

Bill No. SB 1814

Barcode 352054

CHAMBER ACTION

Senate

House

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The Committee on Transportation (Bennett) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

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

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

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

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1 demonstrated for sale, and the dealer license plates may not
2 be used on a vehicle used to transport another motor vehicle
3 for the motor vehicle dealer.

4 (b)1. Marine boat trailer dealers and manufacturers
5 may, upon payment of the license taxes imposed by s.
6 320.08(12), secure one or more dealer plates, which are valid
7 for use on boat trailers owned by the dealer to whom such
8 plates are issued while being used in connection with such
9 dealer's business, but are not valid for use for hire.

10 2. It is the intent of the Legislature that the method
11 currently used to license marine boat trailer dealers to do
12 business in the state, that is, by an occupational license
13 issued by the city or county, not be changed. The department
14 shall not interpret this act to mean that it is empowered to
15 license such dealers to do business. An occupational license
16 tax certificate shall be sufficient proof upon which the
17 department may issue dealer license plates.

18 Section 2. Subsection (3) of section 320.60, Florida
19 Statutes, is amended, and subsection (17) is added to that
20 section, to read:

21 320.60 Definitions for ss. 320.61-320.70.--Whenever
22 used in ss. 320.61-320.70, unless the context otherwise
23 requires, the following words and terms have the following
24 meanings:

25 (3) "Demonstrator" means any new motor vehicle which
26 is carried on the records of the dealer as a demonstrator and
27 is used by, being inspected or driven by the dealer or his or
28 her employees, or while being operated or driven, with the
29 permission of such motor vehicle dealer, by an owner, officer,
30 employee, or independent contractor of a motor vehicle dealer
31 or by a member of such owner's, officer's, or employee's

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1 immediate family, or driven by prospective customers for the
2 purpose of demonstrating vehicle characteristics in the sale
3 or display of motor vehicles sold by the dealer.

4 (17) "Existing franchised motor vehicle dealer" means
5 any motor vehicle dealer that has a franchise agreement with a
6 licensee. For purposes of notice and identification under s.
7 320.642 only, all dealer locations of an existing motor
8 vehicle dealer or a person that is subject to an unexpired
9 final order permitting the establishment of an additional
10 location or a relocation, where the location is not yet open
11 for business, will be entitled to the same notice and protest
12 rights as an existing dealer under the provisions of s.
13 320.642. A final order expires upon the failure of the dealer
14 or other person that is authorized to establish a location or
15 to relocate to become established at the proposed location
16 within the period provided by law or rule.

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

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

30 (36)(a) Notwithstanding the terms of any franchise
31 agreement, after termination of a franchise an applicant or

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1 licensee has failed to pay to the motor vehicle dealer all of
2 the following amounts:

3 1. The net cost paid by the dealer for each new motor
4 vehicle in the dealer's inventory with mileage of 6,000 miles
5 or less, exclusive of mileage placed on the vehicle before it
6 was delivered to the dealer, provided that for every mile in
7 excess of 1,000 miles there shall be a reduction of the
8 required repurchase price at a rate equivalent to the
9 then-prevailing rate promulgated by the Internal Revenue
10 Service.

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

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

17 b. Was purchased by the dealer either directly from
18 the manufacturer or distributor or was purchased from an
19 outgoing authorized dealer as a part of the dealer's initial
20 inventory.

21 3. The fair market value of each undamaged sign,
22 excluding normal wear and tear, owned by the dealer that bears
23 a trademark or trade name used or claimed by the applicant or
24 licensee or a representative of the applicant or licensee and
25 that was purchased from or at the request of the applicant or
26 licensee or a representative of the applicant or licensee.

27 4. The fair market value of all special tools, data
28 processing equipment, and automotive service equipment owned
29 by the dealer that:

30 a. Were recommended in writing by the applicant or
31 licensee or a representative of the applicant or licensee and

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1 designated as special tools and equipment;

2 b. Were purchased from or at the request of the
3 applicant or licensee or a representative of the applicant or
4 licensee; and

5 c. Are in usable and good condition except for
6 reasonable wear and tear.

7 5. The cost of transporting, handling, packing,
8 storing, and loading any property subject to repurchase under
9 this section.

10 (b) This subsection does not apply to terminations,
11 cancellations, and nonrenewals that are implemented as a
12 result of the sale of the assets or stock of the dealer. The
13 dealer shall return the property listed in this subsection to
14 the licensee within 90 days after the effective date of the
15 termination, cancellation, or nonrenewal. The licensee shall
16 supply the new vehicle dealer with reasonable instructions on
17 the method by which the new vehicle dealer must return the
18 property to the licensee. The compensation for the property
19 shall be paid by the licensee within 60 days after the tender
20 of inventory and other items, provided the new motor vehicle
21 dealer has clear title to the inventory and other items and is
22 in a position to convey that title to the manufacturer or
23 distributor. In the event the inventory or other items are
24 subject to a security interest, the licensee may make payment
25 jointly to the new motor vehicle dealer and the holder of the
26 security interest.

27
28 A motor vehicle dealer who can demonstrate that a violation
29 of, or failure to comply with, any of the preceding provisions
30 by an applicant or licensee will or can adversely and
31 pecuniarily affect the complaining dealer, shall be entitled

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1 to pursue all of the remedies, procedures, and rights of
2 recovery available under ss. 320.695 and 320.697.

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

5 320.641 Discontinuations, cancellations, nonrenewals,
6 modifications, and replacement of franchise agreements.--

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

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

27 (c) If the notice required in paragraph (a) is based
28 upon an alleged failure of the dealer to comply with the
29 obligations of the dealer agreement with respect to the
30 performance of sales or service obligations, the applicant or
31 licensee shall transmit to the dealer a notice of default not

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1 less than 180 days prior to transmission of the notice
 2 required in paragraph (a). The notice of default under this
 3 paragraph shall specify the sales and service deficiencies
 4 alleged by the applicant or licensee and afford the dealer a
 5 period of time of not less than 180 days to cure those
 6 deficiencies.

7 Section 5. Subsections (2), (3), and (5) of section
 8 320.642, Florida Statutes, are amended, and subsection (7) is
 9 added to that section, to read:

10 320.642 Dealer licenses in areas previously served;
 11 procedure.--

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

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

17 2. The licensee fails to show that the existing
 18 franchised dealer or dealers who register new motor vehicle
 19 retail sales or retail leases of the same line-make in the
 20 community or territory of the proposed dealership are not
 21 providing adequate representation of such line-make motor
 22 vehicles in such community or territory as a whole and not
 23 with respect to any part thereof or identifiable plot therein.

24 The burden of proof in establishing inadequate representation
 25 shall be on the licensee.

26 (b) In determining whether the existing franchised
 27 motor vehicle dealer or dealers are providing adequate
 28 representation in the community or territory for the
 29 line-make, the department shall ~~may~~ consider evidence
 30 including ~~which may include~~, but ~~is~~ not limited to:

31 1. The impact of the establishment of the proposed or

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1 | relocated dealer on the consumers, public interest, existing
2 | dealers, and the licensee; provided, however, that financial
3 | impact may only be considered with respect to the protesting
4 | dealer or dealers.

5 | 2. The size and permanency of investment reasonably
6 | made and reasonable obligations incurred by the existing
7 | dealer or dealers to perform their obligations under the
8 | dealer agreement.

9 | 3. The reasonably expected market penetration of the
10 | line-make motor vehicle for the community or territory
11 | involved, after consideration of all factors which may affect
12 | said penetration, including, but not limited to, demographic
13 | factors such as age, income, education, size class preference,
14 | product popularity, retail lease transactions, whether located
15 | in a metropolitan or nonmetropolitan area, or other factors
16 | affecting sales to consumers of the community or territory.
17 | With respect to any geographic comparison area used to
18 | evaluate the performance of the line-make within the community
19 | or territory, the comparison area may not be smaller than an
20 | entire county and may not include any geographic area located
21 | outside this state. Reasonably expected market penetration
22 | shall be measured with respect to the community or territory
23 | as a whole and not with respect to any part thereof or
24 | identifiable plot therein. In order to satisfy its burden of
25 | proof under this section, the licensee must prove that any
26 | deviation or shortfall in market penetration from a reasonable
27 | comparison area is substantial and significant, considering
28 | factors including, but not limited to, the size of the
29 | community or territory and the projected sales of the proposed
30 | dealership.

31 | 4. Any actions by the licensees in denying its

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1 existing dealer or dealers of the same line-make the
 2 opportunity for reasonable growth, market expansion, or
 3 relocation, including the availability of line-make vehicles
 4 in keeping with the reasonable expectations of the licensee in
 5 providing an adequate number of dealers in the community or
 6 territory.

7 5. Any attempts by the licensee to coerce the existing
 8 dealer or dealers into consenting to additional or relocated
 9 franchises of the same line-make in the community or
 10 territory.

11 6. Distance, travel time, traffic patterns, and
 12 accessibility between the existing dealer or dealers of the
 13 same line-make and the location of the proposed additional or
 14 relocated dealer.

15 7. Whether benefits to consumers will likely occur
 16 from the establishment or relocation of the dealership which
 17 cannot be obtained by other geographic or demographic changes
 18 or expected changes in the community or territory.

19 8. Whether the protesting dealer or dealers are in
 20 substantial compliance with their dealer agreement.

21 9. Whether there is adequate interbrand and intrabrand
 22 competition with respect to said line-make in the community or
 23 territory and adequately convenient consumer care for the
 24 motor vehicles of the line-make, including the adequacy of
 25 sales and service facilities.

26 10. Whether the establishment or relocation of the
 27 proposed dealership appears to be warranted and justified
 28 based on economic and marketing conditions pertinent to
 29 dealers competing in the community or territory, including
 30 anticipated future changes.

31 11. The volume of registrations and service business

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1 transacted by the existing dealer or dealers of the same
2 line-make in the relevant community or territory of the
3 proposed dealership.

4 (3) An existing franchised motor vehicle dealer or
5 dealers shall have standing to protest a proposed additional
6 or relocated motor vehicle dealer where the existing motor
7 vehicle dealer or dealers have a franchise agreement for the
8 same line-make vehicle to be sold or serviced by the proposed
9 additional or relocated motor vehicle dealer and are
10 physically located so as to meet or satisfy any of the
11 following requirements or conditions:

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

17 1. The proposed additional or relocated motor vehicle
18 dealer is to be located in the area designated or described as
19 the area of responsibility, or such similarly designated area,
20 including the entire area designated as a multiple-point area,
21 in the franchise agreement or in any related document or
22 commitment with the existing motor vehicle dealer or dealers
23 of the same line-make as such agreement existed upon October
24 1, 1988;

25 2. The existing motor vehicle dealer or dealers of the
26 same line-make have a licensed franchise location within a
27 radius of 20 miles of the location of the proposed additional
28 or relocated motor vehicle dealer; or

29 3. Any existing motor vehicle dealer or dealers of the
30 same line-make can establish that, during any consecutive
31 12-month period of the 36-month period preceding the month in

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1 which the publication of the proposed additional or relocated
2 dealership appears in the Florida Administrative Weekly,
3 ~~filing of the licensee's application for the proposed~~
4 ~~dealership, such dealer or its predecessor made~~ 25 percent of
5 the its retail sales or leases of new motor vehicles made by
6 such dealer or its predecessor were to persons or entities
7 that whose registered the purchased or leased vehicle to an
8 address household addresses were located within a radius of 20
9 miles of the geometric centroid of the property that will
10 encompass all location of the proposed additional or relocated
11 motor vehicle dealer operations; provided such existing dealer
12 is located in the same county or any county contiguous to the
13 county where the additional or relocated dealer is proposed to
14 be located.

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

20 1. Any existing motor vehicle dealer or dealers of the
21 same line-make have a licensed franchise location within a
22 radius of 12.5 miles of the location of the proposed
23 additional or relocated motor vehicle dealer; or

24 2. Any existing motor vehicle dealer or dealers of the
25 same line-make can establish that, during any consecutive
26 12-month period of the 36-month period preceding the month in
27 which the publication of the proposed additional or relocated
28 dealership appears in the Florida Administrative Weekly,
29 ~~filing of the licensee's application for the proposed~~
30 ~~dealership, such dealer or its predecessor made~~ 25 percent of
31 the its retail sales or leases of new motor vehicles made by

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1 such dealer or its predecessor were to persons or entities
 2 that ~~whose~~ registered the purchased or leased vehicle to an
 3 address ~~household addresses were~~ located within a radius of
 4 12.5 miles of the geometric centroid of the property that will
 5 encompass all ~~location~~ of the proposed additional or relocated
 6 motor vehicle dealer; provided such existing dealer is located
 7 in the same county or any county contiguous to the county
 8 where the additional or relocated dealer is proposed to be
 9 located.

10 (c) The date of sale shall be the later of the dates
 11 on which the sale is reported to the licensee or the
 12 department. In the event of a conflict between the address
 13 listed by the purchaser on the registration with the licensee
 14 and that listed on the registration with the department, the
 15 address listed with the department shall be used.

16 (5)(a) The ~~opening or~~ reopening of the same or a
 17 successor motor vehicle dealer within 12 months after the date
 18 that the department revokes a previously issued license and
 19 all legal proceedings, including appeal, regarding such
 20 revocation are completed, or the dealer voluntarily terminates
 21 the previously issued license, or the opening of a relocated
 22 dealer within 12 months after the date that the department
 23 approves an application for change of address, shall not be
 24 considered an additional motor vehicle dealer subject to
 25 protest within the meaning of this section, if:

26 1.(a) The opening or reopening is within the same or
 27 an adjacent county ~~and~~, is within 2 miles of the former motor
 28 vehicle dealer location;

29 2.(b) There is no dealer within 25 miles of the
 30 proposed location or the proposed location is further from
 31 each existing dealer of the same line-make than the prior

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1 location is from each dealer of the same line-make within 25
2 miles of the new location;~~7~~

3 3.(c) The opening or reopening is within 6 miles of
4 the prior location and, if any existing motor vehicle dealer
5 of the same line-make is located within 15 miles of the former
6 location, the proposed location is no closer to any existing
7 dealer of the same line-make within 15 miles of the proposed
8 location;~~7~~ or

9 4.(d) The opening or reopening is within 6 miles of
10 the prior location and, if all existing motor vehicle dealers
11 of the same line-make are beyond 15 miles of the former
12 location, the proposed location is further than 15 miles from
13 any existing motor vehicle dealer of the same line-make.

14
15 Any other such opening or reopening shall constitute an
16 additional motor vehicle dealer within the meaning of this
17 section.

18 (b) If an opening or reopening is accomplished under
19 the terms of this subsection and therefore is not considered
20 an additional motor vehicle dealer subject to protest, the
21 licensee may not notice an additional motor vehicle dealer of
22 the same line-make that is to be located within 4 miles from
23 the previous location for a period of 2 years after the date
24 of the exempt relocation.

25 (7) All measurements required by this section of the
26 distance between existing motor vehicle dealer locations or
27 existing motor vehicle dealer locations and a proposed motor
28 vehicle dealer's location shall be taken from the geometric
29 centroid of the property that encompasses all of the existing
30 or proposed motor vehicle dealer operations.

31 Section 6. Subsection (5) of section 320.643, Florida

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1 Statutes, is renumbered as subsection (6) and a new subsection
2 (5) is added to that section to read:

3 320.643 Transfer, assignment, or sale of franchise
4 agreements.--

5 (5) A transferee proposing to simultaneously relocate
6 motor vehicle dealership operations in conjunction with an
7 asset purchase under subsection (1) or an equity purchase
8 under subsection (2) may not be required to comply with the
9 location requirements of the franchise agreement then in
10 effect and the proposal shall be subject to this section if:

11 (a) The proposed relocation is a relocation exempt
12 from protest and not considered as an additional motor vehicle
13 dealer under s. 320.642(5)(a)1.;

14 (b) The proposed dealership's facility satisfies
15 facility requirements in effect between the licensee and the
16 dealer proposing the transfer at the time the transfer is
17 proposed; and

18 (c) The proposed facility is otherwise an appropriate
19 location, taking into account the accessibility and
20 convenience to consumers of the proposed location, the
21 location of other dealers of the same line-make, and other
22 factors related to the appropriateness of the facility for its
23 proposed use, and whether the proposed dealership facility and
24 dealership operations are separate from any other line-makes.

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

27 320.699 Administrative hearings and adjudications;
28 procedure.--

29 (3) If a complaint is filed under s. 320.641, except a
30 complaint filed under s. 320.641(5), a hearing shall be held
31 not sooner than 180 days and not later than 240 days after the

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1 date of filing of the complaint unless the time is extended by
 2 the administrative law judge for good cause shown. This
 3 subsection governs the schedule of hearings in lieu of any
 4 other provision of law with respect to an administrative
 5 hearing conducted by the Department of Highway Safety and
 6 Motor Vehicles or the Division of Administrative Hearings.

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

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

11 And the title is amended as follows:

12 Delete everything before the enacting clause

14 and insert:

15 A bill to be entitled

16 An act relating to franchised motor vehicle
 17 dealers; amending s. 320.13, F.S.; specifying a
 18 definition for purposes of provisions for
 19 issuance of dealer license plates; amending s.
 20 320.60, F.S.; revising the definition of the
 21 term "demonstrator"; defining the term
 22 "existing franchised motor vehicle dealer";
 23 amending s. 320.64, F.S.; prohibiting applicant
 24 or licensee failure to pay certain costs and
 25 amounts to a dealer after termination of
 26 franchise; providing that the prohibition does
 27 not apply to terminations, cancellations, or
 28 nonrenewals implemented as a result of the sale
 29 of assets or stock of the dealer; requiring
 30 that certain procedures be followed; amending
 31 s. 320.641, F.S.; providing procedures for

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1 discontinuation, cancellation, nonrenewal,
2 modification, or replacement of a franchise
3 agreement based upon an alleged failure of the
4 dealer to comply with certain sales or service
5 obligations; amending s. 320.642, F.S.;
6 revising criteria and procedures to establish
7 an additional dealership or relocate an
8 existing dealer in an area where the same
9 line-make vehicle is presently represented;
10 revising provisions for determination by the
11 Department of Highway Safety and Motor Vehicles
12 that the existing franchised motor vehicle
13 dealer or dealers are providing adequate
14 representation; revising criteria for protest
15 by an existing dealer; revising provisions
16 excluding certain openings and reopenings from
17 consideration as an additional or relocated
18 motor vehicle dealer; prohibiting notice of an
19 additional dealer for a certain period of time
20 within a certain distance from a dealer that
21 was opened or reopened and not considered an
22 additional dealer subject to protest; requiring
23 distance between sites to be measured from the
24 geometric centroid of each site; amending s.
25 320.643, F.S.; exempting a transferee from
26 location requirements in the franchise
27 agreement when the transferee proposes to
28 simultaneously relocate dealership operations
29 in conjunction with the purchase of the
30 dealership under certain circumstances;
31 providing requirements for such proposals;

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1 amending s. 320.699, F.S.; revising procedures
2 for administrative hearings; requiring a
3 certain schedule unless extended by the
4 administrative law judge under certain
5 conditions; providing an effective date.

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