 (4) Notwithstanding any other provision of this
4 section, the failure of a motor vehicle dealer to be engaged
5 in business with the public for 10 consecutive business days
6 constitutes abandonment by the dealer of his or her franchise
7 agreement. If any motor vehicle dealer abandons his or her
8 franchise agreement, he or she has no cause of action under
9 this section. For the purpose of this section, a dealer shall
10 be considered to be engaged in business with the public if a
11 sales and service facility is open and is performing such
12 services 8 hours a day, 5 days a week, excluding holidays.
13 However, it will not be considered abandonment if such failure
14 to engage in business is due to an act of God, a work
15 stoppage, or a delay due to a strike or labor difficulty, a
16 freight embargo, or other cause over which the motor vehicle
17 dealer has no control, including any violation of ss.
18 320.60-320.70.

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

30 (6) If the complainant motor vehicle dealer prevails,
31 he or she shall have a cause of action against the licensee

1 for reasonable attorneys' fees and costs incurred by him or
2 her in such proceeding, and he or she shall have a cause of
3 action under s. 320.697.

4 (7) Except as provided in s. 320.643, no replacement
5 motor vehicle dealer shall be named for this point or location
6 to engage in business, and the franchise agreement shall
7 remain in effect until a final judgment is entered after all
8 appeals are exhausted, provided that, when a motor vehicle
9 dealer appeals a decision upholding a discontinuation,
10 cancellation, or nonrenewal based upon abandonment or
11 revocation of the dealer's license pursuant to s. 320.27 as
12 lawful reasons for such discontinuation, cancellation, or
13 nonrenewal, the franchise agreement shall remain in effect
14 pending exhaustion of all appeals only if the motor vehicle
15 dealer establishes a likelihood of success on appeal and
16 provided that the public interest will not be harmed by
17 keeping the franchise agreement in effect pending entry of
18 final judgment after such appeal ~~prior to the final~~
19 ~~adjudication by the department on the petition or complaint~~
20 ~~and the exhaustion of all appellate remedies by the canceled~~
21 ~~or discontinued dealer, if a stay is issued by either the~~
22 ~~department or an appellate court.~~

23 (8) If a transfer is proposed pursuant to s.
24 320.643(1) or (2) after a notice of intent to discontinue,
25 cancel, or not renew a franchise agreement has been received,
26 but prior to the final determination, including exhaustion of
27 all appellate remedies of a motor vehicle dealer's complaint
28 or petition contesting such action, the termination
29 proceedings shall be stayed, without bond, during the period
30 that the transfer is being reviewed by the licensee pursuant
31 to s. 320.643; the franchise agreement shall remain in full

1 force and effect; and the motor vehicle dealer shall retain
2 all rights and remedies pursuant to the terms and conditions
3 of the franchise agreement and applicable law, including all
4 rights of transfer until the licensee has accepted or rejected
5 the proposed transfer. If the proposed transfer is rejected,
6 the motor vehicle dealer shall retain all of its rights
7 pursuant to s. 320.643 to an administrative determination as
8 to whether the licensee's rejection is in compliance with the
9 provisions of s. 320.643; and, during the pendency of any such
10 administrative proceeding and any related appellate
11 proceedings, the termination proceedings shall remain stayed
12 without bond, the franchise agreement shall remain in full
13 force and effect, and the motor vehicle dealer shall retain
14 all rights and remedies pursuant to the terms and conditions
15 of the franchise agreement and applicable law, including all
16 rights of transfer. If a transfer is approved by the licensee
17 or mandated by law, the termination proceedings shall be
18 dismissed with prejudice as moot.

19 Section 5. Section 320.643, Florida Statutes, is
20 amended to read:

21 320.643 Transfer, assignment, or sale of franchise
22 agreements.--

23 (1) A motor vehicle dealer shall not transfer, assign,
24 or sell a franchise agreement to another person unless the
25 dealer first notifies the licensee of the dealer's decision to
26 make such transfer, by written notice setting forth the
27 prospective transferee's name, address, financial
28 qualification, and business experience during the previous 5
29 years. The licensee shall, in writing, within 60 days after
30 receipt of such notice, inform the dealer either of the
31 licensee's approval of the transfer, assignment, or sale or of

1 the unacceptability of the proposed transferee, setting forth
2 the material reasons for the rejection. If the licensee does
3 not so inform the dealer within the 60-day period, its
4 approval of the proposed transfer is deemed granted. No such
5 transfer, assignment, or sale will be valid unless the
6 transferee agrees in writing to comply with all requirements
7 of the franchise then in effect. Notwithstanding the terms of
8 any franchise agreement, the acceptance by the licensee of the
9 proposed transferee shall not be unreasonably withheld. For
10 the purposes of this section, the refusal by the licensee to
11 accept a proposed transferee who is of good moral character
12 and who otherwise meets the written, reasonable, and uniformly
13 applied standards or qualifications, if any, of the licensee
14 relating to financial qualifications of the transferee and the
15 business experience of executive management ~~required by the~~
16 ~~licensee of its motor vehicle dealers~~ is presumed to be
17 unreasonable. A motor vehicle dealer whose proposed sale is
18 rejected licensee who receives such notice may, within 60 days
19 following such receipt of such rejection, file with the
20 department a ~~verified~~ complaint for a determination that the
21 proposed transferee has been rejected in violation of ~~is not a~~
22 ~~person qualified to be a transferee under~~ this section. The
23 licensee has the burden of proof with respect to all issues
24 raised by such ~~verified~~ complaint. The department shall
25 determine, and enter an order providing, that the proposed
26 transferee is either qualified or is not and cannot be
27 qualified for specified reasons, or the order may provide the
28 conditions under which a proposed transferee would be
29 qualified. If the licensee fails to file such a response to
30 the motor vehicle dealer's ~~verified~~ complaint within such
31 10-day ~~60-day~~ period or if the department, after a hearing,

1 ~~dismisses the complaint or~~ renders a decision other than one
2 disqualifying the proposed transferee, the franchise agreement
3 between the motor vehicle dealer and the licensee shall be
4 deemed amended to incorporate such transfer or amended in
5 accordance with the determination and order rendered,
6 effective upon compliance by the proposed transferee with any
7 conditions set forth in the determination or order.

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

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

30 (b) During the pendency of any such hearing, the
31 franchise agreement of the motor vehicle dealer shall continue

1 in effect in accordance with its terms. The department shall
2 expedite any determination requested under this section.

3 Section 6. Section 320.645, Florida Statutes, is
4 amended to read:

5 320.645 Restriction upon ownership of dealership by
6 licensee.--

7 (1) No licensee, including a manufacturer or agent of
8 a manufacturer, or any parent, subsidiary, common entity, or
9 officer or representative of the licensee shall own or
10 operate, either directly or indirectly, a motor vehicle
11 dealership in this state for the sale or service of motor
12 vehicles which have been or are offered for sale under a
13 franchise agreement with a motor vehicle dealer in this state.

14 A licensee may not be issued a motor vehicle dealer license
15 pursuant to s. 320.27. However, no such licensee will be
16 deemed to be in violation of this section:

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

20 (b) When operating a motor vehicle dealership
21 temporarily for a reasonable period for the exclusive purpose
22 of broadening the diversity of its dealer body and enhancing
23 opportunities for qualified persons who are part of a group
24 that has historically been underrepresented in its dealer
25 body, or for other qualified persons whom the licensee deems
26 to lack the resources to purchase or capitalize the dealership
27 outright, ~~not to exceed 1 year, or~~ in a bona fide relationship
28 with an independent person, other than a licensee or its agent
29 or affiliate, who is required to make ~~has made~~ a significant
30 investment that is subject to loss in the dealership and who

31

1 can reasonably expect to acquire full ownership of the
2 dealership on reasonable terms and conditions; or

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

8
9 In any such case, the licensee must continue to make the motor
10 vehicle dealership available for sale to an independent person
11 at a fair and reasonable price. Approval of the sale of such a
12 motor vehicle dealership to a proposed motor vehicle dealer
13 shall not be unreasonably withheld.

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

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

17 (b) "Reasonable terms and conditions" requires that
18 profits from the dealership are reasonably expected to be
19 sufficient to allow full ownership of the dealership by the
20 independent person within a reasonable time period not to
21 exceed 10 years, which time period may be extended if there is
22 a reasonable basis to do so and the extension is not being
23 sought to evade the purpose of this section; that the
24 independent person has sufficient control to permit
25 acquisition of ownership; and that the relationship may not be
26 terminated solely to avoid full ownership. The terms and
27 conditions are not reasonable if they preclude the independent
28 person from an expedited purchase of the dealership using a
29 monetary source other than profits from the dealership's
30 operation; however, the independent person must pay to the
31 licensee any and all reasonable prepayment charges and costs,

1 including all unrecouped restored losses, associated with the
2 expedited purchase of the dealership. For the purpose of this
3 section, unrecouped restored losses are moneys that the
4 manufacturer has contributed to the dealership to restore
5 losses of the dealership which the manufacturer has not been
6 paid back through profits of the dealership.

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

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

14 (a) The business activities, including, without
15 limitation, the dealings with motor vehicle manufacturers and
16 their representatives and affiliates, of any person that is
17 primarily engaged in the business of short-term, not to exceed
18 12 months, rental of motor vehicles and industrial and
19 construction equipment and activities incidental to that
20 business, provided that:

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

26 2. Warranty repairs performed under any manufacturer's
27 new vehicle warranty by such person on motor vehicles are
28 limited to repair of those motor vehicles that it owns. As to
29 previously owned vehicles, warranty repairs may be performed
30 only if pursuant to a motor vehicle service agreement as
31 defined in part I of chapter 634 which is issued by such

1 person or pursuant to an express warranty issued by such
2 person on the retail sale of those vehicles previously owned;
3 and

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

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

10 (4) This section does not apply to any dealership that
11 is owned, controlled, or operated by a licensee on July 1,
12 2000.

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

17 Section 7. Subsection (2) of section 320.699, Florida
18 Statutes, is amended to read:

19 320.699 Administrative hearings and adjudications;
20 procedure.--

21 (2) If a written objection or notice of protest is
22 filed with the department under paragraph (1)(b), a hearing
23 shall be held not sooner than 180 days from ~~within 180 days of~~
24 ~~the date of filing of the first objection or notice of~~
25 ~~protest, unless the time is extended by the hearing officer~~
26 ~~for good cause shown. If a hearing is not scheduled within~~
27 ~~said time, any party may request such hearing which shall be~~
28 ~~held forthwith by the hearing officer.~~

29 Section 8. Section 320.69905, Florida Statutes, is
30 created to read:

31

1 320.69905 Severability.--If a provision of ss.
2 320.60-320.70 or its application to any person or circumstance
3 is held invalid, the invalidity does not affect other
4 provisions or applications of ss. 320.60-320.70 which can be
5 given effect without the invalid provision or application, and
6 to this end the provisions of ss. 320.60-320.70 are severable.

7 Section 9. This act shall take effect July 1, 2001.

8
9 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
10 COMMITTEE SUBSTITUTE FOR
11 SB 1090

12 The CS amends s. 360.60, F.S., to revise the definition of
13 "motor vehicle dealer" to include licensed franchised motor
14 vehicle dealers who repair or service motor vehicles or
15 certain used motor vehicles for commission, money, or other
16 things of value; and to define "sell" and its various synonyms
17 to include lease transactions.

18 The CS amends s. 360.61, F.S., to provide no replacement
19 dealer license may be granted pending a dealer complaint of
20 unfair or prohibited cancellation or non-renewal, so long as
21 the dealer agreement of the complaining dealer is in effect as
22 provided under s. 320.641(7), F.S.

23 The CS amends s. 320.64, F.S., to provide violations of
24 prohibited acts are sufficient grounds for license denial,
25 suspension, or revocation and makes them subject to penalties
26 provided in ss. 320.695 and 320.697, F.S.

27 The CS also amends s. 320.64, F.S., to provide additional
28 reasons which could justify the denial, suspension, or
29 revocation of a manufacturer's license in Florida.

30 The CS amends s. 320.641, F.S., to provide criteria to be used
31 in determining whether a termination, cancellation,
non-renewal, or modification of a franchise should be
approved.

The CS amends s. 320.643, F.S., to allow a manufacturer to use
financial qualifications in its determinations regarding a
transfer, and allows the dealer to file a complaint in protest
of the denial of a transfer of a franchise agreement.

The CS amends s. 320.645, F.S., relating to the restriction
upon ownership of dealerships by a licensee to allow
manufacturers to operate motor vehicle dealerships for the
exclusive purpose of broadening diversity and improving
minority representation.