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DATE: April 18, 2001

HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE
COUNCIL FOR READY INFRASTRUCTURE
ANALYSIS

BILL #: HB 1239

RELATING TO: Motor Vehicle Dealer / Franchises

SPONSOR(S): Representatives Diaz-Balart and Bense

TIED BILL(S): none

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

(1) TRANSPORTATION YEAS 11 NAYS 0
(2) JUDICIAL OVERSIGHT YEAS 9 NAYS 0
(3) COUNCIL FOR READY INFRASTRUCTURE YEAS 18 NAYS 0
(4)
(5)

I. SUMMARY:

This bill implements numerous changes to laws regulating motor vehicle manufacturers, distributors, and importers. This bill would provide additional protections to currently licensed franchise motor vehicle dealers in Florida by prohibiting certain actions by motor vehicle manufacturers, distributors and importers.

This bill does not appear to have a fiscal impact on state or local government.

On April 4, 2001, the Committee on Transportation adopted a strike everything amendment which rewrote the bill. The amendment is traveling with the bill. For a detailed description of the amendment, see part V of the bill analysis.

On April 12, 2001, the Committee on Judicial Oversight adopted a substitute amendment to the previously adopted strike-everything amendment. The amendment is traveling with the bill. For a detailed description of the amendment, see part V of the bill analysis.

On April 18, 2001, the Council for Ready Infrastructure adopted a substitute amendment to the previously adopted strike-everything amendment. The amendment is traveling with the bill. For a detailed description of the amendment, see part V of the bill analysis.

SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No [x]	N/A []
2.	Lower Taxes	Yes []	No []	N/A [x]
3.	Individual Freedom	Yes []	No []	N/A [x]
4.	Personal Responsibility	Yes []	No []	N/A [x]
5.	Family Empowerment	Yes []	No []	N/A [x]

For any principle that received a "no" above, please explain:

This bill creates new requirements for manufacturers in their dealings with motor vehicle dealers.

B. PRESENT SITUATION:

Chapter 320, F.S., provides for the licensing of automobile dealers and automobile manufacturers and regulates the franchise relationship between franchise dealers and the manufacturers. The intent of this licensing and regulation as stated in s. 320.605, F.S., is to protect the public health, safety and welfare of citizens of the state by regulating licensing, maintaining competition, providing consumer protection and fair trade, and providing minorities with opportunities for full participation as motor vehicle dealers.

Section 320.60 provides definitions for the manufacturer licensing and franchise regulations portions of the chapter. As used in ss. 320.60-320.70, F.S., the term "licensee" refers to a manufacturer, factory branch, distributor, or importer.

Currently, no motor vehicle may be sold, leased, or offered for sale or lease in this state unless the manufacturer, importer, or distributor of such motor vehicle, which issues an agreement to a motor vehicle dealer in this state, is licensed by the Department of Highway Safety and Motor Vehicles (DHSMV), ss. 320.60-320.70, F.S. Upon obtaining a license under this section, the licensee is considered to be doing business in this state and is subject to the jurisdiction of the court of this state and service of process in accordance with chapter 48, F.S.

Section 320.61(4), F.S., currently provides that when a complaint of unfair cancellation of a dealer agreement is made by a motor vehicle dealer against a licensee and is being heard by DHSMV, no replacement application for such agreement may be granted to another dealer until a final decision on the complaint of unfair cancellation is rendered by DHSMV.

Section 320.64, F.S., provides for denial, suspension, or revocations of a manufacturer's license. A license may be denied, suspended, or revoked, within the entire state or at specific locations within the state at which the licensee engages in business upon proof the licensee has failed to comply with the specific provisions set out in the section with sufficient frequency to establish a pattern of wrongdoing.

Section 320.641, F.S., provides remedies for unfair cancellation of a franchise agreement by a licensee. The section requires the licensee to provide notice to a dealer at least 90 days before changing, canceling or not renewing a franchise agreement when such action would adversely alter

the rights or obligations of a dealer under the franchise agreement or will substantially impair the sales, service obligations or investment of a dealer. DHSMV must be notified of any action taken regarding a franchise agreement, and failure to provide the 90-day notice will render the action voidable by the dealer.

Any motor vehicle dealer whose franchise agreement is discontinued, canceled, not renewed, modified, or replaced may, within a 90-day notice period, file a petition or complaint for a determination of whether such action is fair or prohibited. The discontinuation, cancellation, or non-renewal of a franchise agreement is unfair unless it is: 1) Not clearly permitted by the franchise agreement; 2) Not undertaken in good faith; 3) Not undertaken for good cause; or, 4) Based on an alleged breach of the franchise agreement which is not in fact a material and substantial breach. Agreements and certificates of appointment continue in effect until final determination of the issues raised in the petition or complaint by the motor vehicle dealer. No replacement dealer may be named prior to final adjudication of the dealer's complaint by DHSMV and the exhaustion of all appellate remedies if a stay is issued by either DHSMV or an appellate court. The petitioner (the motor vehicle dealer) has the initial burden of proof to show by a preponderance of the evidence the unfairness of the manufacturer's decision. If there is a prima facie showing of bad faith, the burden shifts to the licensee to show by a preponderance of the evidence that it would have reached the same conclusion even in the absence of the alleged bad faith.

Section 320.643, F.S., establishes certain provisions governing a dealer's transfer, assignment, or sale of a franchise agreement. The section provides for written notice to the licensee and provides the licensee with 60 days in which to approve or not approve the transfer, assignment, or sale. Where the licensee objects, the refusal must include the material reasons for the rejection. The licensee is prohibited from unreasonably withholding approval. Additionally, the courts have held that a first right of refusal in a franchise agreement is void.

Section 320.645, F.S., provides restrictions on the ownership of motor vehicle dealerships by licensees. With certain exceptions, no licensee or representative of the licensee may own or operate a motor vehicle dealership in this state for the sale or service of motor vehicles which have been or are offered for sale under a franchise agreement with a motor vehicle dealer in this state. However, licensees are not considered to own or operate a dealership when operating a dealership during transitions between owners, when owning or operating a dealership in conjunction with someone purchasing the dealership, or while offering the dealership for sale when there is no independent person to operate the dealership.

Section 320.695, F.S., authorizes DHSMV, or any motor vehicle dealer to seek a temporary or permanent injunction, or both, restraining any person who is not licensed by DHSMV from acting as a licensee under the terms of ss. 320.60-320.70, F.S.

C. EFFECT OF PROPOSED CHANGES:

This bill amends various sections of Chapter 320, Florida Statutes, revising definitions, and prohibiting certain acts or actions by motor vehicle manufacturers, distributors and importers regarding their franchise motor vehicle dealers. See section-by-section analysis for specific provisions.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Defines the terms "area of responsibility," "broker," "consumer," "lead," "sell," "selling," "sold," "exchange," "retail sales," "leases," and "service." In addition, the definitions for "line-make vehicles" and "motor vehicle dealer" are revised.

Section 2: Prohibits the issuance of a replacement dealer license until the department has reached a final decision in any pending complaints for unfair cancellation of a dealer agreement by a licensee. Defines "final decision" as the exhaustion of all appellate remedies by the licensee or motor vehicle dealer.

Section 3: Requires that the terms and conditions of a franchise agreement be subject to ss. 320.60 - 320.70, F.S. Further, defines any term or condition of a franchise agreement, which is inconsistent with or in violation of ss. 320.60 - 320.70, F.S., as not enforceable by a licensee.

Section 4: Replaces the existing provisions for denial, suspension or revocation of licenses with a requirement that a licensee or applicant is subject to the claims and remedies provided in ss. 320.695 and 320.697. Section 320.695 concerns temporary or permanent injunctions issued without bond. Section 320.697 provides that any person who suffers a pecuniary loss or has been otherwise adversely affected by a violation of this section may recover damages in an amount equal to three times the pecuniary loss, together with costs and a reasonable attorney's fee to be assessed by the court. The burden of proof in civil damages actions is on the licensee to prove that a violation or unfair practice did not occur.

Further, this section compiles a list of acts that are prohibited by the applicant or licensee, constituting a violation. There are 41 subsections listed in the section, and the violations modified or added by the bill include, but are not limited to the following:

- Implementation or threat to implement a policy, program, procedure, standard, addendum, or requirement that would adversely alter the rights or obligations of the licensed dealer or that may substantially impair the sales, service obligations or investment of the licensed dealer.

- Failure to offer to sell to all motor vehicle dealers in the state of the same line-make, all motor vehicle models manufactured for that line-make. Such vehicles are to be offered at the same price with no discount based on the quantity being purchased.

- Requiring motor vehicle dealers to pay an additional fee, purchase unreasonable advertising materials, remodel existing facilities or provide exclusive facilities as a prerequisite to receiving any model or series of motor vehicle.

- Requiring a motor vehicle dealer of a line-make to enter into a separate franchise agreement for any model or series of motor vehicle manufactured for that line-make.

- To ensure that a fair and equitable system of motor vehicle allocation or distribution has been established, licensees are required to maintain records that fully describe its method or formula for allocation of vehicles for three years. These records must be made available to any of its franchisees upon request.

- Selling or leasing, or offer to sell or lease, any service, motor vehicle, or product to a retail customer without going through a franchise motor vehicle dealer. This section does not apply to an applicant or licensee exempted under s. 320.645(3), or to a replacement vehicle provided by the licensee under chapter 681. In addition this section does not prohibit:
  ⇒A licensee from providing the use of motor vehicles for occasional general promotional or charitable uses.
  ⇒A licensee from providing financing directly to any entity for any product or service that is not sold by a motor vehicle dealer under its franchise agreement.

⇒A licensee from providing loans directly to motor vehicle dealers of any line-make, for any purpose.

⇒A licensee from providing directly to a retail consumer services and products that are incidental to the ownership or leasing of a motor vehicle or used motor vehicle and are not for purposes of resale and that constitute services or products that the retail customer is owed as a result of purchasing or leasing a motor vehicle or used motor vehicle from a motor vehicle dealer.

- Charging back a dealer for any warranty or failing to properly reimburse a dealer for any service claimed by the dealer under the warranty unless it can be proven that the repair or service was unnecessary.

- Requiring a dealer to file a statement of actual time spent in performance of labor on any service or repair covered by warranty when actual labor time spent was not the basis for reimbursement to the dealer for the service or repair.

- Performing an audit of a dealer for warranty parts and service compensation for payments made more than 12 months before the date of the audit.

- Attempting to charge back or otherwise recover warranty payments 18 months or more after the date of payment.

- Charging back a warranty payment or failure to make a warranty payment unless written justification is provided to the dealer showing the warranty payment was unnecessary. The dealer has 60 days from receipt of such documentation to seek a remedy with a court. If the final determination of any potential chargeback is in the favor of the motor vehicle dealer, the applicant or licensee is liable to the motor vehicle dealer for twice the amount of the any chargeback or denied warranty claim, plus reasonable attorney's fees and court costs.

- Failure or refusal to indemnify a dealer for damages or settlement agreements by the manufacturer, distributor or importer.

- Denial of a dealer's claim for sales incentives, service incentives, rebates, or other forms of incentive compensation available to it; reduction of an incentive amount after it has been earned by the dealer; or chargeback after the payment of an incentive claim unless the licensee proves that the claim was fraudulent by clear and convincing evidence or the dealer fails to reasonably substantiate the claim.

- Auditing a dealer regarding sales incentives, sales rebates, service incentives, sales rebates, service incentives, service rebates, parts incentive, parts rebates or other forms of incentive compensation where payments were made more than 12 months before the date of the audit.

- Charging back to a dealer or failure to pay a dealer any incentive payment without providing written explanation to the dealer providing that the payment was obtained fraudulently. The dealer has 60 days from receipt of such documentation to seek a remedy with a court. If the court finds in favor of the motor vehicle dealer, the applicant or licensee is liable to the motor vehicle dealer for twice the amount of the any chargeback or claim which was rejected or unpaid, plus reasonable attorney's fees and court costs.

- Auditing or threatening to audit a dealer in order to force them to forego any rights granted under ss. 320.60—320.70 or under the agreement between the licensee and the motor vehicle dealer.

- Any attempt to restrict or condition the sale of new motor vehicles, replacement parts, or accessories by franchise dealers.

- Wrongful or unreasonable rejection of a proposal to transfer the franchise dealership or attempt to impose conditions on a transfer other than what appears in law.

- Publishing or otherwise making available any information obtained from a dealer regarding selling or leasing prices of vehicles or profit per motor vehicle.

- Offering or attempting to introduce a franchise agreement or other agreement which would require a dealer to participate in arbitration or mediation concerning any issue which is binding on the dealer before the dealer files a complaint with the department or a court or which contains a choice-of-venue provision that would require a dealer to pursue an action outside of the state or which contains a choice-of-law provision that would apply the law of any state other than this state or which requires a dealer to compensate the licensee for attorney's fees and other court expenses, unless the any such provision is voidable at any time at the option of the dealer.

- Directly or indirectly competing with a motor vehicle dealer in this state.

- Making financing rates or lease rates available to customers, which are less than the rates made available by all dealers of the same line-make in the state.

- Influencing any aspect of the final amount charged to a customer without prior consent by the dealer or charging the dealer more than 90 percent of the manufacturer's suggested retail price for a motor vehicle. This does not prohibit:
  ⇒Establishing a manufacturer's suggested retail price, if the dealer is afforded a gross profit of not less than 10 percent.
  ⇒Implementing from time to time reasonable sales, lease, or financing promotions of reasonable and limited duration.
  ⇒Implementing reasonable standard feature option packages or vehicle option content.
  ⇒Establishing the terms of any new motor vehicle warranty offered by the licensee.
  ⇒Establishing reasonable sale, lease, or financing terms through motor vehicle dealers to retirees of a licensee.

- Providing less than all leads of prospective retail consumers to the motor vehicle dealer in whose assigned area the lead resides.

- Any direct or indirect interest in a motor vehicle broker; any offer to sell a new motor vehicle directly to a broker; funding or offering to fund any operations of a broker.

- Any variation of prices charged to its franchisees in the state; or inducements based on, the dealer's purchase or establishment of new facilities, the dealer's relocation remodeling or repair of facilities, the dealer's willingness to maintain exclusive facilities, personnel or display space, the dealer's willingness to provide loaner vehicles at the dealer's expense, the dealer's participation in training programs, or employment of consultants endorsed by the manufacturer, distributor or importer.

- Failure to reimburse a dealer in full for the actual cost of providing a loaner vehicle to a customer, if a loaner is required by the licensee or a loaner is part of a licensee's customer satisfaction index, computation, or consideration.

- Pressuring a motor vehicle dealer to establish exclusive facilities, personnel, display space, service areas, or customer areas, if any such requirement is unreasonable in light of current economic considerations or otherwise would not be justified by reasonable business considerations, or would adversely affect the return on investment of the dealer.

Section 5: This bill amends s. 320.641, F.S., making it more difficult for a manufacturer, distributor or importer to cancel a franchise agreement. The burden of proof that the franchise cancellation was not illegal, unfair or unreasonable will fall on the manufacturer, distributor or importer and final determination must include exhaustion of all appellate remedies by the manufacturer, distributor or importer or the motor vehicle dealer. During this determination, the current franchise would remain in force. If the proposed franchise cancellation is based on alleged deficient sales performance, service performance or facilities, the manufacturer, distributor or importer must allow the franchise dealer not less than six months to correct the problems before a cancellation can be enforced. In addition, a cancellation based on alleged fraud cannot be imposed unless the manufacturer, distributor or importer can prove that the principal of the dealership had actual knowledge of the fraud.

This bill also requires a manufacturer, distributor or importer to provide written notification to a dealer of its intent to modify or replace the franchise. The dealer is provided 90 days from the date of receipt to file a petition or complaint for a determination of whether the proposed modification or replacement is unfair or unreasonable. The final determination must include exhaustion of all appellate remedies by all parties.

Section 6: This bill amends s. 320.642, F.S., to modify the criteria for determining market penetration when approving a new franchise dealer. Factors that must be considered in this regard would include areas that are reasonably similar with regard to demographic traits including age, income, import penetration, education, size class preference, and product popularity and such comparison areas may not be smaller than an entire county.

Section 7: This bill amends s. 320.643, F.S., to prohibit manufacturers, distributors and importers from denying a franchise transfer unless it would infringe upon the business of current licensed franchise dealers or if it would not satisfy the licensee's reasonably written and uniformly applied facility guidelines. A manufacturer, distributor or importer would also not be able to deny a transfer involving a change in executive management except for reasons provided in section 320.644, F.S.

Section 8: This bill amends s. 320.645, F.S., broadening the prohibition against a manufacturer, distributor or importer owning a franchise dealership. If such ownership occurs, then it must be in connection with an effort to broaden the diversity of owners of franchise dealerships. Written certification must be provided that the temporary ownership of a dealership for this purpose is bona fide and, at any time, the DHSMV or other person may file an action to determine whether a dealer development arrangement is bona fide. In addition, when temporarily owning a dealership or part of a dealership, the manufacturer, distributor or importer may not engage in any discriminatory practices against other franchise dealers.

Section 9: This bill amends s. 320.695, F. S., as it relates to injunctions, to provide that the issuance of an injunction is without regard to whether an adequate remedy exists at law or, whether irreparable injury will result without the injunction.

Section 10: This bill amends s. 320.699, F.S., as it applies to administrative hearings and adjudications, to provide that a hearing must be held no sooner than 240 days after a protest is filed.

Section 11: Specifies that if a provision of the bill or its application to any person or circumstance is held invalid, the other provisions or applications of the act which can be given effect without the invalid provision or application. To that end the provisions of the bill are declared severable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

This bill may increase the number of dealer license inquiries and proceedings that would be processed by the Department of Highway Safety and Motor Vehicles. Any workload increases would be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to expend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

An OPPAGA review of Florida's Automobile Manufacturer Licensing program, conducted at the request of the Joint Legislative Auditing Committee, made the following conclusions:

- Florida regulates more dimensions of the automobile manufacturer-dealer business relationship and does so more stringently than does any other state. Manufacturer and dealer groups disagree on whether the program is needed and on its effects.

- The program has typically upheld manufacturer- and dealer-proposed business actions, indicating that both parties generally are proposing business actions (terminating dealerships, establishing new dealerships, changing dealership management, or selling dealerships) that meet statutory criteria.

- Recent professional literature concludes that programs like Florida's may reduce industry competition and increase consumer costs in vehicle purchases.

- The level of competition among dealers should be determined by the free market rather than by government regulation. However, given the program's history, changing the law to streamline regulation appears the best alternative.

OPPAGA's conclusion was:

> We identified three policy options that the Legislature could consider regarding the program: retaining the current program, eliminating the program, and modifying requirements to lessen regulations and more closely match the requirements used in other states. However, given the program's history, changing the law to streamline regulation appears to be the best alternative.[1]

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 4, 2001, the Committee on Transportation adopted a strike-everything amendment that:

- Amends s. 360.60, F.S., the definitions section, to:
  - Revise the definition of "motor vehicle dealer" to include all forms of business entities;

[1] OPPAGA Report No. 97-71.

- Revise the definition of “motor vehicle dealer” to include licensed franchised motor vehicle dealers who repair or service new or used motor vehicles pursuant to a franchise agreement;
- Revise the definition of “motor vehicle dealer” to include lease transactions;
- Add a new definition which provides that the terms “sell,” "selling," "sold," "exchange," "retail sales," and "leases" includes any transaction where the title of motor vehicle or used motor vehicle is transferred to a retail consumer, and also any retail lease transaction where a retail customer leases a vehicle for a period of at least 12 months.

- Amends s. 360.61(4), F.S., to provide that no replacement dealer license may be granted pending a dealer complaint of unfair or prohibited cancellation or non-renewal, so long as the dealer agreement of the complaining dealer is in effect as provided under s. 320.641(7), F.S.

- Amends s. 320.64, F.S., to:
  - Require manufacturers to retain for three years, records describing methods or formulas for allocation of motor vehicles and records of actual allocation and distribution of motor vehicles to its dealers in Florida;
  - Require manufacturers to make available all named vehicles from a line-make, e.g., A manufacturer may not refuse to distribute particular models to particular dealers;
  - Prohibit manufacturers from competing with dealers of the same line-make;
  - Require all sales of vehicles in Florida to be through franchised motor vehicle dealers, excepting factory programs for certain defined persons so long as the vehicles are delivered through a dealer;
  - Limit warranty audit periods;
  - Prohibit a manufacturer from refusing to allocate vehicles, charged-back or withheld payments, or other things of value to dealers otherwise eligible under a sales promotion, program, or contest;
  - Prohibit a manufacturer from excluding a dealer from participating in promotions, programs, or contests for selling to a customer who ships the vehicle to a foreign country. (The amendment creates a rebuttable presumption that the dealer did not know, or should not have reasonably known that the vehicle would be exported if the vehicle was titled in the United States);
  - Prohibit a manufacturer’s failure to indemnify dealers against negligent manufacture, design, or assembly;
  - Prohibit a manufacturer from publishing confidential dealer information without dealer consent;
  - Prohibit a manufacturer’s failure to reimburse a dealer for the reasonable cost of providing loaner vehicles, if dealers are required by factory programs to provide such loaner vehicles;
  - Prohibit a manufacturer’s threat to audit a dealer for the purpose of coercing the dealer to forego rights granted to the dealer by agreement or by law. (Manufacturers are permitted to reasonably and periodically audit dealers to determine the validity of paid claims);
  - Prohibit a manufacturer from offering a franchise agreement that forces binding mediation or arbitration, requires legal action in venues outside Florida, requires mediation or arbitration outside Florida, or fails to provide that the laws of Florida are binding in any legal proceeding or other method of dispute resolution;
  - Prohibit a manufacturer’s unreasonable rejection of a proposed sale of a dealership or proposed change in executive management;
  - Prohibit a manufacturer’s discrimination in prices charged to dealers, except in certain limited circumstances;
  - Prohibit a manufacturer’s discrimination in prices charged to dealers through the use of rebates or incentives.

- The amendment provides that violation of these requirements and prohibitions may result in denial, suspension, or revocation of a license to do business within the entire state, or at specific locations within the state upon proof that the section was violated with sufficient frequency to establish a pattern of wrongdoing.

- Amends s. 320.641, F.S., to:
  - Provide criteria to be used in determining whether a termination, cancellation, non-renewal, or modification of a franchise should be approved;
  - Require that a franchise agreement shall remain in effect during the appeals process over a decision to discontinue, cancel, or refuse renewal of the agreement, except in the case of a dealer's loss of license or abandonment;
  - Allow the transfer of a franchise agreement pending the outcome of a termination proceeding.

- Amends s. 320.642(2)(b)3, F.S., to establish criteria to be used by DHSMV in comparing geographic areas for determining whether existing dealers are providing adequate representation in a community or territory.

- Amends s. 320.643, F.S., to:
  - Allow a manufacturer to use financial qualifications in its determinations regarding a transfer, and allows the dealer to file a complaint in protest of the denial of a transfer;
  - Require a manufacturer to state reasons for rejecting a transfer, and to provide for approval of the transfer if the manufacturer fails to notify the dealer of the rejection within 60 days.

- Amends s. 320.645, F.S., to:
  - Allow manufacturers to operate motor vehicle dealerships for the exclusive purpose of broadening diversity and improving minority representation;
  - Define terms;
  - Clarify that the bill does not restrict the business activities of short term rental businesses that sell only used vehicles, perform warranty repairs only on vehicles they sell, and finance the sale of used vehicles only.

- Amends s. 320.699(2), F.S., to require that a hearing on a notice of protest shall not be held sooner than 180 days from the filing of the protest.

The bill was then reported favorably as amended.

On April 12, 2001, the Committee on Judicial Oversight adopted a substitute strike-everything amendment. As compared to the bill as filed, this amendment:

- Removes the definitions of "area of responsibility", "broker", "consumer", "lead", "line-make vehicles", "service".

- Adds to the new definition of "sell" to provide that establishing a price for sale does not constitute a sale or lease.

- Modifies the changes to s. 320.61(4), F.S., to provide that the subsection applies not just to unfair cancellation, but also to prohibited cancellation or to nonrenewal of a dealer agreement. Also, provides that the dealer agreement will only continue if the complaining dealer is authorized to remain as a dealer pursuant to s. 320.641(7), F.S.

- Removes the changes to s. 320.63, F.S.

- Modifies the changes to s. 320.64, F.S., to:
  - Provide that the license of a manufacturer may additionally be denied, suspended, or revoked upon a showing that ss. 320.60-.70, F.S., was violated with sufficient frequency to establish a pattern of wrongdoing.
  - Delete subsections (13) and (16).
  - Renumber the changes in the bill as filed, and to remove numerous of the described prohibited activities.

- Modifies the changes to s. 320.641, F.S., to:
  - Remove the changes to subsection (1);
  - Remove the new subsection (2), and restore current (2);
  - Remove the new subsection (3), and restore current (3), amended to provide that the grounds relied upon for termination, cancellation, or nonrenewal must be applied in a uniform manner; and to provide that a modification or replacement is unfair if it is not clearly permitted by the franchise agreement, is not undertaken in good faith, or is not undertaken for good cause; the manufacturer has the burden of proof that its actions are fair and not prohibited;
  - Amend subsection (7) to provide that a franchise agreement remains in effect through appeals unless the dealer has abandoned the franchise, in which case the dealer must show a likelihood of success on appeal and that the public will not be harmed in order to keep the franchise during appeal; and
  - Adds a new subsection (8) that termination of a franchise proceeding is stayed during the review of a proposed transfer of the franchise.

- Removes changes to s. 320.642, F.S.

- Modifies the changes to s. 320.643, F.S., to:
  - Move the requirement that approval of a transferee must not be unreasonably withheld to new subsection (3).
  - Remove the provision that a change in executive management is not a transfer.
  - Shorten from 60 to 30 days the time within which the manufacturer must reply to a complaint filed by a dealer regarding a request for transfer.
  - Provide that a manufacturer that does not reply to a request for transfer within 60 days is deemed to have accepted the transfer.
  - Remove new subsections (3) and (4) regarding relocations and first rights of refusal.

- Modifies the changes to s. 320.645, F.S., to:
  - Remove the definition of “significant investment”; and
  - Remove the authority of any person to file a complaint objecting to the operation of a dealership by a manufacturer;

- Remove the changes to s. 320.695, F.S.

- Modifies the changes to s. 320.699, F.S., to require an injunction hearing to be conducted within 180 to 240 days.

- Makes grammar and style changes.

On April 18, 2001, the Council for Ready Infrastructure adopted a substitute strike-everything amendment. This amendment contains all the provisions in the amendment that was adopted by the Committee on Judicial Oversight. It also includes grammatical and technical changes and a change to the relating clause in the title.

VI. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:	Staff Director:
William C. Garner	Phillip B. Miller

AS REVISED BY THE COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:	Staff Director:
Nathan L. Bond, J.D.	Lynne Overton, J.D.

AS FURTHER REVISED BY THE COUNCIL FOR READY INFRASTRUCTURE:

Prepared by:	Council Director:
C. Scott Jenkins	Thomas J. Randle

AS FURTHER REVISED BY THE COUNCIL FOR READY INFRASTRUCTURE:

Prepared by:	Council Director:
C. Scott Jenkins	Thomas J. Randle