

By the Committee on Transportation; and Senator Baker

596-2002-05

1                                   A bill to be entitled  
2                   An act relating to franchised motor vehicle  
3                   dealers; amending s. 320.13, F.S.; specifying a  
4                   definition for purposes of provisions for  
5                   issuance of dealer license plates; amending s.  
6                   320.60, F.S.; revising the definition of the  
7                   term "demonstrator"; defining the term  
8                   "existing franchised motor vehicle dealer";  
9                   amending s. 320.64, F.S.; prohibiting applicant  
10                  or licensee failure to pay certain costs and  
11                  amounts to a dealer after termination of  
12                  franchise; providing that the prohibition does  
13                  not apply to terminations, cancellations, or  
14                  nonrenewals implemented as a result of the sale  
15                  of assets or stock of the dealer; requiring  
16                  that certain procedures be followed; amending  
17                  s. 320.641, F.S.; providing procedures for  
18                  discontinuation, cancellation, nonrenewal,  
19                  modification, or replacement of a franchise  
20                  agreement based upon an alleged failure of the  
21                  dealer to comply with certain sales or service  
22                  obligations; amending s. 320.642, F.S.;  
23                  revising criteria and procedures to establish  
24                  an additional dealership or relocate an  
25                  existing dealer in an area where the same  
26                  line-make vehicle is presently represented;  
27                  revising provisions for determination by the  
28                  Department of Highway Safety and Motor Vehicles  
29                  that the existing franchised motor vehicle  
30                  dealer or dealers are providing adequate  
31                  representation; revising criteria for protest

1 by an existing dealer; revising provisions  
2 excluding certain openings and reopenings from  
3 consideration as an additional or relocated  
4 motor vehicle dealer; prohibiting notice of an  
5 additional dealer for a certain period of time  
6 within a certain distance from a dealer that  
7 was opened or reopened and not considered an  
8 additional dealer subject to protest; requiring  
9 distance between sites to be measured from the  
10 geometric centroid of each site; amending s.  
11 320.643, F.S.; exempting a transferee from  
12 location requirements in the franchise  
13 agreement when the transferee proposes to  
14 simultaneously relocate dealership operations  
15 in conjunction with the purchase of the  
16 dealership under certain circumstances;  
17 providing requirements for such proposals;  
18 amending s. 320.699, F.S.; revising procedures  
19 for administrative hearings; requiring a  
20 certain schedule unless extended by the  
21 administrative law judge under certain  
22 conditions; providing an effective date.

23  
24 Be It Enacted by the Legislature of the State of Florida:

25  
26 Section 1. Subsection (1) of section 320.13, Florida  
27 Statutes, is amended to read:

28 320.13 Dealer and manufacturer license plates and  
29 alternative method of registration.--

30 (1)(a) Any licensed motor vehicle dealer and any  
31 licensed mobile home dealer may, upon payment of the license

1 tax imposed by s. 320.08(12), secure one or more dealer  
2 license plates, which are valid for use on motor vehicles or  
3 mobile homes owned by the dealer to whom such plates are  
4 issued while the motor vehicles are in inventory and for sale,  
5 or while being operated in connection with such dealer's  
6 business, as defined in s. 320.60(3), but are not valid for  
7 use for hire. Dealer license plates may not be used on any tow  
8 truck or wrecker unless the tow truck or wrecker is being  
9 demonstrated for sale, and the dealer license plates may not  
10 be used on a vehicle used to transport another motor vehicle  
11 for the motor vehicle dealer.

12 (b)1. Marine boat trailer dealers and manufacturers  
13 may, upon payment of the license taxes imposed by s.  
14 320.08(12), secure one or more dealer plates, which are valid  
15 for use on boat trailers owned by the dealer to whom such  
16 plates are issued while being used in connection with such  
17 dealer's business, but are not valid for use for hire.

18 2. It is the intent of the Legislature that the method  
19 currently used to license marine boat trailer dealers to do  
20 business in the state, that is, by an occupational license  
21 issued by the city or county, not be changed. The department  
22 shall not interpret this act to mean that it is empowered to  
23 license such dealers to do business. An occupational license  
24 tax certificate shall be sufficient proof upon which the  
25 department may issue dealer license plates.

26 Section 2. Subsection (3) of section 320.60, Florida  
27 Statutes, is amended, and subsection (17) is added to that  
28 section, to read:

29 320.60 Definitions for ss. 320.61-320.70.--Whenever  
30 used in ss. 320.61-320.70, unless the context otherwise  
31

1 requires, the following words and terms have the following  
2 meanings:

3           (3) "Demonstrator" means any new motor vehicle which  
4 is carried on the records of the dealer as a demonstrator and  
5 is used by, being inspected or driven by the dealer or his or  
6 her employees, or while being operated or driven, with the  
7 permission of such motor vehicle dealer, by an owner, officer,  
8 employee, or independent contractor of a motor vehicle dealer  
9 or by a member of such owner's, officer's, or employee's  
10 immediate family, or driven by prospective customers for the  
11 purpose of demonstrating vehicle characteristics in the sale  
12 or display of motor vehicles sold by the dealer.

13           (17) "Existing franchised motor vehicle dealer" means  
14 any motor vehicle dealer that has a franchise agreement with a  
15 licensee. For purposes of notice and identification under s.  
16 320.642 only, all dealer locations of an existing motor  
17 vehicle dealer or a person that is subject to an unexpired  
18 final order permitting the establishment of an additional  
19 location or a relocation, where the location is not yet open  
20 for business, will be entitled to the same notice and protest  
21 rights as an existing dealer under the provisions of s.  
22 320.642. A final order expires upon the failure of the dealer  
23 or other person that is authorized to establish a location or  
24 to relocate to become established at the proposed location  
25 within the period provided by law or rule.

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

28           320.64 Denial, suspension, or revocation of license;  
29 grounds.--A license of a licensee under s. 320.61 may be  
30 denied, suspended, or revoked within the entire state or at  
31 any specific location or locations within the state at which

1 the applicant or licensee engages or proposes to engage in  
2 business, upon proof that the section was violated with  
3 sufficient frequency to establish a pattern of wrongdoing, and  
4 a licensee or applicant shall be liable for claims and  
5 remedies provided in ss. 320.695 and 320.697 for any violation  
6 of any of the following provisions. A licensee is prohibited  
7 from committing the following acts:

8 (36)(a) Notwithstanding the terms of any franchise  
9 agreement, after termination of a franchise an applicant or  
10 licensee has failed to pay to the motor vehicle dealer all of  
11 the following amounts:

12 1. The net cost paid by the dealer for each new motor  
13 vehicle in the dealer's inventory with mileage of 6,000 miles  
14 or less, exclusive of mileage placed on the vehicle before it  
15 was delivered to the dealer, provided that for every mile in  
16 excess of 1,000 miles there shall be a reduction of the  
17 required repurchase price at a rate equivalent to the  
18 then-prevailing rate promulgated by the Internal Revenue  
19 Service.

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

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

26 b. Was purchased by the dealer either directly from  
27 the manufacturer or distributor or was purchased from an  
28 outgoing authorized dealer as a part of the dealer's initial  
29 inventory.

30 3. The fair market value of each undamaged sign,  
31 excluding normal wear and tear, owned by the dealer that bears

1 a trademark or trade name used or claimed by the applicant or  
2 licensee or a representative of the applicant or licensee and  
3 that was purchased from or at the request of the applicant or  
4 licensee or a representative of the applicant or licensee.

5 4. The fair market value of all special tools, data  
6 processing equipment, and automotive service equipment owned  
7 by the dealer that:

8 a. Were recommended in writing by the applicant or  
9 licensee or a representative of the applicant or licensee and  
10 designated as special tools and equipment;

11 b. Were purchased from or at the request of the  
12 applicant or licensee or a representative of the applicant or  
13 licensee; and

14 c. Are in usable and good condition except for  
15 reasonable wear and tear.

16 5. The cost of transporting, handling, packing,  
17 storing, and loading any property subject to repurchase under  
18 this section.

19 (b) This subsection does not apply to terminations,  
20 cancellations, and nonrenewals that are implemented as a  
21 result of the sale of the assets or stock of the dealer. The  
22 dealer shall return the property listed in this subsection to  
23 the licensee within 90 days after the effective date of the  
24 termination, cancellation, or nonrenewal. The licensee shall  
25 supply the new vehicle dealer with reasonable instructions on  
26 the method by which the new vehicle dealer must return the  
27 property to the licensee. The compensation for the property  
28 shall be paid by the licensee within 60 days after the tender  
29 of inventory and other items, provided the new motor vehicle  
30 dealer has clear title to the inventory and other items and is  
31 in a position to convey that title to the manufacturer or

1 distributor. In the event the inventory or other items are  
2 subject to a security interest, the licensee may make payment  
3 jointly to the new motor vehicle dealer and the holder of the  
4 security interest.

5  
6 A motor vehicle dealer who can demonstrate that a violation  
7 of, or failure to comply with, any of the preceding provisions  
8 by an applicant or licensee will or can adversely and  
9 pecuniarily affect the complaining dealer, shall be entitled  
10 to pursue all of the remedies, procedures, and rights of  
11 recovery available under ss. 320.695 and 320.697.

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

14 320.641 Discontinuations, cancellations, nonrenewals,  
15 modifications, and replacement of franchise agreements.--

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

28 (b) The failure by the licensee to comply with the  
29 90-day notice period and procedure prescribed herein shall  
30 render voidable, at the option of the motor vehicle dealer,  
31 any discontinuation, cancellation, nonrenewal, modification,

1 or replacement of any franchise agreement. Designation of a  
2 franchise agreement at a specific location as a "nondesignated  
3 point" shall be deemed an evasion of this section and  
4 constitutes an unfair cancellation.

5 (c) If the notice required in paragraph (a) is based  
6 upon an alleged failure of the dealer to comply with the  
7 obligations of the dealer agreement with respect to the  
8 performance of sales or service obligations, the applicant or  
9 licensee shall transmit to the dealer a notice of default not  
10 less than 180 days prior to transmission of the notice  
11 required in paragraph (a). The notice of default under this  
12 paragraph shall specify the sales and service deficiencies  
13 alleged by the applicant or licensee and afford the dealer a  
14 period of time of not less than 180 days to cure those  
15 deficiencies.

16 Section 5. Subsections (2), (3), and (5) of section  
17 320.642, Florida Statutes, are amended, and subsection (7) is  
18 added to that section, to read:

19 320.642 Dealer licenses in areas previously served;  
20 procedure.--

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

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

26 2. The licensee fails to show that the existing  
27 franchised dealer or dealers who register new motor vehicle  
28 retail sales or retail leases of the same line-make in the  
29 community or territory of the proposed dealership are not  
30 providing adequate representation of such line-make motor  
31 vehicles in such community or territory as a whole and not



1 with respect to any part thereof or identifiable plot therein.

2 The burden of proof in establishing inadequate representation  
3 shall be on the licensee.

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

9 1. The impact of the establishment of the proposed or  
10 relocated dealer on the consumers, public interest, existing  
11 dealers, and the licensee; provided, however, that financial  
12 impact may only be considered with respect to the protesting  
13 dealer or dealers.

14 2. The size and permanency of investment reasonably  
15 made and reasonable obligations incurred by the existing  
16 dealer or dealers to perform their obligations under the  
17 dealer agreement.

18 3. The reasonably expected market penetration of the  
19 line-make motor vehicle for the community or territory  
20 involved, after consideration of all factors which may affect  
21 said penetration, including, but not limited to, demographic  
22 factors such as age, income, education, size class preference,  
23 product popularity, retail lease transactions, whether located  
24 in a metropolitan or nonmetropolitan area, or other factors  
25 affecting sales to consumers of the community or territory.  
26 With respect to any geographic comparison area used to  
27 evaluate the performance of the line-make within the community  
28 or territory, the comparison area may not be smaller than an  
29 entire county and may not include any geographic area located  
30 outside this state. Reasonably expected market penetration  
31 shall be measured with respect to the community or territory

1 as a whole and not with respect to any part thereof or  
2 identifiable plot therein. In order to satisfy its burden of  
3 proof under this section, the licensee must prove that any  
4 deviation or shortfall in market penetration from a reasonable  
5 comparison area is substantial and significant, considering  
6 factors including, but not limited to, the size of the  
7 community or territory and the projected sales of the proposed  
8 dealership.

9           4. Any actions by the licensees in denying its  
10 existing dealer or dealers of the same line-make the  
11 opportunity for reasonable growth, market expansion, or  
12 relocation, including the availability of line-make vehicles  
13 in keeping with the reasonable expectations of the licensee in  
14 providing an adequate number of dealers in the community or  
15 territory.

16           5. Any attempts by the licensee to coerce the existing  
17 dealer or dealers into consenting to additional or relocated  
18 franchises of the same line-make in the community or  
19 territory.

20           6. Distance, travel time, traffic patterns, and  
21 accessibility between the existing dealer or dealers of the  
22 same line-make and the location of the proposed additional or  
23 relocated dealer.

24           7. Whether benefits to consumers will likely occur  
25 from the establishment or relocation of the dealership which  
26 cannot be obtained by other geographic or demographic changes  
27 or expected changes in the community or territory.

28           8. Whether the protesting dealer or dealers are in  
29 substantial compliance with their dealer agreement.

30           9. Whether there is adequate interbrand and intrabrand  
31 competition with respect to said line-make in the community or

1 | territory and adequately convenient consumer care for the  
2 | motor vehicles of the line-make, including the adequacy of  
3 | sales and service facilities.

4 |         10. Whether the establishment or relocation of the  
5 | proposed dealership appears to be warranted and justified  
6 | based on economic and marketing conditions pertinent to  
7 | dealers competing in the community or territory, including  
8 | anticipated future changes.

9 |         11. The volume of registrations and service business  
10 | transacted by the existing dealer or dealers of the same  
11 | line-make in the relevant community or territory of the  
12 | proposed dealership.

13 |         (3) An existing franchised motor vehicle dealer or  
14 | dealers shall have standing to protest a proposed additional  
15 | or relocated motor vehicle dealer where the existing motor  
16 | vehicle dealer or dealers have a franchise agreement for the  
17 | same line-make vehicle to be sold or serviced by the proposed  
18 | additional or relocated motor vehicle dealer and are  
19 | physically located so as to meet or satisfy any of the  
20 | following requirements or conditions:

21 |         (a) If the proposed additional or relocated motor  
22 | vehicle dealer is to be located in a county with a population  
23 | of less than 300,000 according to the most recent data of the  
24 | United States Census Bureau or the data of the Bureau of  
25 | Economic and Business Research of the University of Florida:

26 |             1. The proposed additional or relocated motor vehicle  
27 | dealer is to be located in the area designated or described as  
28 | the area of responsibility, or such similarly designated area,  
29 | including the entire area designated as a multiple-point area,  
30 | in the franchise agreement or in any related document or  
31 | commitment with the existing motor vehicle dealer or dealers

1 of the same line-make as such agreement existed upon October  
2 1, 1988;

3 2. The existing motor vehicle dealer or dealers of the  
4 same line-make have a licensed franchise location within a  
5 radius of 20 miles of the location of the proposed additional  
6 or relocated motor vehicle dealer; or

7 3. Any existing motor vehicle dealer or dealers of the  
8 same line-make can establish that, during any consecutive  
9 12-month period of the 36-month period preceding the month in  
10 which the publication of the proposed additional or relocated  
11 dealership appears in the Florida Administrative Weekly,  
12 ~~filing of the licensee's application for the proposed~~  
13 ~~dealership, such dealer or its predecessor made~~ 25 percent of  
14 the its retail sales or leases of new motor vehicles made by  
15 such dealer or its predecessor were to persons or entities  
16 that whose registered the purchased or leased vehicle to an  
17 address household addresses were located within a radius of 20  
18 miles of the geometric centroid of the property that will  
19 encompass all location of the proposed additional or relocated  
20 motor vehicle dealer operations; provided such existing dealer  
21 is located in the same county or any county contiguous to the  
22 county where the additional or relocated dealer is proposed to  
23 be located.

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

29 1. Any existing motor vehicle dealer or dealers of the  
30 same line-make have a licensed franchise location within a  
31

1 radius of 12.5 miles of the location of the proposed  
2 additional or relocated motor vehicle dealer; or

3         2. Any existing motor vehicle dealer or dealers of the  
4 same line-make can establish that, during any consecutive  
5 12-month period of the 36-month period preceding the month in  
6 which the publication of the proposed additional or relocated  
7 dealership appears in the Florida Administrative Weekly,  
8 ~~filing of the licensee's application for the proposed~~  
9 ~~dealership, such dealer or its predecessor made~~ 25 percent of  
10 the its retail sales or leases of new motor vehicles made by  
11 such dealer or its predecessor were to persons or entities  
12 that whose registered the purchased or leased vehicle to an  
13 address household addresses were located within a radius of  
14 12.5 miles of the geometric centroid of the property that will  
15 encompass all location of the proposed additional or relocated  
16 motor vehicle dealer; provided such existing dealer is located  
17 in the same county or any county contiguous to the county  
18 where the additional or relocated dealer is proposed to be  
19 located.

20         (c) The date of sale shall be the later of the dates  
21 on which the sale is reported to the licensee or the  
22 department. In the event of a conflict between the address  
23 listed by the purchaser on the registration with the licensee  
24 and that listed on the registration with the department, the  
25 address listed with the department shall be used.

26         (5)(a) ~~The opening or~~ reopening of the same or a  
27 successor motor vehicle dealer within 12 months after the date  
28 that the department revokes a previously issued license and  
29 all legal proceedings, including appeal, regarding such  
30 revocation are completed, or the dealer voluntarily terminates  
31 the previously issued license, or the opening of a relocated

1 dealer within 12 months after the date that the department  
2 approves an application for change of address, shall not be  
3 considered an additional motor vehicle dealer subject to  
4 protest within the meaning of this section, if:

5 ~~1.(a)~~ The opening or reopening is within the same or  
6 an adjacent county ~~and~~ is within 2 miles of the former motor  
7 vehicle dealer location;~~;~~

8 ~~2.(b)~~ There is no dealer within 25 miles of the  
9 proposed location or the proposed location is further from  
10 each existing dealer of the same line-make than the prior  
11 location is from each dealer of the same line-make within 25  
12 miles of the new location;~~;~~

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

19 ~~4.(d)~~ The opening or reopening is within 6 miles of  
20 the prior location and, if all existing motor vehicle dealers  
21 of the same line-make are beyond 15 miles of the former  
22 location, the proposed location is further than 15 miles from  
23 any existing motor vehicle dealer of the same line-make.

24  
25 Any other such opening or reopening shall constitute an  
26 additional motor vehicle dealer within the meaning of this  
27 section.

28 (b) If an opening or reopening is accomplished under  
29 the terms of this subsection and therefore is not considered  
30 an additional motor vehicle dealer subject to protest, the  
31 licensee may not notice an additional motor vehicle dealer of

1 the same line-make that is to be located within 4 miles from  
2 the previous location for a period of 2 years after the date  
3 of the exempt relocation.

4 (7) All measurements required by this section of the  
5 distance between existing motor vehicle dealer locations or  
6 existing motor vehicle dealer locations and a proposed motor  
7 vehicle dealer's location shall be taken from the geometric  
8 centroid of the property that encompasses all of the existing  
9 or proposed motor vehicle dealer operations.

10 Section 6. Subsection (5) of section 320.643, Florida  
11 Statutes, is renumbered as subsection (6), and a new  
12 subsection (5) is added to that section, to read:

13 320.643 Transfer, assignment, or sale of franchise  
14 agreements.--

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

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

24 (b) The proposed dealership's facility satisfies  
25 facility requirements in effect between the licensee and the  
26 dealer proposing the transfer at the time the transfer is  
27 proposed; and

28 (c) The proposed facility is otherwise an appropriate  
29 location, taking into account the accessibility and  
30 convenience to consumers of the proposed location, the  
31 location of other dealers of the same line-make, and other

1 factors related to the appropriateness of the facility for its  
2 proposed use, and whether the proposed dealership facility and  
3 dealership operations are separate from any other line-makes.

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

6 320.699 Administrative hearings and adjudications;  
7 procedure.--

8 (3) If a complaint is filed under s. 320.641, except a  
9 complaint filed under s. 320.641(5), a hearing shall be held  
10 not sooner than 180 days and not later than 240 days after the  
11 date of filing of the complaint unless the time is extended by  
12 the administrative law judge for good cause shown. This  
13 subsection governs the schedule of hearings in lieu of any  
14 other provision of law with respect to an administrative  
15 hearing conducted by the Department of Highway Safety and  
16 Motor Vehicles or the Division of Administrative Hearings.

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

18  
19 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
20 COMMITTEE SUBSTITUTE FOR  
21 Senate Bill 1814

22 The CS expands the definition of "demonstrator" to include new  
23 vehicles owned by a dealer that are driven or operated by  
24 family members of the dealer or employees of the dealership  
and to include independent contractors of the dealership.

25 The CS clarifies conditions for the return of dealership  
26 inventory upon termination of a franchise. The inventory must  
27 be returned to the licensee within 90 days of the termination  
and payment from the licensee must be received within 60 days  
of the return.

28 The CS establishes a 180 day period for franchised dealers to  
29 respond to claims from a licensee regarding the dealer's sales  
30 performance obligations and take corrective actions. If a  
31 licensee opens a new dealership which is not open to protest,  
the licensee may not propose additional dealerships within  
four miles of the previous dealerships for two years.