

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

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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The Committee on Transportation offered the following:

**Amendment (with title amendment)**

Remove from the bill: Everything after the enacting clause  
and insert in lieu thereof:

Section 1. Paragraph (a) of subsection (11) of section 320.60, Florida Statutes, is amended and a new subsection (15) is added to read:

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

(11)(a) "Motor vehicle dealer" means any person, firm, company, or corporation, or other entity, who,

1. Is licensed pursuant to s. 320.27 as a "franchised motor vehicle dealer" and, for commission, money or other things of value, repairs or services motor vehicles or used motor vehicles pursuant to an agreement as defined in subsection (1), or

2. Who sells, exchanges, buys, leases or rents, or

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1 offers, or attempts to negotiate a sale or exchange of any  
2 interest in, motor vehicles, or

3 3. Who is engaged wholly or in part in the business of  
4 selling motor vehicles, whether or not such motor vehicles are  
5 owned by such person, firm, company, or corporation.

6 (15) "Sell," "selling," "sold," "exchange," "retail  
7 sales," and "leases" includes any transaction where the title  
8 of motor vehicle or used motor vehicle is transferred to a  
9 retail consumer, and also any retail lease transaction where a  
10 retail customer leases a vehicle for a period of at least 12  
11 months.

12 Section 2. Subsection (4) of section 320.61, Florida  
13 Statutes, is amended to read:

14 320.61 Licenses required of motor vehicle  
15 manufacturers, distributors, importers, etc.--

16 (4) When a complaint of unfair or prohibited  
17 cancellation or nonrenewal of a dealer agreement is made by a  
18 motor vehicle dealer against a licensee and such complaint is  
19 pending is in the process of being heard pursuant to ss.  
20 320.60-320.70 ~~by the department~~, no replacement application  
21 for such agreement shall be granted and no license shall be  
22 issued by the department under s. 320.27 to any replacement  
23 dealer until a final decision is rendered by the department on  
24 the complaint of unfair cancellation, so long as the dealer  
25 agreement of the complaining dealer is in effect as provided  
26 under s. 320.641(7).

27 Section 3. Subsections (13) and (16) are stricken,  
28 subsections (14), (15), and (17)-(23) are renumbered,  
29 subsection (20) is amended and renumbered as (18), and  
30 subsections (22)-(33) are added to section 320.64, Florida  
31 Statutes, to read:

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1           320.64 Denial, suspension, or revocation of license;  
2 grounds.--A license of a licensee under s. 320.61 may be  
3 denied, suspended, or revoked within the entire state or at  
4 any specific location or locations within the state at which  
5 the applicant or licensee engages or proposes to engage in  
6 business, upon a proof that the section was violated with  
7 sufficient frequency to establish a pattern of wrongdoing and  
8 a license or applicant shall be liable for claims and remedies  
9 provided in s. 320.695 and s. 320.697 for any violation of any  
10 of the following provisions. A licensee is prohibited from  
11 committing the following acts:~~upon proof that an applicant or~~  
12 ~~licensee has failed to comply with any of the following~~  
13 ~~provisions with sufficient frequency so as to establish a~~  
14 ~~pattern of wrongdoing on the part of the applicant:~~

15           (18)~~(20)~~ The applicant or licensee has established a  
16 system of motor vehicle allocation or distribution or has  
17 implemented a system of allocation or distribution of motor  
18 vehicles to one or more of its franchised motor vehicle  
19 dealers which is unfair, inequitable, unreasonably  
20 discriminatory, or not supportable by reason and good cause  
21 after considering the equities of the affected motor vehicles  
22 dealer or dealers. An applicant or licensee shall maintain  
23 for 3 years records that describe its methods or formula of  
24 allocation and distribution of its motor vehicles and records  
25 of its actual allocation and distribution of motor vehicles  
26 to its motor vehicle dealers in this state.

27           (22) The applicant or licensee has refused to deliver,  
28 in reasonable quantities and within a reasonable time, to any  
29 duly licensed motor vehicle dealer who has an agreement with  
30 such applicant or licensee for the retail sale of new motor  
31 vehicles and parts for motor vehicles sold or distributed by

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1 the applicant or licensee, any such motor vehicles or parts as  
2 are covered by such agreement. Such refusal includes the  
3 failure to offer to its same line-make franchised motor  
4 vehicle dealers all models manufactured for that line-make, or  
5 requiring a dealer to pay any extra fee, require a dealer to  
6 execute a separate franchise agreement, purchase unreasonable  
7 advertising displays or other materials, or remodel, renovate,  
8 or recondition the dealer's existing facilities, or provide  
9 exclusive facilities as a prerequisite to receiving a model or  
10 services of vehicles. However, the failure to deliver any  
11 motor vehicle or part will not be considered a violation of  
12 this section if the failure is due to an act of God, work  
13 stoppage, or delay due to a strike or labor difficulty, a  
14 freight embargo, product shortage, or other cause over which  
15 the applicant or licensee has no control. An applicant or  
16 licensee may impose reasonable requirements on the motor  
17 vehicle dealer, other than the items listed above, including,  
18 but not limited to, the purchase of special tools required to  
19 properly service a motor vehicle, the undertaking of sales  
20 person or service person training related to the motor  
21 vehicle.

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

27 (24) The applicant or licensee has sold a motor  
28 vehicle to any retail consumer in the state except through a  
29 motor vehicle dealer holding a franchise agreement for the  
30 line-make that includes the motor vehicle. This section does  
31 not apply to sales by the applicant or licensee of motor

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1 vehicles to its current employees and the federal government.

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

18 (26) Notwithstanding the terms of any franchise  
19 agreement, the applicant or licensee has refused to allocate,  
20 sell, or deliver motor vehicles, charged back or withheld  
21 payments or other things of value for which the dealer is  
22 otherwise eligible under a sales promotion, program, or  
23 contest, or prevented the motor vehicle dealer from  
24 participating in any promotion, program, or contest for  
25 selling a motor vehicle to a customer who was present at the  
26 dealership and the motor vehicle dealer did not know or should  
27 not have reasonably known that the vehicle would be shipped to  
28 a foreign country. There will be a rebuttable presumption  
29 that the dealer did not know or should not have reasonably  
30 known that the vehicle would be shipped to a foreign country  
31 if the vehicle is titled in the United States.

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

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

26           (29) The applicant or licensee has failed to reimburse  
27 a motor vehicle dealer in full for the reasonable cost of  
28 providing a loaner vehicle to any customer who is having a  
29 vehicle serviced at the motor vehicle dealer, if a loaner is  
30 required by the applicant or licensee, or a loaner is  
31 expressly part of an applicant or licensee's customer

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1 satisfaction index or computation.

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

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

13 (a) At the time of execution of that franchise  
14 agreement fails to provide a motor vehicle dealer with an  
15 option not to arbitrate or mediate any dispute with the  
16 licensee that is binding on the motor vehicle dealer, or

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

20 (c) Requires that any arbitration, mediation, or other  
21 legal proceeding be conducted outside of this state, or

22 (d) Fails to provide that the law of the State of  
23 Florida, to the exclusion of any other jurisdiction, shall be  
24 applied in any arbitration or other legal proceeding between a  
25 motor vehicle dealer and licensee.

26  
27 The licensee shall, at the time it offers the franchise  
28 agreement to a motor vehicle dealer, provide the motor vehicle  
29 dealer with a copy of the licensee's arbitration and/or  
30 mediation rules and procedures, including the composition of  
31 the finder(s) of fact.

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1           (32) Notwithstanding the terms of any franchise  
2 agreement, the applicant or licensee has wrongfully or  
3 unreasonably rejected or withheld approval of any proposed  
4 transfer made pursuant to s. 320.643(1) or (2) or a proposed  
5 change of executive management pursuant to 320.644.  
6 Reasonableness is to be determined on an objective basis or  
7 standard.

8           (33) The applicant or licensee has varied the price  
9 charged to any of its motor vehicle dealers located in this  
10 state by offering rebates, credits, incentives, or other  
11 consideration that has the effect of varying the price based  
12 on the volume of vehicles purchased by the motor vehicle  
13 dealer or based on the motor vehicle dealer's geographic  
14 location within this state.

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

17           320.641 Discontinuations, cancellations, nonrenewals,  
18 modifications, and replacement~~Unfair cancellation~~ of franchise  
19 agreements.--

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

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1           (b) The failure by the licensee to comply with the  
2 90-day notice period and procedure prescribed herein shall  
3 render voidable, at the option of the motor vehicle dealer,  
4 any discontinuation, cancellation, nonrenewal, modification,  
5 or replacement of any franchise agreement. Designation of a  
6 franchise agreement at a specific location as a "nondesignated  
7 point" shall be deemed an evasion of this section and  
8 constitutes an unfair cancellation.

9           (2) Franchise agreements are deemed to be continuing  
10 unless the applicant or licensee has notified the department  
11 of the discontinuation of, cancellation of, failure to renew,  
12 modification of, or replacement of the agreement of any of its  
13 motor vehicle dealers; and annual renewal of the license  
14 provided for under ss. 320.60-320.70 is not necessary for any  
15 cause of action against the licensee.

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

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1 upon for termination, cancellation, or nonrenewal have not  
2 been applied in a uniform and consistent manner by the  
3 licensee. A modification or replacement is unfair if it is  
4 not clearly permitted by the franchise agreement; is not  
5 undertaken in good faith; or is not undertaken for good cause.  
6 The applicant or licensee shall have burden of proof that such  
7 action is fair and not prohibited..

8           (4) Notwithstanding any other provision of this  
9 section, the failure of a motor vehicle dealer to be engaged  
10 in business with the public for 10 consecutive business days  
11 constitutes abandonment by the dealer of his or her franchise  
12 agreement. If any motor vehicle dealer abandons his or her  
13 franchise agreement, he or she has no cause of action under  
14 this section. For the purpose of this section, a dealer shall  
15 be considered to be engaged in business with the public if a  
16 sales and service facility is open and is performing such  
17 services 8 hours a day, 5 days a week, excluding holidays.  
18 However, it will not be considered abandonment if such failure  
19 to engage in business is due to an act of God, a work  
20 stoppage, or a delay due to a strike or labor difficulty, a  
21 freight embargo, or other cause over which the motor vehicle  
22 dealer has no control, including any violation of ss.  
23 320.60-320.70.

24           (5) Notwithstanding any other provision of this  
25 section, if a motor vehicle dealer has abandoned his or her  
26 franchise agreement as provided in subsection (4), the  
27 licensee may give written notice to the dealer and the  
28 department of the licensee's intention to discontinue, cancel,  
29 or fail to renew the franchise agreement with the dealer at  
30 least 15 days before the effective date thereof, specifying  
31 the grounds for such action. A motor vehicle dealer receiving

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1 such notice may file a petition or complaint for determination  
2 of whether in fact there has been an abandonment of the  
3 franchise.

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

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

27 (8) If a transfer is proposed pursuant to s.  
28 320.643(1) or (2) after a notice of intent to discontinue,  
29 cancel, or not renew a franchise agreement is received but,  
30 prior to the final determination, including exhaustion of all  
31 appellate remedies of a motor vehicle dealer's complaint or

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1 petition contesting such action, the termination proceedings  
2 shall be stayed, without bond, during the period that the  
3 transfer is being reviewed by the licensee pursuant to  
4 320.643, the franchise agreement shall remain in full force  
5 and effect, and the motor vehicle dealer shall retain all  
6 rights and remedies pursuant to the terms and conditions of  
7 the franchise agreement and applicable law, including all  
8 rights of transfer until such time as the licensee has  
9 accepted or rejected the proposed transfer. If the proposed  
10 transfer is rejected, the motor vehicle dealer shall retain  
11 all of its rights pursuant to s. 320.643 to an administrative  
12 determination as to whether the licensee's rejection is in  
13 compliance with the provisions of s. 320.643, and during the  
14 pendency of any such administrative proceeding, and any  
15 related appellate proceedings, the termination proceedings  
16 shall remain stayed without bond, the franchise agreement  
17 shall remain in full force and effect and the motor vehicle  
18 dealer shall retain all rights and remedies pursuant to the  
19 terms and conditions of the franchise agreement and applicable  
20 law, including all rights of transfer. If a transfer is  
21 approved by the licensee or mandated by law, the termination  
22 proceedings shall be dismissed with prejudice as moot.

23 Section 5. Subparagraph 3. of paragraph (b) of  
24 subsection (2) of section 320.642, Florida Statutes, is  
25 amended to read:

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

28 (2) (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  
31 line-make, the department may consider evidence which may

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1 include, but is not limited to:

2           3. The reasonably expected market penetration of the  
3 line-make motor vehicle for the community or territory  
4 involved, after consideration of all factors which may affect  
5 said penetration, including, but not limited to, demographic  
6 factors such as age, income, education, size class preference,  
7 product popularity, retail lease transactions, or other  
8 factors affecting sales to consumers of the community or  
9 territory. Furthermore, with respect to any geographic  
10 comparison area used to evaluate the performance of the  
11 line-make within the community or territory such comparison  
12 area shall be reasonably similar in demographic traits to the  
13 community or territory, including but not limited to, age,  
14 income, education, size class preference, and product  
15 popularity and such comparison areas shall not be smaller than  
16 an entire county. Reasonably expected market penetration  
17 shall be measured with respect to the community or territory  
18 as a whole and not with respect to any part thereof or  
19 identifiable plot therein.

20           Section 6. Section 320.643, Florida Statutes, is  
21 amended to read:

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

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

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

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1 ~~1060~~-day period or if the department, after a hearing,  
2 ~~dismisses the complaint or~~ renders a decision other than one  
3 disqualifying the proposed transferee, the franchise agreement  
4 between the motor vehicle dealer and the licensee shall be  
5 deemed amended to incorporate such transfer or amended in  
6 accordance with the determination and order rendered,  
7 effective upon compliance by the proposed transferee with any  
8 conditions set forth in the determination or order.

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

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

31 (b) During the pendency of any such hearing, the

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1 franchise agreement of the motor vehicle dealer shall continue  
2 in effect in accordance with its terms. The department shall  
3 expedite any determination requested under this section.

4 Section 7. Section 320.645, Florida Statutes, is  
5 amended to read:

6 320.645 Restriction upon ownership of dealership by  
7 licensee.--

8 (1) No licensee, including a manufacturer or agent of  
9 a manufacturer, or any parent, subsidiary, common entity, or  
10 officer or representative of the licensee shall own or  
11 operate, either directly or indirectly, a motor vehicle  
12 dealership in this state for the sale or service of motor  
13 vehicles which have been or are offered for sale under a  
14 franchise agreement with a motor vehicle dealer in this state.  
15 A licensee may not be issued a motor vehicle dealer license  
16 pursuant to s. 320.27. However, no such licensee will be  
17 deemed to be in violation of this section:

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

21 (b) When operating a motor vehicle dealership  
22 temporarily for a reasonable period for the exclusive purpose  
23 of broadening the diversity of its dealer body and enhancing  
24 opportunities for qualified persons who are part of a group  
25 that has historically been underrepresented in its dealer  
26 body, or for other qualified persons who the licensee deems  
27 lack the resources to purchase or capitalize the dealership  
28 outright, not to exceed 1 year, or in a bona fide relationship  
29 with an independent person, other than a licensee or its agent  
30 or affiliate, who is required to make ~~has made~~ a significant  
31 investment that is subject to loss in the dealership and who

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1 can reasonably expect to acquire full ownership of the  
2 dealership on reasonable terms and conditions; or

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

8  
9 In any such case, the licensee must continue to make the motor  
10 vehicle dealership available for sale to an independent person  
11 at a fair and reasonable price. Approval of the sale of such a  
12 motor vehicle dealership to a proposed motor vehicle dealer  
13 shall not be unreasonably withheld.

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

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

17 (b) "Reasonable terms and conditions" requires that  
18 profits from the dealership are reasonably expected to be  
19 sufficient to allow full ownership of the dealership by the  
20 independent person within a reasonable time period not to  
21 exceed 10 years, which time period may be extended if there is  
22 a reasonable basis to do so and is not being sought to evade  
23 the purpose of this section; that the independent person has  
24 sufficient control to permit acquisition of ownership; and  
25 that the relationship cannot be terminated solely to avoid  
26 full ownership. The terms and conditions are not reasonable  
27 if they preclude the independent person from an expedited  
28 purchase of the dealership using a monetary source other than  
29 profits from the dealership's operation; provided, however,  
30 that the independent person must pay to the licensee any and  
31 all reasonable prepayment charges and costs, including all

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1 unrecouped restored losses, associated with the expedited  
2 purchase of the dealership. For the purpose of this section,  
3 unrecouped restored losses are monies that the manufacturer  
4 has contributed to the dealership to restore losses of the  
5 dealership that the manufacturer has not been paid back  
6 through profits of the dealership.

7 (c) "Significant investment" means a reasonable  
8 amount, considering the reasonable capital requirements of the  
9 dealership, acquired and obtained from sources other than the  
10 licensee or any of its affiliates and not encumbered by the  
11 person's interest in the dealership.

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

14 (a) The business activities, including, without  
15 limitation, the dealings with motor vehicle manufacturers and  
16 their representatives and affiliates, of any person that is  
17 primarily engaged in the business of short term not to exceed  
18 12 months rental of motor vehicles and industrial and  
19 construction equipment and activities incidental to that  
20 business, provided that:

21 1. Any motor vehicles sold by such person are limited  
22 to used motor vehicles that have been previously used  
23 exclusively and regularly by such person in the conduct of its  
24 rental business and used motor vehicles traded in on motor  
25 vehicles sold by such person;

26 2. Warranty repairs performed under any manufacturer's  
27 new vehicle warranty by such person on motor vehicles are  
28 limited to those motor vehicles that it owns. As to  
29 previously owned vehicles, warranty repairs can be performed  
30 only if pursuant to a motor vehicle service agreement as  
31 defined in chapter 634, part I, issued by such person or an

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1 express warranty issued by such person on the retail sale of  
2 those vehicles previously owned; and

3 3. Motor vehicle financing provided by such person to  
4 retail consumers for motor vehicles is limited to used motor  
5 vehicles sold by such person in the conduct of its business;  
6 or

7 (b) The direct or indirect ownership, affiliation or  
8 control of a person described in paragraph (a) of this  
9 subsection.

10 (4) This section does not apply to any dealership that  
11 is owned, controlled, or operated by a licensee on July 1,  
12 2000.

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

17 Section 8. Subsection (2) of section 320.699, Florida  
18 Statutes, is amended to read:

19 320.699 Administrative hearings and adjudications;  
20 procedure.--

21 (2) If a written objection or notice of protest is  
22 filed with the department under paragraph (1)(b), a hearing  
23 shall be held not sooner than 180 days from ~~within 180 days of~~  
24 ~~the date of filing of the first objection or notice of~~  
25 ~~protest, unless the time is extended by the hearing officer~~  
26 ~~for good cause shown. If a hearing is not scheduled within~~  
27 ~~said time, any party may request such hearing which shall be~~  
28 ~~held forthwith by the hearing officer.~~

29 Section 9. Section 320.6991, Florida Statutes, is  
30 created to read:

31 Section 320.6991 Severability.--If a provision of ss.

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1 320.60-320.70 or its application to any person or circumstance  
2 is held invalid, the invalidity does not affect other  
3 provisions or applications of ss. 320.60-320.70 that can be  
4 given effect without the invalid provision or application, and  
5 to this end the provisions of 320.60-320.70 are severable.

6 Section 10. This act shall take effect July 1, 2001.

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8  
9 ===== T I T L E A M E N D M E N T =====

10 And the title is amended as follows:

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

13  
14 and insert in lieu thereof:

15 An act relating to motor vehicle dealer  
16 franchise agreements; amending s. 320.60, F.S.;  
17 revising definitions used in ss. 320.61-320.70,  
18 F.S.; amending s. 320.61, F.S.; amending  
19 procedures to be followed when a complaint of  
20 unfair cancellation of a dealer agreement has  
21 been made by a motor vehicle dealer against a  
22 licensee; defining the term "final decision";  
23 amending s. 320.64, F.S.; providing penalties  
24 and remedies for violations; deleting  
25 subsections (13) and (16); amending subsection  
26 20; creating subsections (22) through (33) and  
27 renumbering sections; amending s. 320.641,  
28 F.S.; providing procedures relating to  
29 discontinuations, cancellations, nonrenewals,  
30 modifications, and replacements of franchise  
31 agreements; amending s. 320.642, F.S.; amending

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1 criteria for establishing an additional motor  
2 vehicle dealer who deals in a specific  
3 line-make in an area that is already served by  
4 another such dealer; amending s. 320.643, F.S.;  
5 amending provisions relating to the transfer,  
6 assignment, or sale of franchise agreements;  
7 amending s. 320.645, F.S.; amending provisions  
8 relating to restrictions upon a licensee's  
9 owning a dealership; providing for "dealer  
10 development arrangements"; providing  
11 exceptions; amending s. 320.699, F.S.; amending  
12 procedures for administrative hearings;  
13 creating s. 320.6991; providing for  
14 severability; providing an effective date.

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