

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

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

The Committee on Judicial Oversight offered the following:

Substitute Amendment for Amendment (043023) (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 license or applicant shall be liable for claims and remedies
11 provided in s. 320.695 and s. 320.697 for any violation of any
12 of the following provisions. A licensee is prohibited from
13 committing the following acts:upon proof that an applicant or
14 licensee has failed to comply with any of the following
15 provisions with sufficient frequency so as to establish a
16 pattern of wrongdoing on the part of the 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

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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 license
18 may impose reasonable requirements on the motor vehicle
19 dealer, other than the items listed above, including, but not
20 limited to, the purchase of special tools required to properly
21 service a motor vehicle, the undertaking of sales person or
22 service person training related to the motor vehicle.

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

29 (24) The applicant or licensee has sold a motor
30 vehicle to any retail consumer in the state except through a
31 motor vehicle dealer holding a franchise agreement for the

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

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

23 (26) Notwithstanding the terms of any franchise
24 agreement, the applicant or licensee has refused to allocate,
25 sell, or deliver motor vehicles, charged back or withheld
26 payments or other things of value for which the dealer is
27 otherwise eligible under a sales promotion, program, or
28 contest, or prevented the motor vehicle dealer from
29 participating in any promotion, program, or contest for
30 selling a motor vehicle to a customer who was present at the
31 dealership and the motor vehicle dealer did not know or should

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

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

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

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

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

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

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

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

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

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

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1 the finder(s) of fact.

2 (32) Notwithstanding the terms of any franchise
3 agreement, the applicant or licensee has rejected or withheld
4 approval of any proposed transfer in violation of s. 320.643
5 or a proposed change of executive management in violation of
6 s. 320.644.

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

9 320.641 Discontinuations, cancellations, nonrenewals,
10 modifications, and replacement~~Unfair cancellation~~ of franchise
11 agreements.--

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

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

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

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

31 (4) Notwithstanding any other provision of this

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

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

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

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

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

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1 agreement and applicable law, including all rights of transfer
2 until such time as the licensee has accepted or rejected the
3 proposed transfer. If the proposed transfer is rejected, the
4 motor vehicle dealer shall retain all of its rights pursuant
5 to s. 320.643 to an administrative determination as to whether
6 the licensee's rejection is in compliance with the provisions
7 of s. 320.643, and during the pendency of any such
8 administrative proceeding, and any related appellate
9 proceedings, the termination proceedings shall remain stayed
10 without bond, the franchise agreement shall remain in full
11 force and effect and the motor vehicle dealer shall retain all
12 rights and remedies pursuant to the terms and conditions of
13 the franchise agreement and applicable law, including all
14 rights of transfer. If a transfer is approved by the licensee
15 or mandated by law, the termination proceedings shall be
16 dismissed with prejudice as moot. The subsection (8) applies
17 only to the first two proposed transfers pursuant to s.
18 320.643(1) or (2) after notice of intent to discontinue,
19 cancel, or not renew is received.

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

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

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

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

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1 complaint within such 3060-days after receipt of the
2 complaint, unless the parties agree in writing to an extension,
3 ~~period~~ or if the department, after a hearing, ~~dismisses the~~
4 ~~complaint~~ or renders a decision other than one disqualifying
5 the proposed transferee, the franchise agreement between the
6 motor vehicle dealer and the licensee shall be deemed amended
7 to incorporate such transfer or amended in accordance with the
8 determination and order rendered, effective upon compliance by
9 the proposed transferee with any conditions set forth in the
10 determination or order.

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

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

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1 and order rendered, effective upon compliance by the proposed
2 transferee with any conditions set forth in the determination
3 or order.

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

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

14 Section 6. Section 320.645, Florida Statutes, is
15 amended to read:

16 320.645 Restriction upon ownership of dealership by
17 licensee.--

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

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

31 (b) When operating a motor vehicle dealership

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1 temporarily for a reasonable period for the exclusive purpose
2 of broadening the diversity of its dealer body and enhancing
3 opportunities for qualified persons who are part of a group
4 that has historically been underrepresented in its dealer
5 body, or for other qualified persons who the licensee deems
6 lack the resources to purchase or capitalize the dealership
7 outright, ~~not to exceed 1 year, or~~ in a bona fide relationship
8 with an independent person, other than a licensee or its agent
9 or affiliate, who has made a significant investment that is
10 subject to loss in the dealership within the dealership's
11 first year of operation and who can reasonably expect to
12 acquire full ownership of the dealership on reasonable terms
13 and conditions; or

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

19
20 In any such case, the licensee must continue to make the motor
21 vehicle dealership available for sale to an independent person
22 at a fair and reasonable price. Approval of the sale of such a
23 motor vehicle dealership to a proposed motor vehicle dealer
24 shall not be unreasonably withheld.

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

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

28 (b) "Reasonable terms and conditions" requires that
29 profits from the dealership are reasonably expected to be
30 sufficient to allow full ownership of the dealership by the
31 independent person within a reasonable time period not to

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1 exceed 10 years, which time period may be extended if there is
2 a reasonable basis to do so and is not being sought to evade
3 the purpose of this section; that the independent person has
4 sufficient control to permit acquisition of ownership; and
5 that the relationship cannot be terminated solely to avoid
6 full ownership. The terms and conditions are not reasonable
7 if they preclude the independent person from an expedited
8 purchase of the dealership using a monetary source other than
9 profits from the dealership's operation; provided, however,
10 that the independent person must pay or make an agreement to
11 pay to the licensee any and all reasonable prepayment charges
12 and costs, including all unrecouped restored losses,
13 associated with the expedited purchase of the dealership. For
14 the purpose of this section, unrecouped restored losses are
15 monies that the manufacturer has provided to the dealership to
16 restore losses of the dealership that the manufacturer has not
17 been paid back through profits of the dealership.

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

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

25 (a) The business activities, including, without
26 limitation, the dealings with motor vehicle manufacturers and
27 their representatives and affiliates, of any person that is
28 primarily engaged in the business of short term not to exceed
29 12 months rental of motor vehicles and industrial and
30 construction equipment and activities incidental to that
31 business, provided that:

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

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

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

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

21 (4) This section does not apply to any dealership that
22 is owned, controlled, or operated by a licensee on July 1,
23 2000.

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

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

30 320.699 Administrative hearings and adjudications;
31 procedure.--

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

1 (2) If a written objection or notice of protest is
2 filed with the department under paragraph (1)(b), a hearing
3 shall be held not sooner than 180 days nor later than 240 days
4 from within 180 days of the date of filing of the first
5 objection or notice of protest, unless the time is extended by
6 the Administrative Law Judge. This subsection shall govern
7 the schedule of hearings in lieu of any other provision of law
8 with respect to administrative hearings conducted by the
9 Department of Highway Safety and Motor Vehicles or the
10 Division of Administrative Hearings, including performance
11 standards of state agencies, which may be included in current
12 and future appropriations acts.~~hearing officer for good cause~~
13 ~~shown. If a hearing is not scheduled within said time, any~~
14 ~~party may request such hearing which shall be held forthwith~~
15 ~~by the hearing officer.~~

16 Section 8. Section 320.6991, Florida Statutes, is
17 created to read:

18 Section 320.6991 Severability.--If a provision of ss.
19 320.60-320.70 or its application to any person or circumstance
20 is held invalid, the invalidity does not affect other
21 provisions or applications of ss. 320.60-320.70 that can be
22 given effect without the invalid provision or application, and
23 to this end the provisions of 320.60-320.70 are severable.

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

25
26
27 ===== T I T L E A M E N D M E N T =====

28 And the title is amended as follows:

29 On page 1, line 10 through page 2, line 11
30 remove from the title of the bill: all of said lines

31

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1 and insert in lieu thereof:
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.; providing penalties
11 and remedies for violations; deleting
12 subsections (13) and (16); amending subsection
13 20; creating subsections (22) through (33) and
14 renumbering sections; amending s. 320.641,
15 F.S.; providing procedures relating to
16 discontinuations, cancellations, nonrenewals,
17 modifications, and replacements of franchise
18 agreements; amending s. 320.642, F.S.; amending
19 criteria for establishing an additional motor
20 vehicle dealer who deals in a specific
21 line-make in an area that is already served by
22 another such dealer; amending s. 320.643, F.S.;
23 amending provisions relating to the transfer,
24 assignment, or sale of franchise agreements;
25 amending s. 320.645, F.S.; amending provisions
26 relating to restrictions upon a licensee's
27 owning a dealership; providing for "dealer
28 development arrangements"; providing
29 exceptions; amending s. 320.699, F.S.; amending
30 procedures for administrative hearings;
31 creating s. 320.6991; providing for

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

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severability; providing an effective date.