

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

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

The Council for Ready Infrastructure offered the following:

Substitute Amendment for Amendment (774057) (with title amendment)

Remove from the bill: Everything after the enacting clause and insert in lieu thereof:

Section 1. 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

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

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

7 (15) "Sell," "selling," "sold," "exchange," "retail
8 sales," and "leases" includes any transaction where the title
9 of motor vehicle or used motor vehicle is transferred to a
10 retail consumer, and also any retail lease transaction where a
11 retail customer leases a vehicle for a period of at least 12
12 months. Establishing a price for sale pursuant to s.
13 320.64(24) does not constitute a sale or lease.

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

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

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

29 Section 3. Subsections (13) and (16) are stricken,
30 subsections (14), (15), and (17)-(23) are renumbered,
31 subsection (20) is amended and renumbered as (18), and

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1 subsections (22)-(33) are added to section 320.64, Florida
2 Statutes, to read:

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

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

30 (22) The applicant or licensee has refused to deliver,
31 in reasonable quantities and within a reasonable time, to any

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

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

31 (24) The applicant or licensee has sold a motor

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

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

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

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

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

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

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1 into evidence in such a proceeding, after timely notice to an
2 affected dealer.

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

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

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

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

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

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

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

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1 or a proposed change of executive management in violation of
2 s. 320.644.

3 Section 4. Section 320.641, Florida Statutes, is
4 amended and a new subsection (8) is added to read:

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

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

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

28 (2) Franchise agreements are deemed to be continuing
29 unless the applicant or licensee has notified the department
30 of the discontinuation of, cancellation of, failure to renew,
31 modification of, or replacement of the agreement of any of its

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1 motor vehicle dealers; and annual renewal of the license
2 provided for under ss. 320.60-320.70 is not necessary for any
3 cause of action against the licensee.

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

27 (4) Notwithstanding any other provision of this
28 section, the failure of a motor vehicle dealer to be engaged
29 in business with the public for 10 consecutive business days
30 constitutes abandonment by the dealer of his or her franchise
31 agreement. If any motor vehicle dealer abandons his or her

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

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

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

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

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1 are exhausted, provided that, when a motor vehicle dealer
2 appeals a decision upholding a discontinuation, cancellation,
3 or nonrenewal based upon abandonment or revocation of the
4 dealer's license pursuant to s. 320.27, as lawful reasons for
5 such discontinuation, cancellation, or nonrenewal, the
6 franchise agreement shall remain in effect pending exhaustion
7 of all appeals only if the motor vehicle dealer establishes a
8 likelihood of success on appeal and that the public interest
9 will not be harmed by keeping the franchise agreement in
10 effect pending entry of final judgment after such appeal.
11 ~~prior to the final adjudication by the department on the~~
12 ~~petition or complaint and the exhaustion of all appellate~~
13 ~~remedies by the canceled or discontinued dealer, if a stay is~~
14 ~~issued by either the department or an appellate court.~~

15 (8) If a transfer is proposed pursuant to s.
16 320.643(1) or (2) after a notice of intent to discontinue,
17 cancel, or not renew a franchise agreement is received but,
18 prior to the final determination, including exhaustion of all
19 appellate remedies of a motor vehicle dealer's complaint or
20 petition contesting such action, the termination proceedings
21 shall be stayed, without bond, during the period that the
22 transfer is being reviewed by the licensee pursuant to s.
23 320.643.7 During the period that the transfer is being
24 reviewed by the licensee, pursuant to s. 320.643, the
25 franchise agreement shall remain in full force and effect, and
26 the motor vehicle dealer shall retain all rights and remedies
27 pursuant to the terms and conditions of the franchise
28 agreement and applicable law, including all rights of transfer
29 until such time as the licensee has accepted or rejected the
30 proposed transfer. If the proposed transfer is rejected, the
31 motor vehicle dealer shall retain all of its rights pursuant

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

16 Section 5. Section 320.643, Florida Statutes, is
17 amended to read:

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

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

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

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

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

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

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

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

9 Section 6. Section 320.645, Florida Statutes, is
10 amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (4) This section does not apply to any dealership that
17 is owned, controlled, or operated by a licensee on July 1,
18 2000.

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

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

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

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

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

11 Section 8. Section 320.6991, Florida Statutes, is
12 created to read:

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

19 Section 9. This act shall take effect July 1, 2001.
20
21

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

23 And the title is amended as follows:

24 On page 1, line 10 through page 2, line 11
25 remove from the title of the bill: all of said lines
26

27 and insert in lieu thereof:

28 An act relating to motor vehicles; amending s.
29 320.60, F.S.; revising definitions used in ss.
30 320.61-320.70, F.S.; amending s. 320.61, F.S.;
31 amending procedures to be followed when a

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

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