

CHAMBER ACTION

1 The Transportation Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to franchised motor vehicle dealers;
7 amending s. 320.13, F.S.; specifying a definition for
8 purposes of provisions for issuance of dealer license
9 plates; amending s. 320.60, F.S.; revising the definition
10 of the term "demonstrator"; defining the term "existing
11 franchised motor vehicle dealer"; amending s. 320.64,
12 F.S.; prohibiting applicant or licensee failure to pay
13 certain costs and amounts to a dealer after termination of
14 franchise; providing that the prohibition does not apply
15 to terminations, cancellations, or nonrenewals implemented
16 as a result of the sale of assets or stock of the dealer;
17 requiring certain procedures be followed; amending s.
18 320.641, F.S.; providing procedures for discontinuation,
19 cancellation, nonrenewal, modification, or replacement of
20 a franchise agreement based upon an alleged failure of the
21 dealer to comply with certain sales or service
22 obligations; amending s. 320.642, F.S.; revising criteria
23 and procedures to establish an additional dealership or

24 | relocate an existing dealer in an area where the same
 25 | line-make vehicle is presently represented; revising
 26 | provisions for determination by the Department of Highway
 27 | Safety and Motor Vehicles that the existing franchised
 28 | motor vehicle dealer or dealers are providing adequate
 29 | representation; revising criteria for protest by an
 30 | existing dealer; revising provisions excluding certain
 31 | openings and reopenings from consideration as an
 32 | additional or relocated motor vehicle dealer; prohibiting
 33 | notice of an additional dealer for a certain period of
 34 | time within a certain distance from a dealer that was
 35 | opened or reopened and not considered an additional dealer
 36 | subject to protest; requiring distance between sites to be
 37 | measured from the geometric centroid of each site;
 38 | amending s. 320.643, F.S.; exempting a transferee from
 39 | location requirements in the franchise agreement when the
 40 | transferee proposes to simultaneously relocate dealership
 41 | operations in conjunction with the purchase of the
 42 | dealership under certain circumstances; providing
 43 | requirements for such proposals; amending s. 320.699,
 44 | F.S.; revising procedures for administrative hearings;
 45 | requiring a certain schedule unless extended by the
 46 | administrative law judge under certain conditions;
 47 | providing an effective date.

48 |
 49 | Be It Enacted by the Legislature of the State of Florida:
 50 |

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51 Section 1. Subsection (1) of section 320.13, Florida
52 Statutes, is amended to read:

53 320.13 Dealer and manufacturer license plates and
54 alternative method of registration.--

55 (1)(a) Any licensed motor vehicle dealer and any licensed
56 mobile home dealer may, upon payment of the license tax imposed
57 by s. 320.08(12), secure one or more dealer license plates,
58 which are valid for use on motor vehicles or mobile homes owned
59 by the dealer to whom such plates are issued while the motor
60 vehicles are in inventory and for sale, or while being operated
61 in connection with such dealer's business, as defined in s.
62 320.60(3), but are not valid for use for hire. Dealer license
63 plates may not be used on any tow truck or wrecker unless the
64 tow truck or wrecker is being demonstrated for sale, and the
65 dealer license plates may not be used on a vehicle used to
66 transport another motor vehicle for the motor vehicle dealer.

67 (b)1. Marine boat trailer dealers and manufacturers may,
68 upon payment of the license taxes imposed by s. 320.08(12),
69 secure one or more dealer plates, which are valid for use on
70 boat trailers owned by the dealer to whom such plates are issued
71 while being used in connection with such dealer's business, but
72 are not valid for use for hire.

73 2. It is the intent of the Legislature that the method
74 currently used to license marine boat trailer dealers to do
75 business in the state, that is, by an occupational license
76 issued by the city or county, not be changed. The department
77 shall not interpret this act to mean that it is empowered to
78 license such dealers to do business. An occupational license tax

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79 certificate shall be sufficient proof upon which the department
80 may issue dealer license plates.

81 Section 2. Subsection (3) of section 320.60, Florida
82 Statutes, is amended, and subsection (17) is added to said
83 section, to read:

84 320.60 Definitions for ss. 320.61-320.70.--Whenever used
85 in ss. 320.61-320.70, unless the context otherwise requires, the
86 following words and terms have the following meanings:

87 (3) "Demonstrator" means any new motor vehicle which is
88 carried on the records of the dealer as a demonstrator and is
89 used by, being inspected or driven by the dealer or his or her
90 employees, or while being operated or driven, with the
91 permission of such motor vehicle dealer, by an owner, officer,
92 employee, or independent contractor of a motor vehicle dealer or
93 by a member of such owner's, officer's, or employee's immediate
94 family, or driven by prospective customers for the purpose of
95 demonstrating vehicle characteristics in the sale or display of
96 motor vehicles sold by the dealer.

97 (17) "Existing franchised motor vehicle dealer" means any
98 motor vehicle dealer that has a franchise agreement with a
99 licensee. For purposes of notice and identification under s.
100 320.642 only, all dealer locations of an existing motor vehicle
101 dealer or a person that is subject to an unexpired final order
102 permitting the establishment of an additional location or a
103 relocation, where the location is not yet open for business,
104 will be entitled to the same notice and protest rights as an
105 existing dealer under the provisions of s. 320.642. A final
106 order shall expire upon the failure of the dealer or other

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107 person that is authorized to establish a location or to relocate
 108 to become established at the proposed location within the period
 109 provided by law or rule.

110 Section 3. Subsection (36) is added to section 320.64,
 111 Florida Statutes, to read:

112 320.64 Denial, suspension, or revocation of license;
 113 grounds.--A license of a licensee under s. 320.61 may be denied,
 114 suspended, or revoked within the entire state or at any specific
 115 location or locations within the state at which the applicant or
 116 licensee engages or proposes to engage in business, upon proof
 117 that the section was violated with sufficient frequency to
 118 establish a pattern of wrongdoing, and a licensee or applicant
 119 shall be liable for claims and remedies provided in ss. 320.695
 120 and 320.697 for any violation of any of the following
 121 provisions. A licensee is prohibited from committing the
 122 following acts:

123 (36)(a) Notwithstanding the terms of any franchise
 124 agreement, after termination of a franchise an applicant or
 125 licensee has failed to pay to the motor vehicle dealer all of
 126 the following amounts:

127 1. The net cost paid by the dealer for each new motor
 128 vehicle in the dealer's inventory with mileage of 6,000 miles or
 129 less, exclusive of mileage placed on the vehicle before it was
 130 delivered to the dealer, provided that for every mile in excess
 131 of 1,000 miles there shall be a reduction of the required
 132 repurchase price at a rate equivalent to the then prevailing
 133 rate promulgated by the Internal Revenue Service.

134 2. The cost paid by the dealer for each new, unused,
 135 undamaged, and unsold part or accessory that:

136 a. Is in the current parts catalog and is still in the
 137 original, resalable merchandising package and in an unbroken
 138 lot, except that, in the case of sheet metal, a comparable
 139 substitute for the original package may be used; and

140 b. Was purchased by the dealer either directly from the
 141 manufacturer or distributor or was purchased from an outgoing
 142 authorized dealer as a part of the dealer's initial inventory.

143 3. The fair market value of each undamaged sign, excluding
 144 normal wear and tear, owned by the dealer that bears a trademark
 145 or trade name used or claimed by the applicant or licensee or a
 146 representative of the applicant or licensee and that was
 147 purchased from or at the request of the applicant or licensee or
 148 a representative of the applicant or licensee.

149 4. The fair market value of all special tools, data
 150 processing equipment, and automotive service equipment owned by
 151 the dealer that:

152 a. Were recommended in writing by the applicant or
 153 licensee or a representative of the applicant or licensee and
 154 designated as special tools and equipment;

155 b. Were purchased from or at the request of the applicant
 156 or licensee or a representative of the applicant or licensee;
 157 and

158 c. Are in usable and good condition except for reasonable
 159 wear and tear.

160 5. The cost of transporting, handling, packing, storing,
 161 and loading any property subject to repurchase under this
 162 section.

163 (b) This subsection shall not apply to terminations,
 164 cancellations, and nonrenewals that are implemented as a result
 165 of the sale of the assets or stock of the dealer. The dealer
 166 shall return the property listed in this subsection to the
 167 licensee within 90 days after the effective date of the
 168 termination, cancellation, or nonrenewal. The licensee shall
 169 supply the new vehicle dealer with reasonable instructions on
 170 the method by which the new vehicle dealer must return the
 171 property to the licensee. The compensation for the property
 172 shall be paid by the licensee within 60 days after the tender of
 173 inventory and other items, provided the new motor vehicle dealer
 174 has clear title to the inventory and other items and is in a
 175 position to convey that title to the manufacturer or
 176 distributor. In the event the inventory or other items are
 177 subject to a security interest, the licensee may make payment
 178 jointly to the new motor vehicle dealer and the holder of the
 179 security interest.

180
 181 A motor vehicle dealer who can demonstrate that a violation of,
 182 or failure to comply with, any of the preceding provisions by an
 183 applicant or licensee will or can adversely and pecuniarily
 184 affect the complaining dealer, shall be entitled to pursue all
 185 of the remedies, procedures, and rights of recovery available
 186 under ss. 320.695 and 320.697.

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187 Section 4. Subsection (1) of section 320.641, Florida
188 Statutes, is amended to read:

189 320.641 Discontinuations, cancellations, nonrenewals,
190 modifications, and replacement of franchise agreements.--

191 (1)(a) An applicant or licensee shall give written notice
192 to the motor vehicle dealer and the department of the licensee's
193 intention to discontinue, cancel, or fail to renew a franchise
194 agreement or of the licensee's intention to modify a franchise
195 or replace a franchise with a succeeding franchise, which
196 modification or replacement will adversely alter the rights or
197 obligations of a motor vehicle dealer under an existing
198 franchise agreement or will substantially impair the sales,
199 service obligations, or investment of the motor vehicle dealer,
200 at least 90 days before the effective date thereof, together
201 with the specific grounds for such action.

202 (b) The failure by the licensee to comply with the 90-day
203 notice period and procedure prescribed herein shall render
204 voidable, at the option of the motor vehicle dealer, any
205 discontinuation, cancellation, nonrenewal, modification, or
206 replacement of any franchise agreement. Designation of a
207 franchise agreement at a specific location as a "nondesignated
208 point" shall be deemed an evasion of this section and
209 constitutes an unfair cancellation.

210 (c) If the notice required in paragraph (a) is based upon
211 an alleged failure of the dealer to comply with the obligations
212 of the dealer agreement with respect to the performance of sales
213 or service obligations, the applicant or licensee shall transmit
214 to the dealer a notice of default not less than 180 days prior

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215 to transmission of the notice required in paragraph (a). The
 216 notice of default under this paragraph shall specify the sales
 217 and service deficiencies alleged by the applicant or licensee
 218 and afford the dealer a period of time of not less than 180 days
 219 to cure those deficiencies.

220 Section 5. Subsections (2), (3), and (5) of section
 221 320.642, Florida Statutes, are amended, and subsection (7) is
 222 added to said section, to read:

223 320.642 Dealer licenses in areas previously served;
 224 procedure.--

225 (2)(a) An application for a motor vehicle dealer license
 226 in any community or territory shall be denied when:

227 1. A timely protest is filed by a presently existing
 228 franchised motor vehicle dealer with standing to protest as
 229 defined in subsection (3); and

230 2. The licensee fails to show that the existing franchised
 231 dealer or dealers who register new motor vehicle retail sales or
 232 retail leases of the same line-make in the community or
 233 territory of the proposed dealership are not providing adequate
 234 representation of such line-make motor vehicles in such
 235 community or territory as a whole and not with respect to any
 236 part thereof or identifiable plot therein. The burden of proof
 237 in establishing inadequate representation shall be on the
 238 licensee.

239 (b) In determining whether the existing franchised motor
 240 vehicle dealer or dealers are providing adequate representation
 241 in the community or territory for the line-make, the department

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242 shall ~~may~~ consider evidence including ~~which may include~~, but ~~is~~
243 not limited to:

244 1. The impact of the establishment of the proposed or
245 relocated dealer on the consumers, public interest, existing
246 dealers, and the licensee; provided, however, that financial
247 impact may only be considered with respect to the protesting
248 dealer or dealers.

249 2. The size and permanency of investment reasonably made
250 and reasonable obligations incurred by the existing dealer or
251 dealers to perform their obligations under the dealer agreement.

252 3. The reasonably expected market penetration of the line-
253 make motor vehicle for the community or territory involved,
254 after consideration of all factors which may affect said
255 penetration, including, but not limited to, demographic factors
256 such as age, income, education, size class preference, product
257 popularity, retail lease transactions, whether located in a
258 metropolitan or nonmetropolitan area, or other factors affecting
259 sales to consumers of the community or territory. With respect
260 to any geographic comparison area used to evaluate the
261 performance of the line-make within the community or territory,
262 such comparison area shall not be smaller than an entire county
263 and shall not include any geographic area located outside this
264 state. Reasonably expected market penetration shall be measured
265 with respect to the community or territory as a whole and not
266 with respect to any part thereof or identifiable plot therein.
267 In order to satisfy its burden of proof pursuant to this
268 section, the licensee must prove that any deviation or shortfall
269 in market penetration from a reasonable comparison area is

270 substantial and significant, considering factors including, but
 271 not limited to, the size of the community or territory and the
 272 projected sales of the proposed dealership.

273 4. Any actions by the licensees in denying its existing
 274 dealer or dealers of the same line-make the opportunity for
 275 reasonable growth, market expansion, or relocation, including
 276 the availability of line-make vehicles in keeping with the
 277 reasonable expectations of the licensee in providing an adequate
 278 number of dealers in the community or territory.

279 5. Any attempts by the licensee to coerce the existing
 280 dealer or dealers into consenting to additional or relocated
 281 franchises of the same line-make in the community or territory.

282 6. Distance, travel time, traffic patterns, and
 283 accessibility between the existing dealer or dealers of the same
 284 line-make and the location of the proposed additional or
 285 relocated dealer.

286 7. Whether benefits to consumers will likely occur from
 287 the establishment or relocation of the dealership which cannot
 288 be obtained by other geographic or demographic changes or
 289 expected changes in the community or territory.

290 8. Whether the protesting dealer or dealers are in
 291 substantial compliance with their dealer agreement.

292 9. Whether there is adequate interbrand and intrabrand
 293 competition with respect to said line-make in the community or
 294 territory and adequately convenient consumer care for the motor
 295 vehicles of the line-make, including the adequacy of sales and
 296 service facilities.

297 10. Whether the establishment or relocation of the
298 proposed dealership appears to be warranted and justified based
299 on economic and marketing conditions pertinent to dealers
300 competing in the community or territory, including anticipated
301 future changes.

302 11. The volume of registrations and service business
303 transacted by the existing dealer or dealers of the same line-
304 make in the relevant community or territory of the proposed
305 dealership.

306 (3) An existing franchised motor vehicle dealer or dealers
307 shall have standing to protest a proposed additional or
308 relocated motor vehicle dealer where the existing motor vehicle
309 dealer or dealers have a franchise agreement for the same line-
310 make vehicle to be sold or serviced by the proposed additional
311 or relocated motor vehicle dealer and are physically located so
312 as to meet or satisfy any of the following requirements or
313 conditions:

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

319 1. The proposed additional or relocated motor vehicle
320 dealer is to be located in the area designated or described as
321 the area of responsibility, or such similarly designated area,
322 including the entire area designated as a multiple-point area,
323 in the franchise agreement or in any related document or
324 commitment with the existing motor vehicle dealer or dealers of

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325 | the same line-make as such agreement existed upon October 1,
326 | 1988;

327 | 2. The existing motor vehicle dealer or dealers of the
328 | same line-make have a licensed franchise location within a
329 | radius of 20 miles of the location of the proposed additional or
330 | relocated motor vehicle dealer; or

331 | 3. Any existing motor vehicle dealer or dealers of the
332 | same line-make can establish that, during any consecutive 12-
333 | month period of the 36-month period preceding the month in which
334 | the publication of the proposed additional or relocated
335 | dealership appears in the Florida Administrative Weekly, ~~filing~~
336 | of the licensee's application for the proposed dealership, such
337 | dealer or its predecessor made 25 percent of the its retail
338 | sales or leases of new motor vehicles made by such dealer or its
339 | predecessor were to persons or entities that ~~whose~~ registered
340 | the purchased or leased vehicle to an address ~~household~~
341 | addresses were located within a radius of 20 miles of the
342 | geometric centroid of the property that will encompass all
343 | location of the proposed additional or relocated motor vehicle
344 | dealer operations; provided such existing dealer is located in
345 | the same county or any county contiguous to the county where the
346 | additional or relocated dealer is proposed to be located.

347 | (b) If the proposed additional or relocated motor vehicle
348 | dealer is to be located in a county with a population of more
349 | than 300,000 according to the most recent data of the United
350 | States Census Bureau or the data of the Bureau of Economic and
351 | Business Research of the University of Florida:

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352 1. Any existing motor vehicle dealer or dealers of the
353 same line-make have a licensed franchise location within a
354 radius of 12.5 miles of the location of the proposed additional
355 or relocated motor vehicle dealer; or

356 2. Any existing motor vehicle dealer or dealers of the
357 same line-make can establish that, during any consecutive 12-
358 month period of the 36-month period preceding the month in which
359 the publication of the proposed additional or relocated
360 dealership appears in the Florida Administrative Weekly, ~~filing~~
361 of the licensee's application for the proposed dealership, such
362 dealer or its predecessor made 25 percent of the its retail
363 sales or leases of new motor vehicles made by such dealer or its
364 predecessor were to persons or entities that ~~whose~~ registered
365 the purchased or leased vehicle to an address household
366 addresses were located within a radius of 12.5 miles of the
367 geometric centroid of the property that will encompass all
368 ~~location~~ of the proposed additional or relocated motor vehicle
369 dealer; provided such existing dealer is located in the same
370 county or any county contiguous to the county where the
371 additional or relocated dealer is proposed to be located.

372 (c) The date of sale shall be the later of the dates on
373 which the sale is reported to the licensee or the department. In
374 the event of a conflict between the address listed by the
375 purchaser on the registration with the licensee and that listed
376 on the registration with the department, the address listed with
377 the department shall be used.

378 (5)(a) The ~~opening or~~ reopening of the same or a successor
379 motor vehicle dealer within 12 months after the date that the

380 department revokes a previously issued license and all legal
 381 proceedings, including appeal, regarding such revocation are
 382 completed, or the dealer voluntarily terminates the previously
 383 issued license, or the opening of a relocated dealer within 12
 384 months after the date that the department approves an
 385 application for change of address, shall not be considered an
 386 additional motor vehicle dealer subject to protest within the
 387 meaning of this section, if:

388 1.(a) The opening or reopening is within the same or an
 389 adjacent county and~~τ~~ is within 2 miles of the former motor
 390 vehicle dealer location;~~τ~~

391 2.(b) There is no dealer within 25 miles of the proposed
 392 location or the proposed location is further from each existing
 393 dealer of the same line-make than the prior location is from
 394 each dealer of the same line-make within 25 miles of the new
 395 location;~~τ~~

396 3.(c) The opening or reopening is within 6 miles of the
 397 prior location and, if any existing motor vehicle dealer of the
 398 same line-make is located within 15 miles of the former
 399 location, the proposed location is no closer to any existing
 400 dealer of the same line-make within 15 miles of the proposed
 401 location;~~τ~~ or

402 4.(d) The opening or reopening is within 6 miles of the
 403 prior location and, if all existing motor vehicle dealers of the
 404 same line-make are beyond 15 miles of the former location, the
 405 proposed location is further than 15 miles from any existing
 406 motor vehicle dealer of the same line-make.

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408 Any other such opening or reopening shall constitute an
409 additional motor vehicle dealer within the meaning of this
410 section.

411 (b) If an opening or reopening is accomplished pursuant to
412 the terms of this subsection and therefore is not considered an
413 additional motor vehicle dealer subject to protest, the licensee
414 shall not notice an additional motor vehicle dealer of the same
415 line-make that is to be located within 4 miles from the previous
416 location for a period of 2 years after the date of the exempt
417 relocation.

418 (7) All measurements required by this section of the
419 distance between existing motor vehicle dealer locations or
420 existing motor vehicle dealer locations and a proposed motor
421 vehicle dealer's location shall be taken from the geometric
422 centroid of the property that encompasses all of the existing or
423 proposed motor vehicle dealer operations.

424 Section 6. Subsection (5) of section 320.643, Florida
425 Statutes, is renumbered as subsection (6) and a new subsection
426 (5) is added to said section to read:

427 320.643 Transfer, assignment, or sale of franchise
428 agreements.--

429 (5) A transferee proposing to simultaneously relocate
430 motor vehicle dealership operations in conjunction with an asset
431 purchase pursuant to subsection (1) or an equity purchase
432 pursuant to subsection (2) shall not be required to comply with
433 the location requirements of the franchise agreement then in
434 effect and such a proposal shall be subject to this section if:

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435 (a) The proposed relocation is a relocation exempt from
 436 protest and not considered as an additional motor vehicle dealer
 437 pursuant to the provisions of s. 320.642(5)(a)1.;

438 (b) The proposed dealership's facility satisfies facility
 439 requirements in effect between the licensee and the dealer
 440 proposing the transfer at the time the transfer is proposed; and

441 (c) The proposed facility is otherwise an appropriate
 442 location, taking into account the accessibility and convenience
 443 to consumers of the proposed location, the location of other
 444 dealers of the same line-make, and other factors related to the
 445 appropriateness of the facility for its proposed use, and
 446 whether the proposed dealership facility and dealership
 447 operations are separate from any other line-makes.

448 Section 7. Subsection (3) is added to section 320.699,
 449 Florida Statutes, to read:

450 320.699 Administrative hearings and adjudications;
 451 procedure.--

452 (3) If a complaint is filed pursuant to s. 320.641, except
 453 a complaint filed pursuant to s. 320.641(5), a hearing shall be
 454 held not sooner than 180 days nor later than 240 days after the
 455 date of filing of the complaint unless the time is extended by
 456 the administrative law judge for good cause shown. This
 457 subsection shall govern the schedule of hearings in lieu of any
 458 other provision of law with respect to an administrative hearing
 459 conducted by the Department of Highway Safety and Motor Vehicles
 460 or the Division of Administrative Hearings.

461 Section 8. This act shall take effect July 1, 2005.