

By the Committee on Transportation; and Senator Sebesta

306-2412-03

1                                   A bill to be entitled  
2           An act relating to motor vehicle dealers;  
3           amending s. 320.60, F.S.; revising definitions;  
4           defining "service"; amending s. 320.64, F.S.;  
5           prohibiting certain acts by licensee or  
6           applicant; providing for penalties, liability,  
7           and remedies for violation; amending s.  
8           320.642, F.S.; revising provisions for evidence  
9           to be considered by the Department of Highway  
10          Safety and Motor Vehicles in making certain  
11          determinations of representation by preexisting  
12          dealers; providing criteria and procedures for  
13          protest of proposed addition or relocation of  
14          service-only dealership; requiring license to  
15          permit service only in certain circumstances;  
16          amending s. 320.643, F.S.; revising criteria  
17          and procedures for transfer, sale, or disposal  
18          of franchise agreements and acceptance or  
19          rejection by the licensee of such transfer,  
20          sale, or disposal; prohibiting certain acts by  
21          a licensee; amending s. 320.644, F.S.; defining  
22          "executive management"; revising criteria and  
23          procedures for change of executive management  
24          of motor vehicle dealership and acceptance or  
25          rejection by the licensee of such change;  
26          prohibiting certain acts by licensee; amending  
27          s. 320.645, F.S.; revising restriction upon  
28          ownership of dealership by licensee; amending  
29          s. 501.976, F.S.; revising specifications under  
30          the Florida Deceptive and Unfair Trade  
31          Practices Act for representation by dealer of

1           vehicle as a demonstrator; deleting the  
2           requirement that a demonstrator must have been  
3           driven by a prospective customer; providing an  
4           effective date.

5  
6 Be It Enacted by the Legislature of the State of Florida:

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8           Section 1. Subsections (3), (10), and (13) of section  
9 320.60, Florida Statutes, are amended, and subsection (16) is  
10 added to that section, to read:

11           320.60 Definitions for ss. 320.61-320.70.--Whenever  
12 used in ss. 320.61-320.70, unless the context otherwise  
13 requires, the following words and terms have the following  
14 meanings:

15           (3) "Demonstrator" means any new motor vehicle which  
16 is carried on the records of the dealer as a demonstrator and  
17 is used by, being inspected or driven by the dealer or his or  
18 her employees, or prospective customers for the purpose of  
19 demonstrating vehicle characteristics in the sale or display  
20 of motor vehicles sold by the dealer.

21           (10) "Motor vehicle" means any new automobile,  
22 motorcycle, or truck, including all trucks, regardless of  
23 weight, including "heavy truck" as defined in s. 320.01(10)  
24 and "truck" as defined in s. 320.01(9), the equitable or legal  
25 title to which has never been transferred by a manufacturer,  
26 distributor, importer, or dealer to an ultimate purchaser;  
27 however, when legal title is not transferred but possession of  
28 a motor vehicle is transferred pursuant to a conditional sales  
29 contract or lease and the conditions are not satisfied and the  
30 vehicle is returned to the motor vehicle dealer, the motor  
31 vehicle may be resold by the motor vehicle dealer as a new

1 motor vehicle, provided the selling motor vehicle dealer gives  
2 the following written notice to the purchaser: "THIS VEHICLE  
3 WAS DELIVERED TO A PREVIOUS PURCHASER." The purchaser shall  
4 sign an acknowledgment, a copy of which is kept in the selling  
5 dealer's file.

6 (13) "Used motor vehicle" means any motor vehicle the  
7 title to ~~or possession of~~ which has been transferred, at least  
8 once, by a ~~from the person who first acquired it from the~~  
9 manufacturer, distributor, importer, or dealer to an ultimate  
10 purchaser ~~and which is commonly known as "secondhand" within~~  
11 ~~the ordinary meaning thereof.~~

12 (16) "Service" means any maintenance or repair of any  
13 motor vehicle or used motor vehicle that is sold or provided  
14 to an owner, operator, or user pursuant to a motor vehicle  
15 warranty, or any extension thereof, issued by the licensee.

16 Section 2. Subsections (33), (34), and (35) are added  
17 to section 320.64, Florida Statutes, to read:

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

29 (33) The applicant or licensee has attempted to sell  
30 or lease, or has sold or leased, used motor vehicles at retail  
31 of a line-make that is the subject of any franchise agreement

1 with a motor vehicle dealer in this state, other than heavy  
2 trucks with a net weight of more than 8,000 pounds.

3 (34) The applicant or licensee, after the effective  
4 date of this subsection, has included in any franchise  
5 agreement with a motor vehicle dealer a mandatory obligation  
6 or requirement of the motor vehicle dealer to purchase, sell,  
7 or lease, or offer for purchase, sale, or lease, any quantity  
8 of used motor vehicles.

9 (35) The applicant or licensee has refused to assign  
10 allocation earned by a motor vehicle dealer, or has refused to  
11 sell motor vehicles to a motor vehicle dealer, because the  
12 motor vehicle dealer has failed or refused to sell, lease, or  
13 certify a certain quantity of used motor vehicles prescribed  
14 by the licensee.

15  
16 A motor vehicle dealer who can demonstrate that a violation  
17 of, or failure to comply with, any of the preceding provisions  
18 by an applicant or licensee will or can adversely and  
19 pecuniarily affect the complaining dealer, shall be entitled  
20 to pursue all of the remedies, procedures, and rights of  
21 recovery available under ss. 320.695 and 320.697.

22 Section 3. Paragraph (b) of subsection (2) and  
23 subsection (3) of section 320.642, Florida Statutes, are  
24 amended, and subsection (6) is added to that section, to read:

25 320.642 Dealer licenses in areas previously served;  
26 procedure.--

27 (2)

28 (b) In determining whether the existing franchised  
29 motor vehicle dealer or dealers are providing adequate  
30 representation in the community or territory for the

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1 line-make, the department may consider evidence which may  
2 include, but is not limited to:

3 1. The impact of the establishment of the proposed or  
4 relocated dealer on the consumers, public interest, existing  
5 dealers, and the licensee; provided, however, that financial  
6 impact may only be considered with respect to the protesting  
7 dealer or dealers.

8 2. The size and permanency of investment reasonably  
9 made and reasonable obligations incurred by the existing  
10 dealer or dealers to perform their obligations under the  
11 dealer agreement.

12 3. The reasonably expected market penetration of the  
13 line-make motor vehicle for the community or territory  
14 involved, after consideration of all factors which may affect  
15 said penetration, including, but not limited to, demographic  
16 factors such as age, income, education, size class preference,  
17 product popularity, retail lease transactions, or other  
18 factors affecting sales to consumers of the community or  
19 territory.

20 4. Any actions by the licensees in denying its  
21 existing dealer or dealers of the same line-make the  
22 opportunity for reasonable growth, market expansion, or  
23 relocation, including the availability of line-make vehicles  
24 in keeping with the reasonable expectations of the licensee in  
25 providing an adequate number of dealers in the community or  
26 territory.

27 5. Any attempts by the licensee to coerce the existing  
28 dealer or dealers into consenting to additional or relocated  
29 franchises of the same line-make in the community or  
30 territory.

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1           6. Distance, travel time, traffic patterns, and  
2 accessibility between the existing dealer or dealers of the  
3 same line-make and the location of the proposed additional or  
4 relocated dealer.

5           7. Whether benefits to consumers will likely occur  
6 from the establishment or relocation of the dealership which  
7 ~~the protesting dealer or dealers prove~~ cannot be obtained by  
8 other geographic or demographic changes or expected changes in  
9 the community or territory.

10           8. Whether the protesting dealer or dealers are in  
11 substantial compliance with their dealer agreement.

12           9. Whether there is adequate interbrand and intrabrand  
13 competition with respect to said line-make in the community or  
14 territory and adequately convenient consumer care for the  
15 motor vehicles of the line-make, including the adequacy of  
16 sales and service facilities.

17           10. Whether the establishment or relocation of the  
18 proposed dealership appears to be warranted and justified  
19 based on economic and marketing conditions pertinent to  
20 dealers competing in the community or territory, including  
21 anticipated future changes.

22           11. The volume of registrations and service business  
23 transacted by the existing dealer or dealers of the same  
24 line-make in the relevant community or territory of the  
25 proposed dealership.

26           (3) An existing franchised motor vehicle dealer or  
27 dealers shall have standing to protest a proposed additional  
28 or relocated motor vehicle dealer where the existing motor  
29 vehicle dealer or dealers have a franchise agreement for the  
30 same line-make vehicle to be sold or serviced by the proposed  
31 additional or relocated motor vehicle dealer and are

1 physically located so as to meet or satisfy any of the  
2 following requirements or conditions:

3 (a) If the proposed additional or relocated motor  
4 vehicle dealer is to be located in a county with a population  
5 of less than 300,000 according to the most recent data of the  
6 United States Census Bureau or the data of the Bureau of  
7 Economic and Business Research of the University of Florida:

8 1. The proposed additional or relocated motor vehicle  
9 dealer is to be located in the area designated or described as  
10 the area of responsibility, or such similarly designated area,  
11 including the entire area designated as a multiple-point area,  
12 in the franchise agreement or in any related document or  
13 commitment with the existing motor vehicle dealer or dealers  
14 of the same line-make as such agreement existed upon October  
15 1, 1988;

16 2. The existing motor vehicle dealer or dealers of the  
17 same line-make have a licensed franchise location within a  
18 radius of 20 miles of the location of the proposed additional  
19 or relocated motor vehicle dealer; or

20 3. Any existing motor vehicle dealer or dealers of the  
21 same line-make can establish that during any 12-month period  
22 of the 36-month period preceding the filing of the licensee's  
23 application for the proposed dealership, such dealer or its  
24 predecessor made 25 percent of its retail sales of new motor  
25 vehicles to persons whose registered household addresses were  
26 located within a radius of 20 miles of the location of the  
27 proposed additional or relocated motor vehicle dealer;  
28 provided such existing dealer is located in the same county or  
29 any county contiguous to the county where the additional or  
30 relocated dealer is proposed to be located.

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1 (b) If the proposed additional or relocated motor  
2 vehicle dealer is to be located in a county with a population  
3 of more than 300,000 according to the most recent data of the  
4 United States Census Bureau or the data of the Bureau of  
5 Economic and Business Research of the University of Florida:

6 1. Any existing motor vehicle dealer or dealers of the  
7 same line-make have a licensed franchise location within a  
8 radius of 12.5 miles of the location of the proposed  
9 additional or relocated motor vehicle dealer; or

10 2. Any existing motor vehicle dealer or dealers of the  
11 same line-make can establish that during any 12-month period  
12 of the 36-month period preceding the filing of the licensee's  
13 application for the proposed dealership, such dealer or its  
14 predecessor made 25 percent of its retail sales of new motor  
15 vehicles to persons whose registered household addresses were  
16 located within a radius of 12.5 miles of the location of the  
17 proposed additional or relocated motor vehicle dealer;  
18 provided such existing dealer is located in the same county or  
19 any county contiguous to the county where the additional or  
20 relocated dealer is proposed to be located.

21 (6) When a proposed addition or relocation concerns a  
22 dealership that performs or is to perform only service, as  
23 defined in s. 320.60(16), and will not or does not sell or  
24 lease new motor vehicles, as defined in s. 320.60(15), the  
25 proposal shall be subject to notice and protest pursuant to  
26 the provisions of this section.

27 (a) Standing to protest the addition or relocation of  
28 a service-only dealership shall be limited to those instances  
29 in which the applicable mileage requirement established in  
30 subparagraphs (3)(a)2. and (3)(b)1. is met.

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1           (b) The addition or relocation of a service-only  
2 dealership shall not be subject to protest if:

3           1. The applicant for the service-only dealership  
4 location is an existing motor vehicle dealer of the same  
5 line-make as the proposed additional or relocated service-only  
6 dealership;

7           2. There is no existing dealer of the same line-make  
8 closer than the applicant to the proposed location of the  
9 additional or relocated service-only dealership; and

10           3. The proposed location of the additional or  
11 relocated service-only dealership is at least 7 miles from all  
12 existing motor vehicle dealerships of the same line-make,  
13 other than motor vehicle dealerships owned by the applicant.

14           (c) In determining whether existing franchised motor  
15 vehicle dealers are providing adequate representations in the  
16 community or territory for the line-make in question in a  
17 protest of the proposed addition or relocation of a  
18 service-only dealership, the department may consider the  
19 elements set forth in paragraph (2)(b), provided:

20           1. With respect to subparagraph (2)(b)1., only the  
21 impact as it relates to service may be considered;

22           2. Subparagraph (2)(b)3. shall not be considered;

23           3. With respect to subparagraph (2)(b)9., only service  
24 facilities shall be considered; and

25           4. With respect to subparagraph (2)(b)11., only the  
26 volume of service business transacted shall be considered.

27           (d) If an application for a service-only dealership is  
28 granted, the department shall issue a license which permits  
29 only service, as defined in s. 320.60(16), and does not permit  
30 the selling or leasing of new motor vehicles, as defined in s.  
31 320.60(15). If a service-only dealership subsequently seeks

1 to sell new motor vehicles at its location, the notice and  
2 protest provisions of this section shall apply.

3 Section 4. Section 320.643, Florida Statutes, is  
4 amended to read:

5 320.643 Transfer, assignment, or sale of franchise  
6 agreements.--

7 (1)(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, prohibit, or  
11 penalize any motor vehicle dealer from selling, assigning,  
12 transferring, alienating, or otherwise disposing of its  
13 franchise agreement to any other person or persons, including  
14 a corporation established or existing for the purpose of  
15 owning or holding a franchise agreement, unless the licensee  
16 proves at a hearing pursuant to a complaint filed by a motor  
17 vehicle dealer under this section that such sale, transfer,  
18 alienation, or other disposition is to a person who is not, or  
19 whose controlling executive management is not, of good moral  
20 character or does not meet the written, reasonable, and  
21 uniformly applied standards or qualifications of the licensee  
22 relating to financial qualifications of the transferee and  
23 business experience of the transferee or the transferee's  
24 executive management. A motor vehicle dealer who desires to  
25 sell, assign, transfer, alienate, or otherwise dispose of a  
26 franchise shall notify, or cause the proposed transferee to  
27 notify, the licensee, in writing, setting forth the  
28 prospective transferee's name, address, financial  
29 qualifications, and business experience during the previous 5  
30 years. A licensee who receives such notice may, within 60 days  
31 following such receipt, notify the motor vehicle dealer, in

1 writing, that the proposed transferee is not a person  
2 qualified to be a transferee under this section and setting  
3 forth the material reasons for such rejection. Failure of the  
4 licensee to notify the motor vehicle dealer within the 60-day  
5 period of such rejection shall be deemed an approval of the  
6 transfer. No such transfer, assign, or sale shall be valid  
7 unless the transferee agrees in writing to comply with all  
8 requirements of the franchise then in effect ~~A motor vehicle~~  
9 ~~dealer shall not transfer, assign, or sell a franchise~~  
10 ~~agreement to another person unless the dealer first notifies~~  
11 ~~the licensee of the dealer's decision to make such transfer,~~  
12 ~~by written notice setting forth the prospective transferee's~~  
13 ~~name, address, financial qualification, and business~~  
14 ~~experience during the previous 5 years. The licensee shall, in~~  
15 ~~writing, within 60 days after receipt of such notice, inform~~  
16 ~~the dealer either of the licensee's approval of the transfer,~~  
17 ~~assignment, or sale or of the unacceptability of the proposed~~  
18 ~~transferee, setting forth the material reasons for the~~  
19 ~~rejection. If the licensee does not so inform the dealer~~  
20 ~~within the 60-day period, its approval of the proposed~~  
21 ~~transfer is deemed granted. No such transfer, assignment, or~~  
22 ~~sale will be valid unless the transferee agrees in writing to~~  
23 ~~comply with all requirements of the franchise then in effect.~~  
24 ~~For the purposes of this section, the refusal by the licensee~~  
25 ~~to accept a proposed transferee who is of good moral character~~  
26 ~~and who otherwise meets the written, reasonable, and uniformly~~  
27 ~~applied standards or qualifications, if any, of the licensee~~  
28 ~~relating to financial qualifications of the transferee and the~~  
29 ~~business experience of the transferee or the transferee's~~  
30 ~~executive management is presumed to be unreasonable.~~  
31

1           (b) A motor vehicle dealer whose proposed sale is  
2 rejected may, within 60 days following such receipt of such  
3 rejection, file with the department a complaint for a  
4 determination that the proposed transferee has been rejected  
5 in violation of this section. The licensee has the burden of  
6 proof with respect to all issues raised by such complaint. The  
7 department shall determine, and enter an order providing, that  
8 the proposed transferee is either qualified or is not and  
9 cannot be qualified for specified reasons, or the order may  
10 provide the conditions under which a proposed transferee would  
11 be qualified. If the licensee fails to file such a response to  
12 the motor vehicle dealer's complaint within 30 days after  
13 receipt of the complaint, unless the parties agree in writing  
14 to an extension, or if the department, after a hearing,  
15 renders a decision other than one disqualifying the proposed  
16 transferee, the franchise agreement between the motor vehicle  
17 dealer and the licensee shall be deemed amended to incorporate  
18 such transfer or amended in accordance with the determination  
19 and order rendered, effective upon compliance by the proposed  
20 transferee with any conditions set forth in the determination  
21 or order.

22           (2)~~(a)~~ Notwithstanding the terms of any franchise  
23 agreement, a licensee shall not, by contract or otherwise,  
24 fail or refuse to give effect to, prevent, prohibit, or  
25 penalize, or attempt to refuse to give effect to, prevent,  
26 prohibit, or penalize, any motor vehicle dealer or any  
27 proprietor, partner, stockholder, owner, or other person who  
28 holds or otherwise owns an interest therein from selling,  
29 assigning, transferring, alienating, or otherwise disposing  
30 of, in whole or in part, the equity interest of any of them in  
31 such motor vehicle dealer to any other person or persons,

1 including a corporation established or existing for the  
2 purpose of owning or holding the stock or ownership interests  
3 of other entities, unless the licensee proves at a hearing  
4 pursuant to a complaint filed by a motor vehicle dealer under  
5 this section that such sale, transfer, alienation, or other  
6 disposition is to a person who is not, or whose controlling  
7 executive management is not, of good moral character. A motor  
8 vehicle dealer, or any proprietor, partner, stockholder,  
9 owner, or other person who holds or otherwise owns an interest  
10 in the motor vehicle dealer, who desires to sell, assign,  
11 transfer, alienate, or otherwise dispose of any interest in  
12 such motor vehicle dealer shall notify, or cause the proposed  
13 transferee to so notify, the licensee, in writing, of the  
14 identity and address of the proposed transferee. A licensee  
15 who receives such notice may, within 60 days following such  
16 receipt, notify the motor vehicle dealer in writing that the  
17 proposed transferee is not a person qualified to be a  
18 transferee under this section and setting forth the material  
19 reasons for such rejection. Failure of the licensee to notify  
20 the motor vehicle dealer within the 60-day period of such  
21 rejection shall be deemed an approval of the transfer. Any  
22 person whose proposed sale of stock is rejected may file  
23 within 60 days of receipt of such rejection a complaint with  
24 the department alleging that the rejection was in violation of  
25 the law or the franchise agreement. The licensee has the  
26 burden of proof with respect to all issues raised by such  
27 complaint. The department shall determine, and enter an order  
28 providing, that the proposed transferee either is qualified or  
29 is not and cannot be qualified for specified reasons; or the  
30 order may provide the conditions under which a proposed  
31 transferee would be qualified. If the licensee fails to file a

1 response to the motor vehicle dealer's complaint within 30  
2 days of receipt of the complaint, unless the parties agree in  
3 writing to an extension, or if the department, after a  
4 hearing, renders a decision on the complaint other than one  
5 disqualifying the proposed transferee, the transfer shall be  
6 deemed approved in accordance with the determination and order  
7 rendered, effective upon compliance by the proposed transferee  
8 with any conditions set forth in the determination or order.

9 (3)~~(b)~~ During the pendency of any such hearing, the  
10 franchise agreement of the motor vehicle dealer shall continue  
11 in effect in accordance with its terms. The department shall  
12 expedite any determination requested under this section.

13 (4)~~(3)~~ Notwithstanding the terms of any franchise  
14 agreement, the acceptance by the licensee of the proposed  
15 transferee shall not be unreasonably withheld. For the  
16 purposes of this section, the refusal by the licensee to  
17 accept a proposed transferee who satisfies the criteria set  
18 forth in subsection (1) or subsection (2) is presumed to be  
19 unreasonable.

20 (5) It shall be a violation of this section for the  
21 licensee to reject or withhold approval of a proposed transfer  
22 unless the licensee can prove in any court of competent  
23 jurisdiction in defense of any claim brought pursuant to s.  
24 320.697 that, in fact, the rejection or withholding of  
25 approval of the proposed transfer was reasonable. The  
26 determination of whether such rejection or withholding was  
27 reasonable shall be based on an objective standard. Alleging  
28 the permitted statutory grounds by the licensee in the written  
29 rejection of the proposed transfer shall not protect the  
30 licensee from liability for violating this section.

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1           Section 5. Section 320.644, Florida Statutes, is  
2 amended to read:

3           320.644 Change of executive management control;  
4 objection by licensee; procedure.--

5           (1) Notwithstanding the terms of any franchise  
6 agreement, a licensee shall not, by contract or otherwise,  
7 fail or refuse to give effect to, prevent, prohibit, or  
8 penalize, or attempt to refuse to give effect to, prevent,  
9 prohibit, or penalize any motor vehicle dealer from changing  
10 its executive management control unless the licensee proves at  
11 a hearing pursuant to a complaint filed by a motor vehicle  
12 dealer under this section that such change is to a person who  
13 is not of good moral character or who does ~~No licensee shall~~  
14 ~~prohibit or prevent, or attempt to prohibit or prevent, any~~  
15 ~~motor vehicle dealer from changing the executive management~~  
16 ~~control of the motor vehicle dealer unless the proposed change~~  
17 ~~of executive management control of the motor vehicle dealer is~~  
18 ~~to a person or persons not of good moral character or who do~~  
19 ~~not meet the written, reasonable, and uniformly applied~~  
20 ~~standards of the licensee relating to the business experience~~  
21 ~~of executive management required by the licensee of its motor~~  
22 ~~vehicle dealers. A motor vehicle dealer who desires to change~~  
23 ~~its executive management control shall notify the licensee by~~  
24 ~~written notice, setting forth the name, address, and business~~  
25 ~~experience of the proposed executive management. A licensee~~  
26 ~~who receives such notice~~ shall, in writing ~~may,~~ within 60 days  
27 following such receipt, inform the motor vehicle dealer either  
28 of the approval of the proposed change in executive management  
29 or the unacceptability of the proposed change. If the licensee  
30 does not so inform the motor vehicle dealer within the 60-day  
31 period, its approval of the proposed change is deemed granted.

1 A motor vehicle dealer whose proposed change is rejected may,  
2 within 60 days following receipt of such rejection, file with  
3 the department a complaint for a determination that the  
4 proposed change of executive management has been rejected in  
5 violation of this section. The licensee has the burden of  
6 proof with respect to all issues raised by such complaint. The  
7 department shall determine, and enter an order providing, that  
8 the person proposed for the change is either qualified or is  
9 not and cannot be qualified for specific reasons, or the order  
10 may provide the conditions under which a proposed executive  
11 manager would be qualified. If the licensee fails to file a  
12 response to the motor vehicle dealer's complaint within 30  
13 days after receipt of the complaint, unless the parties agree  
14 in writing to an extension, or if the department after a  
15 hearing renders a decision other than one disqualifying the  
16 person proposed for the change, the franchise agreement  
17 between the motor vehicle dealer and the licensee shall be  
18 deemed amended to incorporate such change or amended in  
19 accordance with the determination or order rendered, effective  
20 upon compliance by the person proposed for the change with any  
21 conditions set forth in the determination or order ~~file with~~  
22 ~~the department a verified complaint for a determination that~~  
23 ~~the proposed change of executive management will result in~~  
24 ~~executive management control by persons who are not of good~~  
25 ~~moral character or who do not meet such licensee's standards.~~  
26 ~~The licensee has the burden of proof with respect to all~~  
27 ~~issues raised by such verified complaint. If the licensee~~  
28 ~~fails to file such verified complaint within such 60-day~~  
29 ~~period or if the department, after a hearing, dismisses the~~  
30 ~~complaint, the franchise agreement between the motor vehicle~~  
31 ~~dealer and the licensee shall be deemed amended to incorporate~~



1 ~~such change or amended in accordance with the decision~~  
2 ~~rendered. For the purpose of this section, the mere~~  
3 ~~termination of employment of executive management, including~~  
4 ~~the dealer/operator or such similarly designated person or~~  
5 ~~persons, shall not be deemed to be a change in executive~~  
6 ~~management or a transfer of the franchise. Provided, however,~~  
7 ~~the designation of replacement executive management shall be~~  
8 ~~subject to this section.~~

9       (2) For the purpose of this section, the mere  
10 termination of employment of executive management shall not be  
11 deemed to be a change in executive management or a transfer of  
12 the franchise; however, the proposal of replacement executive  
13 management shall be subject to ~~During the pendency of any such~~  
14 ~~hearing, the franchise agreement of the motor vehicle dealer~~  
15 ~~shall continue in effect in accordance with its terms. The~~  
16 ~~department shall expedite any determination requested under~~  
17 ~~this section.~~

18       (3) For the purpose of this section, the term  
19 "executive management" means, and is limited to, the person or  
20 persons designated under the franchise agreement as the  
21 dealer-operator, executive manager, or similarly designated  
22 persons who are responsible for the overall day-to-day  
23 operation of the dealership. A motor vehicle dealer may change  
24 all other dealership personnel without seeking approval from  
25 the licensee.

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

30       (5) It shall be a violation of this section for the  
31 licensee to reject or withhold approval of a proposed transfer

1 unless the licensee can prove in any court of competent  
2 jurisdiction in defense of any claim brought pursuant to s.  
3 320.697 that, in fact, the rejection or withholding of  
4 approval of the proposed transfer was reasonable. The  
5 determination of whether such rejection or withholding was  
6 reasonable shall be based on an objective standard. Alleging  
7 the permitted statutory grounds by the licensee in the written  
8 rejection of the proposed transfer shall not protect the  
9 licensee from liability for violating this section.

10 Section 6. Subsection (4) of section 320.645, Florida  
11 Statutes, is amended to read:

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

14 (4) Nothing in this chapter ~~section~~ shall prohibit a  
15 distributor licensee-distributor as defined in s. 320.60(5) or  
16 common entity that is not a manufacturer, a division of a  
17 manufacturer, an entity that is controlled by a manufacturer,  
18 or a common entity of a manufacturer, and that is not owned,  
19 in whole or in part, directly or indirectly, by a  
20 manufacturer, as defined in s. 320.60(9), ~~and that has owned~~  
21 ~~and operated a motor vehicle dealership in this state on or~~  
22 ~~before July 1, 1996, other than a motor vehicle dealership~~  
23 ~~permitted by paragraph (1)(b),~~ from receiving a license or  
24 licenses as defined in s. 320.27 and ~~while~~ owning and  
25 operating a motor vehicle dealership or dealerships that sell  
26 or service ~~sells or services~~ motor vehicles other than any  
27 line-make of motor vehicles distributed by the distributor  
28 ~~licensee-distributor~~.

29 Section 7. Subsection (2) of section 501.976, Florida  
30 Statutes, is amended to read:

31

1           501.976 Actionable, unfair, or deceptive acts or  
2 practices.--It is an unfair or deceptive act or practice,  
3 actionable under the Florida Deceptive and Unfair Trade  
4 Practices Act, for a dealer to:

5           (2) Represent directly or indirectly that a vehicle is  
6 a demonstrator unless the vehicle ~~was driven by prospective~~  
7 ~~customers of a dealership selling the vehicle and such vehicle~~  
8 complies with the definition of a demonstrator in s.  
9 320.60(3).

10  
11 In any civil litigation resulting from a violation of this  
12 section, when evaluating the reasonableness of an award of  
13 attorney's fees to a private person, the trial court shall  
14 consider the amount of actual damages in relation to the time  
15 spent.

16           Section 8. This act shall take effect upon becoming a  
17 law.

18  
19                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
20                   COMMITTEE SUBSTITUTE FOR  
21                   Senate Bill 2708

22 This CS clarifies persons who sell large trucks must be  
23 licensed as motor vehicle dealers, and increases the  
24 restrictions against motor vehicle manufacturers, distributors  
and importers regarding what they can do to franchise motor  
vehicle dealers.

25 In addition, the CS provides that proposed additional or  
26 relocated service only dealerships that don't sell or lease  
27 new motor vehicles are subject to existing notice and protest  
28 provisions. However, current mileage provisions for  
29 determining standing to protest apply; and the proposed  
30 service only dealership location is not subject to protest if  
31 the applicant is an existing dealer, there is not a dealer of  
the same line-make closer to the proposed service only  
dealership, and the proposed location is at least 7 miles from  
existing dealerships of the same line-make. This CS eliminates  
the requirement that a vehicle must have been driven by a  
prospective customer to be considered a "demonstrator."