

Amendment No. e12 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
1		.	
2		.	
3		.	
4		.	

ORIGINAL STAMP BELOW

Representative(s) Gardiner offered the following:

Amendment to Amendment (145343)

On page 66, line 5-9,
remove from the amendment: all of said lines

and insert in lieu thereof:

Section 42. Section 320.64, Florida Statutes, is
amended to read:

and on page 66, between lines 24 & 25,

insert:

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

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

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

1 the department.

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

4 (5) The applicant or licensee has coerced or attempted
5 to coerce any motor vehicle dealer into accepting delivery of
6 any motor vehicle or vehicles or parts or accessories therefor
7 or any other commodities which have not been ordered by the
8 dealer.

9 (6) The applicant or licensee has coerced or attempted
10 to coerce any motor vehicle dealer to enter into any agreement
11 with the licensee.

12 (7) The applicant or licensee has threatened to
13 discontinue, cancel, or not to renew a franchise agreement of
14 a licensed motor vehicle dealer, where the threatened
15 discontinuation, cancellation, or nonrenewal, if implemented,
16 would be in violation of any of the provisions of s. 320.641.

17 (8) The applicant or licensee discontinued, canceled,
18 or failed to renew, a franchise agreement of a licensed motor
19 vehicle dealer in violation of any of the provisions of s.
20 320.641.

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

28 (10) The applicant or licensee has attempted to enter,
29 or has entered, into a franchise agreement with a motor
30 vehicle dealer who does not, at the time of the franchise
31 agreement, have proper facilities to provide the services to

1 his or her purchasers of new motor vehicles which are covered
2 by the new motor vehicle warranty issued by the applicant or
3 licensee.

4 (11) The applicant or licensee has coerced a motor
5 vehicle dealer to provide installment financing for the motor
6 vehicle dealer's purchasers with a specified financial
7 institution.

8 (12) The applicant or licensee has advertised,
9 printed, displayed, published, distributed, broadcast, or
10 televised, or caused or permitted to be advertised, printed,
11 displayed, published, distributed, broadcast, or televised, in
12 any manner whatsoever, any statement or representation with
13 regard to the sale or financing of motor vehicles which is
14 false, deceptive, or misleading.

15 ~~(13) The applicant or licensee has refused to deliver,~~
16 ~~in reasonable quantities and within a reasonable time, to any~~
17 ~~duly licensed motor vehicle dealer who has an agreement with~~
18 ~~such applicant or licensee for the retail sale of new motor~~
19 ~~vehicles and parts for motor vehicles sold or distributed by~~
20 ~~the applicant or licensee, any such motor vehicles or parts as~~
21 ~~are covered by such agreement specifically publicly advertised~~
22 ~~by such applicant or licensee to be available for immediate~~
23 ~~delivery. However, the failure to deliver any motor vehicle~~
24 ~~or part will not be considered a violation of this section if~~
25 ~~the failure is due to act of God, work stoppage, or delay due~~
26 ~~to a strike or labor difficulty, a freight embargo, product~~
27 ~~shortage, or other cause over which the applicant or licensee~~
28 ~~has no control. The failure to deliver parts or components for~~
29 ~~the current and 5 preceding years' models within 60 days from~~
30 ~~date of order shall be deemed prima facie unreasonable.~~

31 (13)~~(14)~~ The applicant or licensee has sold,

1 exchanged, or rented a motorcycle which produces in excess of
2 5 brake horsepower, knowing the use thereof to be by, or
3 intended for, the holder of a restricted Florida driver's
4 license.

5 (14)~~(15)~~ The applicant or licensee has engaged in
6 previous conduct which would have been a ground for revocation
7 or suspension of a license if the applicant or licensee had
8 been licensed.

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

26 (15)~~(17)~~ The applicant or licensee, directly or
27 indirectly, through the actions of any parent of the licensee,
28 subsidiary of the licensee, or common entity causes a
29 termination, cancellation, or nonrenewal of a franchise
30 agreement by a present or previous distributor or importer
31 unless, by the effective date of such action, the applicant or

Amendment No. e12 (for drafter's use only)

1 licensee offers the motor vehicle dealer whose franchise
2 agreement is terminated, canceled, or not renewed a franchise
3 agreement containing substantially the same provisions
4 contained in the previous franchise agreement or files an
5 affidavit with the department acknowledging its undertaking to
6 assume and fulfill the rights, duties, and obligations of its
7 predecessor distributor or importer under the terminated,
8 canceled, or nonrenewed franchise agreement and the same is
9 reinstated.

10 ~~(16)(18)~~ Notwithstanding the terms of any franchise
11 agreement, the applicant or licensee prevents or refuses to
12 accept the succession to any interest in a franchise agreement
13 by any legal heir or devisee under the will of a motor vehicle
14 dealer or under the laws of descent and distribution of this
15 state; provided, the applicant or licensee is not required to
16 accept a succession where such heir or devisee does not meet
17 licensee's written, reasonable, and uniformly applied minimal
18 standard qualifications for dealer applicants or which, after
19 notice and administrative hearing pursuant to chapter 120, is
20 demonstrated to be detrimental to the public interest or to
21 the representation of the applicant or licensee. Nothing
22 contained herein, however, shall prevent a motor vehicle
23 dealer, during his or her lifetime, from designating any
24 person as his or her successor in interest by written
25 instrument filed with and accepted by the applicant or
26 licensee. A licensee who rejects the successor transferee
27 under this subsection shall have the burden of establishing in
28 any proceeding where such rejection is in issue that the
29 rejection of the successor transferee complies with this
30 subsection.

31 ~~(17)(19)~~ The applicant or licensee has included in any

1 franchise agreement with a motor vehicle dealer terms or
2 provisions that are contrary to, prohibited by, or otherwise
3 inconsistent with the provisions contained in ss.
4 320.60-320.70, or has failed to include in such franchise
5 agreement a provision conforming to the requirements of s.
6 320.63(3).

7

8 and on page 67, between lines 5 & 6

9

10 insert:

11 ~~(19)~~~~(21)~~ The applicant or licensee, without good and
12 fair cause, has delayed, refused, or failed to provide a
13 supply of motor vehicles by series in reasonable quantities,
14 including the models publicly advertised by the applicant or
15 licensee as being available, or has delayed, refused, or
16 failed to deliver motor vehicle parts and accessories within a
17 reasonable time after receipt of an order by a franchised
18 dealer. However, this subsection is not violated if such
19 failure is caused by acts or causes beyond the control of the
20 applicant or licensee.

21 ~~(20)~~~~(22)~~ The applicant or licensee has required, or
22 threatened to require, a motor vehicle dealer to prospectively
23 assent to a release, assignment, novation, waiver, or
24 estoppel, which instrument or document operates, or is
25 intended by the applicant or licensee to operate, to relieve
26 any person from any liability or obligation under the
27 provisions of ss. 320.60-320.70.

28 ~~(21)~~~~(23)~~ The applicant or licensee has threatened or
29 coerced a motor vehicle dealer toward conduct or action
30 whereby the dealer would waive or forego its right to protest
31 the establishment or relocation of a motor vehicle dealer in

1 the community or territory serviced by the threatened or
2 coerced dealer.

3

4 and on page 71, between lines 9 & 10

5

6 insert:

7

8 A motor vehicle dealer who can demonstrate that a violation
9 of, or failure to comply with, any of the preceding provisions
10 by an applicant or licensee will or can adversely and
11 pecuniarily affect the complaining dealer, shall be entitled
12 to pursue all of the remedies, procedures, and rights of
13 recovery available under ss. 320.695 and 320.697.

14

15 and on page 71, line 11,

16 remove from the bill: and a new subsection (8) is added

17

18 and on page 74, line 30,

19 remove from the bill: 320.643.7

20

21 and insert in lieu thereof: 320.643.

22

23 and on page 75, line 19,

24 remove from the bill: all of said line

25

26 and insert in lieu thereof: dismissed with prejudice as moot.

27 This subsection applies

28 On page 77, lines 4-7,

29 remove from the bill: all of said lines

30

31 and insert in lieu thereof: complaint within 30 days after

1 receipt of the complaint, unless the parties agree in writing
2 to an extension,~~such 60 day period~~ or if the department,
3 after a hearing,
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31