1984

Session Law 84-069

Florida Senate & House of Representatives

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5-1-84 (4) "Tapes are inaudible"

HB. 890
my 19/13/10
4-18-84 (2) 920/414/490
Florida Legislature

History of Legislation
1984 Regular Session

RE: CHAPTER 54-64
5/30 1077 (P-Passed)
5/1 H 240 (Substitute)

prepared by:

Joint Legislative Management Committee

Legislative Information Division
Capitol Building, Room 826 — 488-4371
S 1077 GENERAL BILL/CS by Commerce, Jenne (Similar CS/H 0890)
Motor Vehicle Dealers: amends provisions re manufacturers, distributors, importers, & dealers; requires certain licensing; provides additional grounds for denial, suspension of, or revocation of license; amends provision re unfair cancellation of franchise agreements, etc. Amends Ch. 320. Effective Date: 05/31/84.

04/17/84 SENATE Filed
04/27/84 SENATE Introduced, referred to Commerce, Appropriations -SJ 00183; On Committee agenda-- Commerce, 05/01/84, 2:00 pm, Rm. A
05/01/84 SENATE Comm. Report: CS by Commerce -SJ 00229; CS read first time 05/04/84 -SJ 00233
05/04/84 SENATE Now in Appropriations -SJ 00229
05/10/84 SENATE Withdrawn from Appropriations -SJ 00247; Placed on Calendar
05/15/84 SENATE Placed on Special Order Calendar; CS passed; YEAS 37 NAYS 0; Immediately certified -SJ 00275
05/16/84 HOUSE Received, placed on Calendar -SJ 00416; Substituted for CS/HSB 880; Read second time; Read third time; Passed; YEAS 107 NAYS 0 -HJ 00423; Immediately certified
05/18/84 Ordered enrolled -SJ 00300
05/23/84 SENATE Signed by Officers and presented to Governor -SJ 00391
05/31/84 Became Law without Governor's Signature
Chapter No. 84-69 -SJ 00598

S 1078 GENERAL BILL by Economic, Community and Consumer Affairs
Cash Forward Contracts: provides for adoption of rules by Banking & Finance Dept.; provides for registration; requires establishment of Cash Forward Trust Fund; provides for revocation, denial or suspension of registration; provides for injunctive relief, investigations, etc. Effective Date: 10/01/84.

04/17/84 SENATE Filed
04/27/84 SENATE Introduced, referred to Economic, Community and Consumer Affairs, Appropriations -SJ 00183
05/08/84 SENATE Extension of time granted Committee Economic, Community and Consumer Affairs
05/21/84 SENATE Extension of time granted Committee Economic, Community and Consumer Affairs
06/01/84 SENATE Died in Committee on Economic, Community and Consumer Affairs

S 1079 GENERAL BILL by Weinstein
Arrest Warrants: provides that specified municipal police officers & state attorney investigators may execute arrest warrants. Amends 801.04. Effective Date: Upon becoming law.

04/17/84 SENATE Filed
04/27/84 SENATE Introduced, referred to Judiciary-Criminal, Judiciary-Civil, Personnel, Retirement and Collective Bargaining -SJ 00183
05/08/84 SENATE On Committee agenda-- Judiciary-Criminal, Temporarily postponed
05/09/84 SENATE Extension of time granted Committee Judiciary-Criminal
05/18/84 SENATE Extension of time granted Committee Judiciary-Criminal
05/30/84 SENATE Extension of time granted Committee Judiciary-Criminal
06/01/84 SENATE Died in Committee on Judiciary-Criminal

S 1080 GENERAL BILL by Calucci
School Superintendents: provides that superintendent shall devote his entire time to his official duties & hold no other office or employment. Amends 230.30. Effective Date: Upon becoming law.
CONTINUED ON NEXT PAGE
H 0889 GENERAL BILL/CS by Natural Resources, Patchett, Morgan and others
(Compare CS/S 0410)
Inland Navigation District, Fla.: abolishes governing body of district & transfers control to Governor & Cabinet; abolishes taxing authority of district; creates a trust fund, transfers dist. assets to trust fund; requires a management plan; provides powers & duties of managing bd. Creates 374.61. Effective Date: 10/01/84.
03/06/84 HOUSE Prefiled
03/08/84 HOUSE Referred to Natural Resources
03/09/84 HOUSE Also referred to Appropriations
04/03/84 HOUSE Proposed, referred to Natural Resources, Appropriations -HJ 00089
04/17/84 HOUSE Comm. Report: CS by Natural Resources -HJ 00226; Now in Appropriations
04/30/84 HOUSE On Committee agenda-- Appropriations, 21 HOB, 8:00 am, 05/02/84
05/04/84 HOUSE On Committee agenda-- Appropriations, 21 HOB, 8:00 am, 05/08/84
05/16/84 HOUSE On Committee agenda-- Appropriations, 21 HOB, 8:00 am, 05/18/84
05/21/84 HOUSE On Committee agenda-- Appropriations, 21 HOB, 8:00 am, 05/22/84
05/23/84 HOUSE Comm. Report: Favorable, placed on Calendar by Appropriations -HJ 00605
05/29/84 HOUSE Placed on Special Order Calendar
05/30/84 HOUSE CS/SB 410 was taken up in lieu of CS/HB 889 -HJ 00897
06/01/84 HOUSE Died on Calendar

H 0890 GENERAL BILL/CS by Commerce, Lippman (Similar CS/S 1077)
Motor Vehicle Dealers: requires certain licensing; provides additional grounds for denial, suspension, revocation of license; amends provisions re unfair cancellation of franchise agreements, changes in plans or systems of distribution, & change of executive mgmt. control, etc. Amends Ch. 320. Effective Date: Upon becoming law.
03/06/84 HOUSE Prefiled
03/12/84 HOUSE Referred to Commerce
03/16/84 HOUSE Subreferred to Subcommittee on Banking and Commerce
04/03/84 HOUSE Introduced, referred to Commerce -HJ 00089; Subreferred to Subcommittee on Banking and Commerce
04/05/84 HOUSE On Committee agenda-- For subref. ratification, 21 HOB, 3:30pm, 04/09
04/16/84 HOUSE On Committee agenda-- Commerce, 21 HOB, 1:15 pm, 04/18/84
04/28/84 HOUSE Comm. Report: CS placed on Calendar by Commerce -HJ 00286
05/02/84 HOUSE Placed on Special Order Calendar
05/14/84 HOUSE CS read first and second times; Amendments adopted -HJ 00404
05/16/84 HOUSE Iden./Sim. Senate Bill substituted; Laid on table under Rule, Iden./Sim./Compare Bill passed, refer to CS/SB 1077 (Ch. 84-69) -HJ 00423

H 0891 GENERAL BILL by Mills (Similar CS/S 0713)
Limitations of Actions: provides that actions for libel or slander shall be commenced within 1 year instead of within 4 years. Amends 95.11. Effective Date: 10/01/84.
CONTINUED ON NEXT PAGE
The Committee on Judiciary offered the following amendment

Amendment 1—On page 3, line 6 following the period, insert:
For purposes of this section, "civil law notary" shall mean an official of a foreign country having an official seal and authorized to make legal or lawful the execution of any document in that jurisdiction, wherein the affixing of his official seal shall be deemed proof of the execution of the document or deed in full compliance with the laws of that jurisdiction.

Rep. Ros moved the adoption of the amendment, which was adopted without objection.

On motions by Rep. Ros, the rules were waived and—

SB 618—A bill to be entitled An act relating to recording conveyances of real property; amending s. 695.03, F.S., providing that authentication or legalization by a civil law notary or notary public wherein the affixing of his official seal shall be deemed proof of the execution of any document or deed in full compliance with the laws of that jurisdiction, shall not apply to the provisions of this section. An officer may not attest to documents in connection with the performance of official duties; repealing s. 695.09, F.S.; providing certain exceptions for instruments authenticated or legalized; providing an effective date

—a similar or companion measure, was taken up, read the second time by title, and substituted for HB 1071. Under the rule, the House bill was laid on the table.

Representatives Selph, Martinez, and Ros offered the following amendment:

Amendment 1—On page 4, line 5, after the period, insert the following and renumber subsequent sections: Section 4 Section 117.10, Florida Statutes, is created to read:

117.10 Law enforcement officers and correctional officers—Law enforcement officers and correctional officers, as defined in s. 943.10, are notaries public for the purpose of notarizing, certifying, or attesting to documents in connection with the performance of official duties. Sections 117.01, 117.04, 117.05, 117.07, and 117.08 shall not apply to the provisions of this section. An officer may not notarize his own signature.

Section 5 Section 925.095, Florida Statutes, as created by chapter 83-147, Laws of Florida, is hereby repealed.

Rep. Selph moved the adoption of the amendment, which was adopted without objection.

Representatives Selph, Martinez, and Ros offered the following title amendment:

Amendment 2—On page 1, line 12, after the semicolon, insert:
creating s. 117.10, F.S., providing that law enforcement and correctional officers are notaries public for certain purposes in connection with performance of official duties; repealing s. 925.095, F.S., relating to the authority of law enforcement and correctional officers to administer oaths;

Rep. Selph moved the adoption of the amendment, which was adopted without objection. Under Rule 8.19, the bill was referred to the Engrossing Clerk.

HB 1002—A bill to be entitled An act relating to the Uniform Commercial Code; amending s. 680.104, F.S., providing for certain continuation statements to remain effective until termination, providing an effective date.

—was read the second time by title

The Committee on Commerce offered the following amendment

Amendment 1—On page 1, line 17, strike "January 1, 1980" and insert October 1, 1984

Rep. Wallace moved the adoption of the amendment, which was adopted without objection. Under Rule 8.19, the bill was referred to the Engrossing Clerk.

HB 1157 was taken up. On motion by Rep. C. F. Jones, SB 362, a similar or companion measure, was substituted for HB 1157. Under the rule, the House bill was laid on the table and—

SB 362—A bill to be entitled An act relating to dangerous transmissible diseases and pests of animals, amending s. 585.15, F.S.; providing that the Department of Agriculture and Consumer Services may declare by rule that certain pests and diseases of domestic animals are a public nuisance, amending s. 585.401, F.S.; broadening the definition of an emergency, amending s. 570.07, F.S.; authorizing the department to declare emergencies and issue orders; amending s. 823.04, F.S., prohibiting the bringing into or selling in this state of animals suffering from a disease or pest declared a public nuisance; providing penalties, providing an effective date

—was read the second time by title and, under Rule 8.19, referred to the Engrossing Clerk.

REP HODGES IN THE CHAIR

HB 430 was taken up. On motion by Rep. McEwan, SB 466, a similar or companion measure, was substituted for HB 430. Under the rule, the House bill was laid on the table and—

SB 466—A bill to be entitled An act relating to the Florida Credit Union Guaranty Corporation, Inc., amending s. 657.258, Florida Statutes, deleting the provision authorizing the corporation in its discretion to refund to a withdrawing member under certain conditions an amount not to exceed 50 percent of the member's investment in the corporation; providing that annual and special assessments shall be considered a payment by the member credit union into the loss reserve maintained by the corporation, requiring the corporation to refund to a withdrawing member which has ceased to operate under a valid certificate of organization the member's investment in the corporation and the amount of the member's interest in the loss reserve; providing conditions; providing that if assets of the corporation fall below 0.5 percent of the total aggregate guaranteed shares and member deposit, the corporation may reduce the investment of each member proportionately and the amount shall be transferred from membership fees to the loss reserve and shall be considered as payment of a special assessment; requiring the corporation to maintain a loss reserve, providing for credits to the loss reserve, providing for certain charges against the reserve; providing an effective date

—was read the second time by title and, under Rule 8.19, referred to the Engrossing Clerk.

HB 542—A bill to be entitled An act relating to criminal law, creating s. 843.131, Florida Statutes, defining the crime of misprision of a forcible felony, providing a penalty; providing exemptions, providing an effective date

—was read the second time by title and, under Rule 8.19, referred to the Engrossing Clerk.

By the Committee on Commerce and Representative Lippman—

CS/HB 890—A bill to be entitled An act relating to motor vehicle manufacturers, distributors, importers, and dealers, amending s. 320.60, F.S., providing definitions, amending s. 320.61, F.S., requiring certain licensing; creating s. 320.623, F.S., relating to franchise agreements; amending s. 320.64, F.S., relating to the credit union to the loss reserve; creating s. 320.644, F.S., relating to change of executive management control, creating s. 320.645, F.S., restricting ownership of a motor vehicle dealership by licensees; amending s. 320.697, F.S., providing for civil damages; providing for application of this act to existing and future agree-
Representative Lippman offered the following amendment:

Amendment 1—On page 10, lines 21 & 22, strike all of said lines and insert: he shall have a cause of action against the licensed defendant for reasonable attorney's fees.

Rep. Lippman moved the adoption of the amendment, which was adopted.

Representative Lippman offered the following amendment:

Amendment 2—On page 8, following line 23, insert a new subsection (19) to read as follows: (19) The applicant or licensee has included in any franchise agreement with a motor vehicle dealer terms or provisions that are contrary to, prohibited by, or otherwise inconsistent with the provisions contained in sections 320.60-320.70, or has filed a false affidavit pursuant to section 320.63 (3)

Rep. Lippman moved the adoption of the amendment, which was adopted.

Representative Lippman offered the following amendment:

Amendment 3—On page 2, lines 25 & 26, strike all of said lines and insert: vehicle dealer is authorized to transact business pertaining to motor vehicles which are intended for sale.

Rep. Lippman moved the adoption of the amendment, which was adopted.

Representative Lippman offered the following amendment:

Amendment 4—On page 3, after line 28, insert a new Section 3 to read as follows: Section 3. Section 320.63 is amended to read as follows:

320.63 Application for license, contents

Any person desiring to be licensed pursuant to ss. 320.60-320.70 shall make application therefore to the department upon a form containing such information as the department shall require. The department may require, with such application or otherwise and from time to time, all of the following, which may be considered by the department in determining the fitness of said applicant to engage in the business for which the applicant desires to be licensed:

(1) Information relating to the applicant's solvency and his financial standing.

(2) A certified copy of applicant's new motor vehicle warranty or warranties in any way connected with a motor vehicle or any component thereof, accompanied by a detailed explanation thereof.

(3) From each manufacturer on direct dealerships, distributor or indirect dealerships, or importer on direct dealerships which utilizes an identical blanket basic agreement for its dealers or distributors in Florida, which agreement contains all or any part of an applicant's agreements with motor vehicle dealers in Florida, a copy of the written agreement and all supplements thereto, together with a list of applicant's authorized dealers or distributors and their addresses. The applicant shall further notify the department immediately of the appointment of any additional dealers or distributors, or any revisions or additions to the basic agreement on file, or of any individual dealer or distributor supplements to such agreements. The applicant or licensee shall further notify the department immediately of the appointment of any additional dealer or distributor, and, not later than sixty (60) days prior to the date a revision or modification to a franchise agreement is offered to a motor vehicle dealer in Florida, the licensee shall notify the department of any such revision, modification, or addition to the franchise agreement on file with the department, or of any individual dealer or distributor supplement thereto, provided that, in no event shall a franchise agreement be offered to a motor vehicle dealer in Florida until the applicant or licensee shall file an affidavit with the department acknowledging that the terms or provisions of the agreement are not inconsistent with, prohibited by, or contrary to the provisions as contained in ss. 320.60-320.70.

(4) A certified copy of the delivery and preparation obligations of its motor vehicle dealers, which obligations shall constitute the motor vehicle dealers' only responsibility for product liability as between the dealer and manufacturer.

(5) An affidavit stating the rates which the applicant pays or agrees to pay any authorized motor vehicle dealer for parts and labor by the authorized motor vehicle dealer for the manufacturer under delivery and preparation obligations or the new vehicle warranty.

(6) The fee for the annual license.

(7) Any other pertinent matter commensurate with the safeguarding of the public interest (and renumber all subsequent sections).

Rep. Lippman moved the adoption of the amendment, which was adopted. Under Rule 8.19, the bill was referred to the Engrossing Clerk.

HB 573—A bill to be entitled An act relating to workers' compensation, amending ss. 440.15, F.S., making employers responsible for supplemental permanent total benefits in certain cases, creating ss. 440.515, F.S.; providing for confidentiality of certain records, providing an effective date.

—was read the second time by title

The Committee on Commerce offered the following amendment:

Amendment 1—On page 1, lines 25-27, strike "and subject to the maximum weekly compensation rate set forth in s. 440.12 (2)" and insert: and subject to the maximum weekly compensation rate set forth in s. 440.12 (2). The weekly compensation payable and the additional benefits payable pursuant to this paragraph when combined shall not exceed the maximum weekly compensation rate in effect at the time of payment as determined pursuant to s. 440.12 (2)

Rep. Danson moved the adoption of the amendment, which was adopted.

Representative Danson offered the following amendment:

Amendment 2—On pages 1-3, strike everything after the enacting clause and insert: Section 1. Paragraph (e) of subsection (1) of section 440.15, Florida Statutes, is amended to read

440.15 Compensation for disability—Compensation for disability shall be paid to the employee, subject to the limits provided in s. 440.12 (2), as follows:

(1) PERMANENT TOTAL DISABILITY—

(e) 1. In case of permanent total disability resulting from injury which occurred subsequent to June 30, 1955, and for which the liability of the employer for compensation has not been discharged under the provisions of s. 440.20 (12), the injured employee shall receive from the Division additional weekly compensation benefits equal to 5 percent of the injured employee's weekly compensation rate, as established pursuant to the law in effect on the date of his injury, multiplied by the number of calendar years since the date of injury. The weekly compensation payable and the additional benefits payable pursuant to this paragraph when combined shall not exceed the maximum weekly compensation rate in effect at the time of payment as determined pursuant to s. 440.12 (2) and subject to the maximum weekly compensation rate set forth in s. 440.12 (2). These supplemental benefits shall be paid by the Division out of the Workers' Compensation Administration Trust Fund when the injury oc-
A BILL relating to
(Brief statement of subject)

motor vehicle manufacturers, distributors, importers, and dealers;

By Senator of the 32nd District
By the Committee on
Chairman's signature

and

SECRETARY OF STATE

HOUSE ACTION

Read 1st Time
Referred to Committees on

SENATE ACTION

Fav Unfav With Amend Com Sub

APPROPRIATIONS

Fav Unfav With Amend Com Sub

Fav Unfav With Amend Com Sub

Read 2nd Time
Read 3rd Time
and

Secretary of Senate

□ Immediately Certified to House
□ Laid on Table
□ Motion to Reconsider by Senator

Withdrawn from the Committee on

APPROPRIATIONS

motion of Senator

CS adopted

MAY 15 1984

□ HOUSE AMENDMENTS, ACTION — See reverse side
□ CONFERENCE COMMITTEE ACTION — See reverse side

□ SENATE AMEND TO HOUSE AMEND, ACTION — See reverse side
□ CONFERENCE COMMITTEE ACTION — See reverse side

MAY 15 1984
A bill to be entitled

An act relating to motor vehicle manufacturers, distributors, importers, and dealers; amending s. 320.60, F.S.; providing definitions; amending s. 320.61, F.S.; requiring certain licensing; amending s. 320.64, F.S.; providing grounds for denial, suspension, or revocation of a license; amending s. 320.641, F.S., relating to unfair cancellation, modification, or replacement of a franchise; creating s. 320.645, F.S.; restricting ownership of a motor vehicle dealership by licensees; providing for application to existing and future agreements; providing severability; providing for future repeal and review; providing an effective date.

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

Section 1. Subsections (1), (5), and (12) of section 320.60, Florida Statutes, are amended 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:

(1) "Manufacturer" means any person, whether a resident or nonresident of this state, who manufactures or assembles motor vehicles or who manufactures or installs on previously assembled truck chassis special bodies or equipment which, when installed, form an integral part of the motor vehicle and which constitute a major manufacturing alteration. The term "manufacturer" includes, in the case of a corporation

CODING. Words in struck through type are deletions from existing law, words underlined are additions.
or copartnership, its central or principal sales corporation
or other agency through which it distributes its products. A
parent, subsidiary, controlled entity or common entity of a
manufacturer, or any other person, other than a motor vehicle
dealer, who is affiliated with a manufacturer by contractual
arrangement or otherwise, shall be deemed to be the agent of
the manufacturer as to any agreement entered into with a motor
vehicle dealer for the purpose of distributing the
manufacturer's motor vehicles. "Common entity" means any
person who shares common ownership with the manufacturer.
"Common ownership" means any common equity interest in the
manufacturer and the common entity wherein the percentage of
that common equity interest is greater than 50 percent.

(5) "Person" means any natural person, partnership,
firm, corporation, or association, joint venture, trust, or
other legal entity.

(12) "Agreement" or "franchise agreement" means
contract, franchise, new motor vehicle franchise, sales and
service selling agreement, dealer agreement, or any other
terminology used to describe the contractual relationship
between a manufacturer, manufacturers, or its distributor,
importer, or factory branch distributors, importers, and a
motor vehicle dealer pursuant to which the motor vehicle
dealer is authorized to sell motor vehicles and perform
warranty or other service upon motor vehicles under a common
name, trade name, trademark, or service mark of the
manufacturer dealers.

Section 2. Subsection (1) of section 320.61, Florida
Statutes, is amended to read:

CODING: Words in struck through type are deletions from existing law; words underlined are additions.
32.61 Licenses required of motor vehicle manufacturers, factory branches, distributors, importers, etc.—

(1) No manufacturer, factory branch, distributor, or importer (all sometimes referred to hereinafter as "licensee") shall engage in business as such in this state without a license therefor as provided in ss. 320.60-320.70. No motor vehicles, foreign or domestic, shall be sold, leased, or offered for sale or lease in this state unless the manufacturer of such motor vehicles and, if applicable, the factory branch, on direct dealership of domestic vehicles; the importer of foreign manufactured vehicles, on direct dealerships; or the distributor, on indirect dealerships of either domestic or foreign vehicles, are licensed under ss. 320.60-320.70. No such licensee's vehicles shall be sold in this state unless either the manufacturer or factory branch, on direct dealerships of domestic vehicles; the importer of foreign manufactured vehicles; on direct dealerships; or the distributor, on indirect dealerships of either domestic or foreign vehicles; as licensed under ss. 320.60-320.70.

Section 3. Subsections (7) and (8) of section 320.64, Florida Statutes, are amended, and subsections (16) and (17) are added to said section to read:

320.64 Denial, suspension, or revocation of license; grounds.—A license may be denied, suspended, or revoked within the entire state or at any specific location or locations at which a licensee engages in business and at which a violation of ss. 320.60-320.70 has occurred, on the following grounds:

(7) The applicant or licensee has unfairly or without due regard to the equities of a motor vehicle dealer, or
without just provocation, threatened to cancel or not to renew
the franchise agreement of such motor vehicle dealer or
threatened to modify or replace a franchise agreement with a
succeeding franchise agreement which would substantially
affect or impair the motor vehicle dealer's sales, service
obligations, or investment.

(8) The applicant or licensee has unfairly or without
due regard to the equities of a motor vehicle dealer, or
without just provocation, canceled, or failed to renew, the
franchise agreement of such motor vehicle dealer or modified
or replaced a franchise agreement with a succeeding franchise
agreement which would substantially affect or impair the motor
vehicle dealer's sales, service obligations, or investment.

(16) The applicant or licensee, directly or
indirectly, through any parent, subsidiary, controlled entity,
common entity, or affiliated company or firm, has unfairly or
without due regard to the equities of a motor vehicle dealer
or without just provocation caused an importer, factory
branch, or distributor of its motor vehicles to terminate,
cancel, not renew, modify, replace, or breach a franchise
agreement with any motor vehicle dealer; and, as of the
effective date of such action, fails to offer such motor
vehicle dealer a franchise agreement containing substantially
the same provisions as contained in such previous franchise
agreement.

(17) Notwithstanding the terms of any franchise
agreement, the applicant or licensee prevents or refuses to
accept the succession to a dealership by any legal heir or
device under the will of a motor vehicle dealer or under the
laws of descent and distribution of this state; provided, the
applicant or licensee shall not be required to accept a
succession which, after notice and administrative hearing,
pursuant to chapter 120, is demonstrated to be detrimental to
the public interest or to the representation of the applicant
or licensee. Nothing contained herein, however, shall prevent
a motor vehicle dealer, during his lifetime, from designating
any person as his successor dealer, by written instrument
filed with and accepted by the applicant or licensee.

Section 4. Section 320.641, Florida Statutes, is
amended to read:

320.641 Unfair cancellation, modification, or
replacement of franchise agreements.--

(1)(a) An applicant or licensee shall give written
notice to notify the motor vehicle dealer and forward a copy
of such notice to the department of the licensee's intention
to discontinue, cancel, or fail to renew the franchise
agreement of any of its motor vehicle dealers, or of the
licensee's intention to modify or replace a franchise with a
succeeding franchise, which modification or replacement will
substantially affect or impair the motor vehicle dealer's
sales, service obligations, or investment, at least 90 days
before the effective date thereof, together with the specific
grounds for discontinuation, cancellation, or failure to
renew, modification, or replacement of said agreement, if
discontinued, canceled, or not renewed.

(b) The failure by the licensee to comply with the 90-
day notice period and procedure prescribed herein shall render
voidable, at the option of the motor vehicle dealer, any
discontinuation, cancellation, or nonrenewal, modification, or
replacement of any franchise agreement. Designation of a
franchise agreement at a specific location as a "nondesignated

CODING Words in struck through type are deletions from existing law, words underlined are additions.
point" shall be deemed an evasion of this section and shall constitute an unfair cancellation.

(2)(a) Franchise agreements are deemed to be continuing unless the applicant or licensee has notified the department of the discontinuation of, cancellation of, or failure to renew, modification of, or replacement of the agreement of any of its motor vehicle dealer. and

Annual renewal of the license provided for under ss. 320.60-320.70 is not necessary for any cause of action against the licensee.

(b) All motor vehicle dealer franchise agreements shall continue in full force and operation, notwithstanding a change, in whole or in part, by a licensee of an established plan or system of distribution of such motor vehicles to motor vehicle dealers, if such change in distribution by the licensee would substantially affect or impair the motor vehicle dealer's sales, service obligations, or investment.

(3) Any motor vehicle dealer whose franchise agreement is discontinued, canceled, or not renewed, modified, or replaced, may, within such 90-day notice period, file with the department a verified complaint in triplicate for a determination of unfair discontinuation, or cancellation, modification, or replacement. Agreements and certificates of appointment shall continue in effect until final determination by the department of the issues raised in such complaint by the motor vehicle dealer, and, except pursuant to s. 320.643, no replacement motor vehicle dealer shall be named for this point or location to engage in business prior to the final adjudication by the department on the complaint discontinuation, cancellation, or failure to renew.

CODING: Words in struck through type are deletions from existing law, words underlined are additions.
(4) Notwithstanding any other provisions of this section, the failure of a motor vehicle dealer to be engaged in business with the public for 10 consecutive business days shall constitute abandonment by the dealer of his franchise agreement. If any motor vehicle dealer abandons his franchise agreement, he shall have no cause of action under this section. However, it shall not be considered abandonment if such failure to engage in business is due to an act of God, a work stoppage, or a delay due to a strike or labor difficulty, a freight embargo, or other cause over which the motor vehicle dealer has no control, including any violation of ss. 320.60-320.70.

(5) If said complainant motor vehicle dealer prevails, he shall be awarded from and against the licensee have a cause of action against the defendant for reasonable attorneys' fees and costs incurred by him in such proceeding; and he shall have a cause of action under s. 320.697 for unfair discontinuation, cancellation, or failure to renew, pursuant to this section.

Section 5. Section 320.645, Florida Statutes, is created to read:

320.645 Restriction upon ownership of dealership by licensee.--No licensee, or any parent, subsidiary, controlled entity, common entity, or other affiliated company or firm, or officer or representative of a licensee, shall own or operate, either directly or indirectly, a motor vehicle dealership in this state for the sale or service of motor vehicles of the manufacturer which are covered by a franchise agreement with a motor vehicle dealer in this state. However, no licensee shall be deemed to be in violation of this section:

CODING: Words in struck through type are deletions from existing law, words underlined are additions.
(1) When operating a motor vehicle dealership for a temporary period, not to exceed 1 year, during the transition from one owner of the motor vehicle dealership to another.

(2) When a motor vehicle dealership is owned or controlled by a licensee during a period while such motor vehicle dealership is being sold pursuant to a bona fide contract or purchase option to the operator of the motor vehicle dealership, provided that the operator is not the licensee or an entity which is under the control of the licensee, or an entity which is commonly held by persons who control the licensee. The operator mentioned herein may be an employee of the licensee, but the employee must be operating the motor vehicle dealership under an agreement whereby he shall become an independent motor vehicle dealership and terminate employment status within 60 months after the date of the agreement.

(3) When a motor vehicle dealership owned and operated by a licensee is located in a market area where there is currently no dealer available to operate the motor vehicle dealership. In such cases, the licensee must, on a continuing basis, make the motor vehicle dealership available for sale at a fair and reasonable price. Approval of the sale of such a motor vehicle dealership to a proposed motor vehicle dealer shall not be unreasonably withheld. It is not necessary for the proposed motor vehicle dealer to provide exclusive facilities and personnel.

Section 6. This act shall apply to all agreements as defined in s. 320.60(12), Florida Statutes, whether presently existing or hereafter entered into, as well as to all amendments, extensions, and renewals of such agreements and

CODING: Words in struck through type are deletions from existing law; words underlined are additions.
all presently established systems of distribution of motor
vehicles.

Section 7. If any provision of this act or the
application thereof to any person or circumstance is held
invalid, the invalidity shall not affect other provisions or
applications of the act which can be given effect without the
invalid provision or application, and to this end the
provisions of this act are declared severable.

Section 8. Section 320.645, Florida Statutes, is
repealed on October 1, 1988, and shall be reviewed pursuant to
s. 11.61, Florida Statutes.

Section 9. This act shall take effect upon becoming a
law.
An act relating to motor vehicle manufacturers, distributors, importers, and dealers; amending s. 320.60, F.S., providing definitions; amending s. 320.61, F.S., requiring certain licensing; amending s. 320.63, F.S., relating to application for license; creating s. 320.632, F.S., relating to franchise agreements; amending s. 320.64, F.S., providing additional grounds for denial, suspension, or revocation of a license; amending s. 320.641, F.S., relating to unfair cancellation of franchise agreements; creating s. 320.6415, F.S., relating to changes in plans or systems of distribution; amending s. 320.643, F.S., relating to transfer, assignment, or sale of franchise agreements; creating s. 320.644, F.S., relating to change of executive management control; creating s. 320.645, F.S., relating to transfer, assignment, or sale of franchise agreements; creating s. 320.646, F.S., relating to change of executive management control; creating s. 320.647, F.S., providing civil damages; providing for application of this act to existing and future agreements; providing for future repeal and review; providing effective dates.

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

Section 1. Subsections (1), (5), and (12) of section 320.60, Florida Statutes, are amended, and subsection (13) is added to said section 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:

(1) "Manufacturer" means any person, whether a resident or nonresident of this state, who manufactures or assembles motor vehicles or who manufactures or installs on previously assembled truck chassis special bodies or equipment which, when installed, form an integral part of the motor vehicle and which constitute a major manufacturing alteration. The term "manufacturer" includes all persons sometimes referred to hereinafter as "licensee") shall engage in business as such in this state without a license therefor as provided in ss. 320.60-320.70. No motor vehicles, foreign or domestic, shall be sold, leased, or offered for sale or lease in this state unless the manufacturer of such motor vehicles and, as the case may be:

(a) Any factory branch, on direct dealerships of domestic vehicles;

(b) Any importer of foreign manufactured vehicles, on direct dealerships;

(c) Any distributor, on indirect dealerships of either domestic or foreign vehicles.

are licensed under ss. 320.60-320.70. No such-licensee's vehicles shall be sold in this state unless either the manufacturer or factory branch; --on--direct-dealerships-of-domestic-vehicles;--on--direct-dealerships;--or--the--distributor;--on--indirect-dealerships-of-either-domestic-or-foreign-vehicles;--is--licensed-under-ss.--320.60-320.70;

Section 3. Subsection (3) of section 320.63, Florida Statutes, is amended to read:

320.63 Application for license; contents.--Any person desiring to be licensed pursuant to ss. 320.60-320.70 shall make application therefor to the department upon a form containing such information as the department shall require. The department may require, with such application or otherwise and from time to time, all of the following, which may be considered by the department in determining the fitness of said applicant to engage in the business for which the applicant desires to be licensed:

(3) From each manufacturer on direct dealerships, distributor on indirect dealerships, or importer on direct dealerships which utilizes an identical blanket basic agreement for its dealers or distributors in Florida, which agreement comprises all or any part of applicant's agreements with motor vehicle dealers in Florida, a copy of the written agreement and all supplements thereto, together with a list of applicant's authorized dealers or distributors and their addresses. The applicant shall further notify the department immediately of the appointment of any additional dealer or
Section 4. Section 320.632, Florida Statutes, is created to read:

320.632 Franchise agreements, agency.--Any parent, subsidiary, or common entity of a manufacturer, any importer, distributor, factory branch, or other entity, which by contractual arrangement or otherwise engages in the distribution of a manufacturer's products, shall be deemed to be the agent of the manufacturer for purposes of any franchise agreement entered into between such agent and a motor vehicle dealer, and shall be bound by the terms and provisions of such franchise agreement as if it were the principal. A manufacturer whose products are offered for sale in this state under any franchise agreement which is executed by an agent of such manufacturer shall be bound by the terms and provisions of such franchise agreement as if it and not the agent had executed the franchise agreement.

Section 5. Section 320.64, Florida Statutes, is amended to read:

320.64 Denial, suspension, or revocation of license; grounds.--A license may be denied, suspended, or revoked within the entire state or within any portion or location or locations at which a licensee engages in business and at which a violation of ss. 320.60-320.70 has occurred, on the following grounds:

(1) The department has proof of unfitness of applicant.

(2) The applicant has made a material misstatement in his application for a license.

(3) The applicant or licensee has failed willfully to comply with any provision of ss. 320.60-320.70 or with any lawful rule or regulation adopted or promulgated by the department.

(4) The applicant or licensee has indulged in any illegal act relating to his business.

(5) The applicant or licensee has coerced or attempted to coerce any motor vehicle dealer into accepting delivery of any motor vehicle or vehicles or parts or accessories therefor or any other commodities which have not been ordered by the dealer.

(6) The applicant or licensee has coerced or attempted to coerce any motor vehicle dealer to enter into any agreement with the licensee.

(7) The applicant or licensee has unfairly or without due regard to the equities of a motor vehicle dealer, or without just

provocation, threatened to cancel or not to renew the franchise agreement of such motor vehicle dealer.

(8) The applicant or licensee has unfairly or without due regard to the equities of a motor vehicle dealer, or without just

provocation, canceled, or failed to renew, the franchise agreement of such motor vehicle dealer.

(9) The applicant or licensee has threatened to modify or replace or has modified or replaced a franchise agreement with a succeeding franchise agreement which would adversely alter the rights or obligations of a motor vehicle dealer under an existing franchise agreement or which substantially impairs the motor vehicle dealer's sales, service obligations, or investment.

(10) The applicant or licensee has attempted to enter, or entered, into a franchise agreement with a motor vehicle dealer who does not, at the time of the franchise agreement, have proper facilities to provide the services to his purchasers of new motor vehicles which are covered by the new motor vehicle warranty issued by the applicant or licensee.

(11) The applicant or licensee has coerced a motor vehicle dealer to provide installment financing for the motor vehicle dealer's purchasers with a specified financial institution.

(12) The applicant or licensee has advertised, printed, displayed, published, distributed, broadcast, or televised, or caused or permitted to be advertised, printed, displayed, published, distributed, broadcast, or televised, in any manner whatsoever, any statement or representation with regard to the sale or financing of motor vehicles which is false, deceptive, or misleading.

(13) The applicant or licensee has refused to deliver, in reasonable quantities and within a reasonable time after receipt of an order, to any duly licensed motor vehicle dealer who has an agreement with such applicant or licensee for the retail sale of new motor vehicles and parts for motor vehicles sold or distributed by the applicant or licensee, any such motor vehicles or parts as are covered by such agreement specifically publicized advertised by such applicant or licensee to be available for immediate delivery. However, the failure to deliver any motor vehicle or part will not be considered a violation of this section if the failure is due to act of God, work stoppage, or delay due to a strike or labor difficulty, a freight embargo, or other cause over which the applicant or licensee has no control. The failure to deliver parts or components for the current, and 5 preceding years', models within 60 days from date of order shall be deemed prima facie unreasonable.

(14) The applicant or licensee has sold, exchanged, or rented a motorcycle or motor scooter which produces in excess of 5 brake horsepower, knowing the use thereof to be by, or intended for, the holder of a restricted Florida driver's license.

(15) The applicant or licensee has engaged in previous conduct which would have been a ground for revocation or suspension of a license if the applicant had been licensed.

(16) Notwithstanding the terms of any franchise agreement, and unless it can be shown that the licensee's franchised dealer is actively negligent, the applicant or licensee has failed to indemnify
and hold harmless its franchised motor vehicle dealer against any judgment for damages or settlement agreed to in writing by the applicant or licensee, including, but not limited to, court costs and reasonable attorney's fees of the motor vehicle dealer, which judgment or settlement arose out of complaints, claims, or lawsuits based upon such grounds as strict liability; negligence; misrepresentation; breach of warranty, express or implied, or dereliction of the sale as described in s. 672.608, less any offset for use recovered by the licensee's franchised motor vehicle dealer, and only to the extent that the judgment or settlement relates to the alleged defective or negligent manufacture, assembly, or design of new motor vehicles, parts, or accessories or other functions of the manufacturer.

17. The applicant or licensee, directly or indirectly, through the actions of any parent, subsidiary, or common entity causes a termination, cancellation, or nonrenewal of a franchise agreement by a present or previous importer, factory branch, or distributor unless, by the effective date of such action, the applicant or licensee offers the motor vehicle dealer whose franchise agreement is terminated, canceled, or nonrenewed a franchise agreement substantially the same provisions contained in the previous franchise agreement or files an affidavit with the department acknowledging its undertaking to assume and fulfill the rights, duties, and obligations of its predecessor importer, factory branch, or distributor under the terminated, canceled, or nonrenewed franchise agreement and the same is reinstated.

18. Notwithstanding the terms of any franchise agreement, the applicant or licensee prevents or refuses to accept the succession to any interest in a franchise agreement by any legal heir or devisee under the will of a motor vehicle dealer or under the laws of descent and distribution of this state; provided, the applicant or licensee shall not be required to accept a succession to any interest in a franchise agreement under the notice and administrative proceeding pursuant to chapter 120, is demonstrated to be detrimental to the public interest or to the representation of the applicant or licensee. Nothing contained herein, however, shall prevent a motor vehicle dealer, during his lifetime, from designating, any person as his successor in interest by written instrument filed with and accepted by the applicant or licensee.

19. The applicant or licensee has included in any franchise agreement with a motor vehicle dealer terms or provisions that are contrary to, prohibited by, or otherwise inconsistent with the provisions contained in ss. 320.60-320.70, or has filed a false affidavit pursuant to s. 320.63(3).

Section 6. Section 320.641, Florida Statutes, is amended to read:

320.641 Unfair cancellation of franchise agreements.

1(a) An applicant or licensee shall give written notice to notify the motor vehicle dealer and forward a copy of such notice to the department of the licensee's intention to modify or replace a franchise with a succeeding franchise, which modification or replacement will adversely alter the rights or obligations of a motor vehicle dealer under an existing franchise agreement or which substantially impairs the motor vehicle dealer's sales, service obligations, or investments of any of its motor vehicle dealers at least 90 days before the effective date thereof, together with the specific grounds for such action: discontinuation; cancellation; or failure to renew of said agreement; if discontinued; canceled; or not renewed.

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

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

(3) Any motor vehicle dealer whose franchise agreement is discontinued, canceled, or not renewed, modified, or replaced, within such 90-day notice period, files with the department a verified complaint in triplicate for a determination of whether such action is an unfair or prohibited discontinuation, or cancellation, nonrenewal, modification, or replacement. Agreements and certificates of appointment shall continue in effect until final determination by the department of the issues raised in such complaint by the motor vehicle dealer, and, except pursuant to s. 320.641, no replacement motor vehicle dealer shall be named for this point or location to engage in business prior to the final adjudication by the department on the complaint: discontinuation; cancellation; or failure to renew.

(4) Notwithstanding any other provisions of this section, the failure of a motor vehicle dealer to be engaged in business with the public for 90 consecutive business days shall constitute abandonment by the dealer of his franchise agreement. If any motor vehicle dealer abandons his franchise agreement, he shall have no cause of action under this section. However, it shall not be considered abandonment if such failure to engage in business is due to an act of God, a work stoppage, or a delay due to a strike or labor difficulty, a freight embargo, or other cause over which the motor vehicle dealer has no control, including any violation of ss. 320.60-320.70.

(5) If said complainant motor vehicle dealer prevails, he shall have a cause of action against the licensee defendant for reasonable attorneys' fees and costs incurred by him in such proceeding and he shall have a cause of action under s. 320.697 for unfair: discontinuation; cancellation; or failure to renew, pursuant to this section.

Section 7. Section 320.6415, Florida Statutes, is created to read:

320.6415 Changes in plan or system of distribution.

1. A motor vehicle dealer franchise agreement shall continue in full force and effect, notwithstanding a change, in whole or in part, in the established plan or system of distribution of the motor vehicles offered for sale under such franchise agreement. The appointment of a newly appointed importer or distributor for motor
vehicles offered for sale under such franchise agreement shall be
designed to be such a change of an established plan or system of
distribution.

(2) Upon the occurrence of such change, the department shall deny
an application:

(a) For any license filed pursuant to ss. 320.60-320.70 unless
the applicant offers to a motor vehicle dealer who is a party to the
franchise agreement a new franchise agreement containing
substantially the same provisions as contained in the
previous franchise agreement or files an affidavit with the department
acknowledging its undertaking to assume and fulfill the rights,
duties, and obligations of its predecessor under the previous
franchise agreement.

(b) For any license filed pursuant to s. 320.27 in any community
or territory in which such franchise or selling agreement is
continuing in full force and operation hereunder, until this section
is complied with.

Section 8. Section 320.643. Florida Statutes, is amended to read:

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

(1) A motor vehicle dealer shall not transfer, assign, or sell a
franchise agreement to another person, unless the dealer first
notifies the licensee of his decision to make such transfer, by
written notice setting forth the prospective transferee's name,
address, financial qualification, and business experience during the
previous 5 years. The licensee shall, in writing, within 60 days
after receipt of such notice, inform the dealer either of his
approval of the transfer, assignment, or sale or of the
unacceptability of the proposed transferee, setting forth the
material reasons for the rejection. If the licensee does not so
inform the dealer within the 60-day period, its approval of the
proposed transfer is deemed granted. No such transfer, assignment,
or sale shall be valid unless the transferee agrees in writing to
comply with all requirements of the franchise then in effect.
Notwithstanding the terms of any franchise agreement, acceptance
by the licensee of the proposed transferee shall not be unreasonably
withheld. For the purposes of this section, refusal by the licensee
to approve a transferee who is of good moral character or
otherwise meets the written, reasonable, and uniformly applied
standards, if any, of the licensee relating to the business
experience of executive management required by the licensee of its
motor vehicle dealers, shall be presumed to be unreasonable.

(2) Notwithstanding the terms of any franchise agreement, no
licensee shall, by contract or otherwise, fail or refuse to give
effect to, prevent, prohibit, or penalize, or attempt to refuse to
give effect to, prevent, prohibit, or penalize, any motor vehicle
dealer or any proprietor, partner, stockholder, owner, or other
person holding or otherwise owning an interest therein, from selling,
assigning, transferring, alienating, or otherwise disposing of, in
whole or in part, the equity interest of any of them in such motor
vehicle dealer to any other person or persons, including a
corporation established or existing for the purpose of owning or
holding, own, or otherwise holding interests of ownership or
security in the motor vehicle dealer, unless the licensee proves at a hearing pursuant to this section that such
sale, transfer, alienation, or other disposition is to a person who
is not, or whose controlling executive management is not, of a good
moral character. A motor vehicle dealer, or any proprietor, partner,
stockholder, owner, or other person holding or otherwise owning an
interest in any motor vehicle dealer desires to sell, assign, transfer,
alienate, or otherwise dispose of any interest in such motor vehicle
dealer shall notify or cause the proposed transferee to so notify the licensee by written notice, setting forth the identity and address of the
proposed transferee. A licensee who receives such notice may, within
60 days following such receipt, file with the department a verified
complaint for a determination that the proposed transferee is not a
person qualified to be a transferee under this section. The licensee
shall have the burden of proof with respect to all issues raised in
such verified complaint. The department shall determine and enter an
order providing either that the proposed transferee is qualified or
is not and cannot be qualified for specified reasons, or providing
the conditions under which a proposed transferee would be qualified.
If the licensee fails to file such verified complaint within the
aforesaid 60-day period or the department, after a hearing, dismisses
the complaint or renders a decision other than disqualifying the
proposed transferee, then the franchise agreement between the motor
vehicle dealer and the licensee shall be deemed amended in accordance
with the determination and order rendered, effective upon compliance
by the proposed transferee with any conditions set forth in the
determination or order.

(3) During the pendency of any such hearing, the franchise
agreement of the motor vehicle dealer shall continue in effect in
accordance with its terms. The department shall expedite any
determination requested under this section.

Section 9. Section 320.644, Florida Statutes, is created to read:

320.644 Change of executive management control.--

(1) No licensee shall prohibit, prevent, or attempt to prohibit
or prevent any motor vehicle dealer from changing the executive
management control of the motor vehicle dealer unless the licensee,
who shall have the burden of proof, proves at a hearing as provided
herein that such change of executive management control of the motor
vehicle dealer is to a person or persons not of good moral character
or who do not meet the written, reasonable, and uniformly applied
standards of the licensee relating to the business experience of
executive management required by the licensee of its motor vehicle
dealers. A motor vehicle dealer who desires to change its executive
management control shall notify the licensee by written notice,
setting forth the name, address, and business experience of executive
management required by the licensee of its motor vehicle
dealers. If the licensee fails to file such verified complaint within the
aforesaid 60-day period or the department, after a hearing, dismisses
the complaint or renders a decision other than disqualifying the
proposed executive management, then the franchise agreement between the motor
vehicle dealer and the licensee shall be deemed amended in accordance
with the determination and order rendered, effective upon compliance
by the proposed executive management with any conditions set forth in the
determination or order.

(2) During the pendency of any such hearing, the franchise
agreement of the motor vehicle dealer shall continue in effect in
accordance with its terms. The department shall expedite any determination requested under this section.

Section 10. Section 320.645, Florida Statutes, is created to read:

320.645 Restriction upon ownership of dealership by licensee.—

(1) No licensee, including a manufacturer, agent of a manufacturer, or any parent, subsidiary, common entity, or officer or representative of the licensee shall own or operate, either directly or indirectly, 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, no such licensee shall be deemed to be in violation of this section:

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

(b) When operating a motor vehicle dealership temporarily for a reasonable period not to exceed 1 year or in a bona fide relationship with an independent person, other than a licensee or its agent or affiliate, who has made a significant investment subject to loss in the dealership and who can reasonably expect to acquire full ownership of said dealership on reasonable terms and conditions; or

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

provided that in any such case, the licensee must, on a continuing basis, make the motor vehicle dealership available for sale to an independent person at a fair and reasonable price. Approval of the sale of such dealership to an independent person or to another motor vehicle dealer shall not be unreasonably withheld. It is not necessary for the proposed motor vehicle dealer to provide exclusive facilities and personnel.

(2) This section shall not be construed to prohibit any licensee from owning or operating a motor vehicle dealership in this state if such dealership was owned or operated by the licensee on the effective date of this act.

Section 11. Section 320.697, Florida Statutes, is amended to read:

320.697 Civil damages.—Any person suffering pecuniary loss or otherwise adversely affected because of a violation by a licensee of ss. 320.60-320.70, notwithstanding the existence of any other remedies under ss. 320.60-320.70, shall have a cause of action against the licensee for damages, and may recover damages therefor in any court of competent jurisdiction in an amount equal to 3 times the pecuniary loss, together with costs and a reasonable attorney’s fee to be assessed by the court. Upon a prima facie showing by the person bringing the action that such a violation by the licensee occurred, the burden of proof shall then be upon the licensee to prove that such violation or unfair practice did not occur.

Section 12. This act shall apply to all presently existing or established systems of distribution of motor vehicles in this state, except to the extent such application would impair contractual agreements in violation of the Florida or federal constitutions. All agreements renewed or entered into subsequent to the effective date of this act shall be governed hereby.

Section 13. Each section which is added to chapter 320, Florida Statutes, by this act is repealed on October 1, 1984, and shall be reviewed by the Legislature pursuant to s. 11.61, Florida Statutes.

Section 14. This act shall take effect upon becoming a law, except section 2, which shall take effect on July 1, 1984.

Became a law without the Governor’s approval.

Filed in Office Secretary of State May 31, 1984.
I. SUMMARY AND PURPOSE

This bill amends provisions in Chapter 320, F.S., "Motor Vehicle Licenses," relating to licensure of motor vehicle dealers, manufacturers, factory branches, importers, and distributors, to provide greater protection for existing franchisees of the above. It provides as a ground for denial, suspension, or revocation of a license certain interference with franchise agreements between an importer, factory branch, manufacturer or distributor and a motor vehicle dealer. In addition, the bill restricts the ownership of dealerships by manufacturers, importers or factory branches with certain exceptions, and it provides certain licensing criteria which must be complied with upon the appointment of a new importer, manufacturer, factory branch, or distributor or upon a change in a system or plan of distribution if there is an existing franchisee adversely affected by such change.

II. CURRENT LAW AND EFFECT OF CHANGES

A. CURRENT LAW

Chapter 320 of the Florida Statutes governs motor vehicle licenses. Section 320.27 requires motor vehicle dealers to be licensed. Sections 320.60-320.70 pertain to regulation of motor vehicle manufacturers, factory branches, distributors, and
importers. More specifically, these sections provide for licensure (320.61, 320.62, 320.63); denial, suspension or revocation of a license (s. 320.64); unfair cancellation of franchise agreements (s. 320.641); and dealer licenses in areas previously served (s. 320.642).

Section 320.642, currently provides that the Department of Highway Safety and Motor Vehicles (hereafter referred to as "Department") shall deny an application for a motor vehicle dealer license if the licensee (which is defined in s. 320.60 as the manufacturer, factory branch, distributor or importer) has existing franchised dealers in that same community or territory and those dealers have complied with the licensee's agreements and are providing adequate representation in that area. The burden of proof for showing inadequate representation is upon the licensee, not upon the dealer/applicant.

Florida Administrative Code Rule 15C-1.08 requires the Department to notify existing franchisees of an applicant's intent to establish a new dealership or franchise. Existing franchisees have the opportunity to request a hearing challenging such new franchise. It is then up to the Director of the Division of Motor Vehicles to either grant or deny the license for the new franchise.

Section 320.697 allows any person suffering pecuniary loss because of a violation by a licensee of ss. 320.60-320.70 a cause of action for damages equal to three times the pecuniary loss together with costs and attorney's fees.

In addition to the above, both Florida law and federal law protect motor vehicle dealers and franchisees from any antitrust violations or from any coercion and intimidation which automobile manufacturers may be able to impose on their retail dealers by virtue of the manufacturers' superior economic position. See for e.g., Chapter 542, F.S., Automobile Dealer's Day in Court Act (15 U.S.C.S. ss. 1221 et seq. (1956)), and the Sherman Act (15 U.S.C.S. ss. 1-7 (1890)).

B. EFFECT OF CHANGES

This bill contains thirteen sections which provide as follows:

SECTION 1 amends the definitional section of s. 320.60, F.S., by amending the definitions of "manufacturer," "person," and "agreement," and by creating a definition for "common entity." The definition of "manufacturer" is amended to include any entity through which a manufacturer distributes its products. The definition of "agreement" is amended to be interchangeable with "franchise agreement" and both are then defined to mean any agreement or relationship pursuant to which a motor vehicle dealer is authorized to transact business pertaining to motor vehicles which are intended for sale under a common name, trademark, or service mark of the manufacturer.

SECTION 2 of the bill amends s. 320.61, F.S., to expand the group of persons who must be licensed pursuant to ss. 320.60-320.70. Under this amendment, all manufacturers doing business in this state must be licensed. Prior to this amendment, only those manufacturers who were engaged in the business of manufacturing in this state had to be licensed. In addition, this section is amended to require any factory branch, importer, or distributor who leases or offers for lease motor vehicles in this state to be licensed. Previously, only those persons selling or offering for sale motor vehicles had to be licensed.
SECTION 3 of the bill amends s. 320.63, F.S., "Application for a license; contents.--" to require a licensee to keep the department abreast of any revision, modification, or addition to a franchise agreement on file with the department. It further prohibits the offering of any franchise agreement to a motor vehicle dealer until the applicant or licensee files with the department an affidavit acknowledging that the terms or provisions of the agreement are not inconsistent with, prohibited by, or contrary to the provisions of ss. 320.60-320.70 (regulating dealers, manufacturers, importers, distributors, and factory branches).

SECTION 4 of this bill creates a new section 320.632 which mandates an agency relationship between a manufacturer and any person distributing a manufacturer's products, and vice versa, for purposes of any franchise agreement entered into by either party with a motor vehicle dealer.

SECTION 5 amends the grounds provided for denial, suspension, or revocation of a manufacturer's, distributor's, importer's, or factory branch's license provided for in section 320.64, F.S., to include the following:

(1) The applicant or licensee has threatened to modify or replace or has modified or replaced an existing franchise agreement with one which would adversely alter the rights or obligations of a motor vehicle dealer or would substantially impair the dealer's sales, service obligations, or investment.

(2) The applicant or licensee, directly or indirectly, causes a termination, cancellation, or non-renewal of a franchise agreement by a present or previous importer, factory branch, or distributor, unless, the applicant or licensee either (1) offers the affected dealer a franchise agreement containing substantially the same provisions contained in the previous franchise agreement; or (2) files with the Department of Highway Safety and Motor Vehicles an affidavit acknowledging its undertaking to assume and fulfill the affected dealer's franchise agreement.

(3) Notwithstanding the terms of any franchise agreement, the applicant or licensee refuses to accept the succession to any interest in a franchise agreement by any legal heir or devisee of a dealer. However, if after a hearing it is determined that such succession would be detrimental to the public interest or to the representation of the applicant or licensee, such refusal shall be permitted.

(4) The applicant or licensee has either:

(a) included in a franchise agreement terms or provisions that are contrary to, prohibited by, or otherwise inconsistent with the provisions of ss. 320.60-320.70 (regulating dealers, manufacturers, importers, distributors, and factory branches); or

(b) filed with the department pursuant to s. 320.63(3) a false affidavit. [The statutory section referred to requires a licensee to file an affidavit acknowledging that the terms or provisions of a new franchise agreement are not inconsistent with, prohibited by, or contrary to the provisions of ss. 320.60-320.70 (regulating dealers, manufacturers, importers, distributors, and factory branches)].

SECTION 6 amends s. 320.641, F.S., to require an applicant or licensee to give written notice to a dealer and to the department of the licensee's intention to modify or replace a franchise
agreement with a succeeding franchise agreement which will adversely alter the rights or obligations of a dealer under an existing agreement. Prior to this amendment, the applicant or licensee only had to notify the department and dealer of any intent to discontinue, cancel, or not renew a franchise agreement. Failure to comply with such notification requirements constitutes an unfair cancellation.

Dealers affected by the applicant or licensee's actions may file a complaint with the department for a hearing to determine whether such action is unfair or prohibited.

Any affected franchise agreement is deemed to be continuing until a final determination is rendered by the department.

SECTION 7 creates a new section in the statutes, s. 320.6415, F.S., to govern changes in a plan or system of distribution. It provides that all dealer franchise agreements shall remain in full force and operation notwithstanding a change, in whole or in part, of an established plan or system of distribution. It further requires the department to deny a license to any manufacturer, distributor, importer, or factory branch that alters its plan or system of distribution, unless such person either (1) offers the affected dealer(s) a new franchise agreement containing substantially the same provisions as contained in the previous franchise agreement; or (2) files with the department an affidavit acknowledging its undertaking to assume and fulfill the previous franchise agreement. The department is also required by this section to deny any application for a dealer license in any community or territory covered by an existing franchise agreement until the above provisions have been complied with.

SECTION 8 amends s. 320.643, F.S., to expand the scope of that section with respect to the transfer, assignment, or sale of franchise agreements. This amendment provides as follows:

(1) It provides that refusal by the licensee to accept a proposed transferee who is of good moral character and who meets any uniformly applied standards of the licensee relating to the business experience of executive management, shall be presumed to be an unreasonable withholding of acceptance of such transfer.

(2) It prohibits a licensee (i.e., a manufacturer, distributor, importer, or factory branch) from prohibiting the transfer of any interest in a franchise agreement to any person unless the licensee proves at a hearing that such transfer is to a person who is not or whose controlling management is not of good moral character. Any person transferring such interest must notify or cause the proposed transferee to notify the licensee in writing of such transfer. A notified licensee is given 60 days to file a complaint with the department contesting such transfer. At any hearing held to determine the qualification of a proposed transferee, the licensee shall have the burden of proof. An existing franchise agreement shall continue in effect in accordance with its terms during the pendency of any hearing held under this section.

SECTION 9 creates a new section in the statutes, s. 320.644, F.S., to govern change on executive management control. It prohibits a licensee from prohibiting or attempting to prohibit any motor vehicle dealer from changing the executive management control of a dealer unless the licensee proves at a hearing that such change is to a person or persons who are not of good moral character or who do not meet any written, reasonable, and uniformly applied standards of the licensee relating to business experience of executive management required by the licensee.
Any dealer desiring to change its executive management control shall notify the licensee of the intended change. Within 60 days of such notice, the licensee may file a complaint with the department challenging such change. The licensee in the event of a hearing has the burden of proving the proposed change will result in persons who are not of good moral character or who do not meet the licensee's standards.

SECTION 10 creates a new section in the statutes, s. 320.645, F.S., to restrict the direct or indirect ownership of a dealership by a licensee in this state. Excepted from this provision are the following:

(1) Operation of a dealership for a temporary period, not to exceed one year, during the transition from one owner to another;

(2) Operation of a dealership temporarily for a reasonable period, not to exceed one year, or in a bona fide relationship with an independent person who has made a significant investment subject to loss in the dealership and who can reasonably expect to acquire full ownership of the dealership;

(3) Any dealership for which the department determines after a hearing that there is no independent person available in the community or territory to own and operate the dealership in a manner consistent with the public interest, however, the licensee must make the dealership available for sale to an independent person on a continuing basis; and

(4) Any dealerships owned or operated by a licensee on the effective date of this act.

SECTION 11 amends s. 320.697, F.S., which relates to civil damages allowed to a person suffering pecuniary loss as a result of a violation by a licensee of ss. 320.60-320.70 to allow any person adversely affected by such violation to seek damages.

SECTION 12 makes this act applicable to all presently existing or established systems of distribution of motor vehicles in this state, except to the extent that such application is unconstitutional.

SECTION 13 provides that all sections added to chapter 320 by this act shall be reviewed by the Legislature pursuant to repeal on October 1, 1988.

SECTION 14 is the effective date clause. It provides that the act shall take effect upon becoming a law, except for Section 2, the licensure provisions, which shall take effect on July 1, 1984.

III. ECONOMIC IMPACT CONSIDERATIONS

A. PRIVATE SECTOR CONSIDERATIONS

For the most part, the economic impact of this bill in the private sector is indeterminable since no one knows how many licensees will be subject to its sanctions. Potentially, all licensees may be subject to this bill so the following figures may be instructive:

In 1983, there were 1342 new motor vehicle dealer licenses issued in Florida. Of this number, approximately 800 were for automobile dealers. The remainder were for either truck or motorcycle dealers. Of these 800 automobile dealers, the majority have a franchise with only one manufacturer, according to the Florida Automobile Dealers Association.
In the licensing year of October 1983-September 1984, to date there have been a total of 113 licenses issued for manufacturers, distributors, factory branches, and importers of new motor vehicles.

Inasmuch as this bill seeks to protect existing dealerships from having their franchise agreements terminated or breached by a manufacturer, factory branch, distributor, or importer without just provocation or because of appointment of a new dealership, this bill should have its greatest impact on those manufacturers, factory branches, distributors, and importers who may have to continue abiding by franchise agreements that they otherwise may have been able to cancel or not renew prior to enactment of this bill.

The economic impact of this bill on consumers is indeterminable.

B. PUBLIC SECTOR CONSIDERATIONS

This bill should have little or no impact in the public sector.

IV. COMMENTS

Restrictions similar to those placed on licensees in Section 10 of this bill prohibiting them from owning dealerships were upheld by the United States Supreme Court in Exxon Corp. v. Governor of Maryland, 437 U.S. 117 (1978). In Exxon the Court upheld against constitutional challenges of due process, commerce clause, and antitrust violations, a Maryland statute which prohibited producers or refiners of petroleum products from operating retail service stations within the state.

Statement of Substantial Changes Made in Committee Substitute:

1. Section 2 of both bills amends s. 320.61 (Licenses required of motor vehicle manufacturers, factory branches, distributors, importers, etc.--). However, this bill makes a substantial change in that section which was not in SB 1077. Under this bill, all manufacturers who engage in business in this state must be licensed. Under existing law and under SB 1077, only those manufacturers who engage in business "as such" in this state have to be licensed.

2. Section 3 of this bill amending s.320.63, F.S., is new to this bill. This new section requires in part a licensee to keep the department abreast of changes made in a franchise agreement on file with the department.

3. Section 3 of this bill creates a new section in the statutes, s. 320.632 (Franchise agreements, agency.--). This new section mandates an agency relationship between any entity distributing a manufacturer's product, and the manufacturer, with respect to any franchise agreements entered into with dealers. There was no similar provision contained in SB 1077.

4. Both bills amend s. 320.64 (Denial, suspension, or revocation of license; grounds.--), though this bill makes more substantial amendments to that section than did SB 1077. SB 1077 added as an additional ground for license denial, suspension, or revocation for an importer, factory branch, or distributor to cause either directly or indirectly and without just provocation, the termination, cancellation, non-renewal, or breach of a dealer's franchise agreement. This bill retains the substance of that section, but excuses such action in the event that the applicant or licensee either offers the affected dealer a
franchise agreement containing substantially the same provisions contained in the previous franchise agreement, or, files an affidavit with the department agreeing to abide by the existing agreement.

In addition, this section adds two new subsections to that statutory section. These newly created subsections authorize the department to deny, suspend, or revoke a license because:

1. The applicant or licensee has threatened to modify or replace or has modified or replaced a franchise agreement with a succeeding franchise agreement which adversely affects a dealer; or

2. The applicant or licensee prevents or refuses to accept the succession to any interest in a franchise agreement by any legal heir or devisee of a dealer, unless it is determined after a hearing that accepting such succession would be detrimental to the public interest or to the representation of the applicant or licensee.

5. SB 1077 mandated an award of attorney's fees and costs in the event a dealer prevails at a hearing. This bill however retains current law which provides that a dealer has to file a separate court action to recover costs.

6. Section 7 of this bill creates a new section in the statutes which was not contained in SB 1077. This new section, s. 320.6415 (Changes in plan or system of distribution.--), provides that a dealer's franchise agreement shall continue in full force and operation, notwithstanding a change in whole or in part, of an established plan or system of distribution of motor vehicles offered for sale under such franchise agreement. This section further prohibits the licensing of a manufacturer, distributor, factory branch, or importer, in the event of such change in an established plan of distribution unless the applicant or licensee either offers a new franchise agreement to the dealer containing substantially the same provisions as the old, or files an affidavit with the department agreeing to assume all duties and obligations under the existing franchise agreements.

7. Section 8 of this bill amends s. 320.643 (Transfer, assignment, or sale of franchise agreements.--) to add two new subsections governing a dealer selling, assigning, or otherwise disposing of an interest in a franchise agreement. Procedures for notice and a hearing are provided. No similar provision was found in SB 1077.

8. Section 9 of this bill creates a new statutory section, s. 320.644 (Change of executive management control.--). This new section prohibits a licensee from preventing or attempting to prevent a dealer from changing the executive management control of the dealer. No similar provision was contained in SB 1077.

9. Section 11 of this bill amends s. 320.697 (Civil damages.--) to allow a person "adversely affected" to have a cause of action for violation of ss. 320.60-320.70, rather than just those persons "suffering pecuniary loss" as the statute now requires. There was no similar provision in SB 1077.

10. Section 12 of this bill makes this act applicable to all presently existing or established systems of distribution of motor vehicles in this state, except to the extent that such application is unconstitutional. Section 6 of SB 1077 made the act retrospectively and prospectively applicable to all agreements as well as to all systems of distribution.
11. The severability clause of SB 1077 has been deleted as unnecessary.

12. The effective dates clause has been amended to provide that section 2 of the act (the licensing provisions) will take effect July 1, 1984. The remainder of the act will take effect upon becoming a law.

V. LEGISLATIVE HISTORY

A. ENACTED BILL

SB 1077 was referred to the Senate Committees on Commerce and Appropriations. On May 1, 1984, the Senate Commerce Committee reported the bill favorably as a CS (See Part IV of this Staff Report for the Statement of Substantial Changes made in the Committee Substitute). The bill was then sent to the Appropriations Committee, from which it was withdrawn on May 10, 1984 and placed on the Senate Calendar. On May 15, 1984, it was placed on the Senate Special Order Calendar and passed by a vote of 37-0 (SJ 275).

Received in the House on May 16, 1984, the bill was placed on the Calendar as a substitute for CS/HB 890. That same day, the bill was passed by the House by a vote of 107-0 (HJ 423).

The bill was signed by the Governor on May 23, 1984.

B. DISPOSITION OF COMPANION

HB 890 was referred to the House Commerce Committee which reported the bill favorably as a CS on April 18, 1984. The CS was placed on the House Calendar April 26, 1984 and on the Special Order Calendar May 2, 1984. On May 14, 1984 the CS was read for the first and second times. On the second reading, four amendments were adopted to conform the bill to its Senate counterpart (HJ 404). On May 16, 1984, the identical Senate bill was substituted for the House bill and passed while the House bill was laid on the table under the rules.

Prepared by:  
Tamara K. Nelson

Staff Director:  
Wyatt F. Martin
AGENDA

HOUSE COMMERCE COMMITTEE MEETING
APRIL 18, 1984

1. HB 702 - Bankhead - Home equity conversion
2. HB 713 - Gallagher - Interest rates and finance charges
3. HB 921 - Silver - Insurance; surplus lines
4. HB 339 - Sanderson - Labor organizations
5. HB 797 - Silver - Investment solicitation
   PCS/HB 797 - Silver - Investment solicitation
6. HB 710 - Pajcic - Instruments deemed mortgages
7. HB 782 - Meffert - Life insurance agents
8. HB 753 - Grant - Cemeteries
9. HB 916 - Hodges-Locke-Selph-Mitchell-Shackelford - Farm equipment manufacturers and dealers
10. HB 958 - Deutsch - Counterfeit trademarks
11. HB 901 - Smith - Secured transactions
12. HB 960 - Thomas - Vehicle insurance
13. HB 890 - Lippman - Motor vehicle manufacturers, distributors, importers, and dealers
14. HB 946 - Logan - Investments
15. HB 781 - Messersmith - Health studio services
16. HB 776 - Mackenzie - Insurance; hospice care coverage
17. HB 1148 - Committee on Higher Education - Community colleges
18. HB 1131 - Rochlin-Kutun-Spaet - Health insurance
19. HB 519 - Press - Wages
1:28

Meeting Opens
Roll Call

HB 702 - Rep. Williams moves to lay on the table the Gallagher amendment left pending from 4/16/84 meeting which motion is denied

Hargrett offers an amendment

Wallace has question on the bill

Rep. Williams moves to lay amendment on the table

1:35

Hargrett debates the bill

Bankhead, Williams, Hargrett, Hazouri debate the bill and amendment

Hazouri moves the bill

1:40

Gallagher speaks to his amendment

1:45

Rep. Williams has question on the Gallagher amendment

1:46

amendment failed

HB 702 adopted

1:47

HB 901 bill moved and adopted without objection

motion taken to take items 13-19 out of subcommittee and put on full committee agenda - motion adopted unanimously

HB 946 - moved and voted out favorably

1:48

HB 946 - Rep. Logan presents the bill

Rep. Kutun and other offer an amendment on p.2, l.11

1:49

Rep. Kutun speaks on the amendment to HB 946

Mr. Martinez move for the bill

HB 946 adopted unanimously

1:53

HB 713 - TP'd

HB 921 - Rep. Silver presents the bill which is adopted unanimously
1:55  HB 339 - Rep. Sanderson presents the bill

Rep. Lehtinen announces that there are 15 amendments on HB 339

Rep. Gardner offers amendments

Rep's. Silver and Simon debate the amendments

Gardner Am. #1 fails

Gardner Am. #2 adopted

Gardner Title Amendment adopted without objection

2:02  Amendment offered on p.2, 1.25-28, Section 4 removed from the bill - amendment adopted by voice vote

Kutun amendment p.2, 1.4, amendment moved by Chairman, adopted by voice vote

2:07  Robert Sugarman, AFL-CIO spoke against the bill

Rep. Kutun moves the previous question - voice vote adopts the motion

bill sponsor called to close on the bill

2:12  HB 339 fails - roll call vote

2:15  HB 781 - Rep. Messersmith presents the bill

2:15  TAPE TURNED OVER - TAPE 1 - SIDE B

Rep. Messersmith offers lengthy amendment

2:18  HB 781 is TP'd

Rep. Upchurch has question on the amendment to the amendment

2:22  Rep. Upchurch moves to send HB 781 back to subcommittee

Rep. McEwan speaks against the motion
Rep. Danson speaks against the motion

Mr. Upchurch closes on his motion which fails

HB 781 is TP'd

2:30  HB 782 - Rep. Meffert subcommittee amendment and an amendment are offered

Subcommittee amendment, amendment, and amendment to title amendment are adopted without objection
2:30 con't. HB 782 is adopted unanimously

2:32 HB 958 - Rep. Deutsch presents the bill
Am. #2 defeated
bill as amended is adopted

2:35 HB 890 - Rep. Lippman offers the bill and speaks to the amendment which is adopted as amended

2:45 HB 1148 - Rep. Wetherell presents the bill
Rep. Hazouri offers amendment on p.1, 1.17
Rep. Danson has question regarding Board of Trustees

2:55 7 amendments are adopted without objection
Rep. Silver moves to make it a committee substitute bill as amended is adopted

3:00 HB 797 - Rep. Silver moves that CS/HB 797 be taken up
Comptroller Gerald Lewis speaks to the bill
Alexander M. Siegel, National Telemarketing Association, speaks for CS/HB 797
Chris Anderson, Department of Banking and Finance, speaks for HB 797

3:10 Rep. Upchurch debates the bill and amendments
Mr. Anderson responds to questions

3:12 Rep. Wallace moves to extend committee meeting time to 3:30

3:13 Rep. Kutun speaks against motion to lay PCS/HB 797 on the tal
Rep. Silver moves the previous question on the bill voice vote - motion fails
Meffert amendment on p.3, 1.17
Kutun amendment offered

3:28 Rep. Silver opposes the Kutun amendment
Comptroller re-addresses the bill

3:32 Point of Order by Rep. Martinez
Meeting Closes
TALK SHEET FOR HB 890

THIS BILL AMENDS PROVISIONS IN CHAPTER 320, F.S., "MOTOR VEHICLE LICENSES," RELATING TO LICENSURE OF MOTOR VEHICLE DEALERS, MANUFACTURERS, FACTORY BRANCHES, IMPORTERS, AND DISTRIBUTORS, TO PROVIDE GREATER PROTECTION FOR EXISTING FRANCHISEES OF THE ABOVE. IT PROVIDES AS A GROUND FOR DENIAL, SUSPENSION, OR REVOCATION OF A LICENSE CERTAIN INTERFERENCE WITH FRANCHISE AGREEMENTS BETWEEN AN IMPORTER, FACTORY BRANCH, MANUFACTURER, OR DISTRIBUTOR AND A MOTOR VEHICLE DEALER RELATING TO THE SAME LINE-MAKE OF MOTOR VEHICLES AS THE APPLICANT'S OR LICENSEE'S. THE TERM "LINE-MAKE" IS DEFINED IN THE BILL. IN ADDITION, THE BILL RESTRICTS THE OWNERSHIP OF DEALERSHIPS BY MOTOR VEHICLE SUPPLIERS WITH CERTAIN EXCEPTIONS, AND IT PROVIDES CERTAIN LICENSING CRITERIA WHICH MUST BE COMPLIED WITH UPON THE APPOINTMENT OF A NEW IMPORTER, MANUFACTURER, FACTORY BRANCH, OR DISTRIBUTOR OF A LINE-MAKE OF MOTOR VEHICLES OR UPON A CHANGE IN THE DISTRIBUTION OF ANY SUCH LINE-MAKE IF THERE IS AN EXISTING FRANCHISEE HANDLING THAT SAME LINE-MAKE.
NOTICE
COMMITTEE MEETING

Joe Brown
Secretary of the Senate

You are hereby notified that the Committee will meet on May 1, 1984, at 2:00 p.m. - 5:00 p.m. in Room "A", Senate Office Building, and will consider the following:

<table>
<thead>
<tr>
<th>Bill Number</th>
<th>Introducer</th>
<th>Subject</th>
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<tr>
<td>SB 5</td>
<td>Senator Scott and others</td>
<td>Telephone Companies</td>
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<td>SB 51</td>
<td>Senator Don Childers &amp; others</td>
<td>Beverage Law</td>
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<td>SB 716</td>
<td>Senator Thurman</td>
<td>Horseracing</td>
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<td>SB 1077</td>
<td>Senator Jenne</td>
<td>Motor Vehicle Dealers</td>
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<td>SB 887</td>
<td>Senator Crawford</td>
<td>Securities Act</td>
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<td>SB 893</td>
<td>Senator Castor</td>
<td>Labor</td>
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<td>SB 581</td>
<td>Senator Margolis</td>
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<td>SB 719</td>
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<td>SB 567</td>
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<td>SB 668</td>
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<td>Economic Development</td>
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<td>SB 1092</td>
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<td>Senator Girardeau</td>
<td>Dental Insurance</td>
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<td>SB 708</td>
<td>Senator Henderson</td>
<td>Alcoholic Beverages and Tobacco Division</td>
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<td>279</td>
<td>Senator Jennings and others</td>
<td>Insurance</td>
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<td>SB 96</td>
<td>Senator Fox</td>
<td>Firefighters</td>
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<td>SB 573</td>
<td>Senator McPherson</td>
<td>Electric Power</td>
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<td>SB 261</td>
<td>Senator Gordon</td>
<td>Lotteries</td>
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Chairman, (Committee)

PRIOR to regular Session file 3 copies with Secretary of Senate 14 days before meeting (Rule 2.6) and DURING regular Session at least 2 days before meeting (Rules 2.1 and 2.8). File 1 copy with President, 1 copy with Sergeant-at-Arms.)
A bill to be entitled

An act relating to motor vehicle manufacturers, distributors, importers, and dealers; amending
s. 320.60, F.S., providing definitions,
amending s 320.61, F.S., requiring certain
licensing; amending s' 320.63, F.S., relating
to application for license; creating s.
320.632, F.S., relating to franchise
agreements, amending s. 320 64, F.S., providing
additional grounds for denial, suspension, or
revocation of a license; amending s. 320.641,
F.S., relating to unfair cancellation of
franchise agreements; creating s. 320 6415,
F.S., relating to changes in plans or systems
of distribution, amending s. 320 643, F.S.,
relating to transfer, assignment, or sale of
franchise agreements; creating s. 320 644,
F.S., relating to change of executive
management control; creating s. 320 645, F.S.,
restricting ownership of a motor vehicle
dealership by licensees; amending s 320.697,
F.S., providing for civil damages; providing
for application of this act to existing and
future agreements; providing for future repeal
and review, providing effective dates

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

Section 1. Subsections (1), (5), and (12) of section
320.60, Florida Statutes, are amended, and subsection (13) is
added to said section to read:

CODING. Words in struck through type are deletions from existing law, words underlined are additions.
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:

(1) "Manufacturer" means any person, whether a resident or nonresident of this state, who manufactures or assembles motor vehicles or who manufactures or installs on previously assembled truck chassis special bodies or equipment which, when installed, form an integral part of the motor vehicle and which constitute a major manufacturing alteration. The term "manufacturer" includes any in the case of a corporation or other entity an agency through which, by contractual agreement or otherwise, it distributes its products.

(5) "Person" means any natural person, partnership, firm, corporation, or association, joint venture, trust, or other legal entity.

(12) "Agreement" or "franchise agreement" means contract, franchise, new motor vehicle franchise, sales and service selling agreement, dealer agreement, or any other terminology used to describe the contractual relationship between manufacturers, distributors, importers, factory branches, and motor vehicle dealers, pursuant to which a motor vehicle dealer is authorized to transact business pertaining to motor vehicles which are intended for sale under a common name, trade name, trademark, or service mark of the manufacturer.

(13) "Common entity" means a person who is either controlled or owned, beneficially or of record, by one or more persons who also control or own more than 40 percent of the
voting equity interests of a manufacturer, or who shares
directors or officers or partners with a manufacturer.

Section 2. Subsection (1) of section 320.61, Florida
Statutes, is amended to read:

320.61 Licenses required of motor vehicle
manufacturers, factory branches, distributors, importers,
etc.--

(1) No manufacturer, factory branch, distributor, or
importer (all sometimes referred to hereinafter as "licensee")
shall engage in business as such in this state without a
license therefor as provided in ss. 320.60-320.70. No motor
vehicles, foreign or domestic, shall be sold, leased, or
offered for sale or lease in this state unless the
manufacturer of such motor vehicles and, as the case may be:

(a) Any factory branch, on direct dealerships of
domestic vehicles,

(b) Any importer of foreign manufactured vehicles, on
direct dealerships, or

(c) Any distributor, on indirect dealerships of either
domestic or foreign vehicles,

are licensed under ss. 320.60-320.70. No such licensee's
vehicles shall be sold in this state unless either the
manufacturer or factory branch, on direct dealerships of
domestic vehicles, the importer of foreign manufactured
vehicles, on direct dealerships, or the distributor, on
indirect dealerships of either domestic or foreign vehicles,
is licensed under ss. 320.60-320.70.

Section 3. Subsection (3) of section 320.63, Florida
Statutes, is amended to read:

CODING: Words in struck through type are deletions from existing law, words underlined are additions.
320.63 Application for license; contents.--Any person desiring to be licensed pursuant to ss. 320.60-320.70 shall make application therefor to the department upon a form containing such information as the department shall require. The department may require, with such application or otherwise and from time to time, all of the following, which may be considered by the department in determining the fitness of said applicant to engage in the business for which the applicant desires to be licensed:

(3) From each manufacturer on direct dealerships, distributor on indirect dealerships, or importer on direct dealerships which utilizes an identical blanket basic agreement for its dealers or distributors in Florida, which agreement comprises all or any part of applicant's agreements with motor vehicle dealers in Florida, a copy of the written agreement and all supplements thereto, together with a list of applicant's authorized dealers or distributors and their addresses. The applicant shall further notify the department immediately of the appointment of any additional dealer or distributor, and, not later than 60 days prior to the date a revision or modification to a franchise agreement is offered to a motor vehicle dealer in Florida, the licensee shall notify the department of any such revision, modification, or addition to the franchise agreement on file with the department, or of any individual dealer or distributor supplement thereto, provided that, in no event shall a franchise agreement be offered to a motor vehicle dealer in Florida until the applicant or licensee files an affidavit with the department acknowledging that the terms or provisions of the agreement are not inconsistent with, prohibited by, or contrary to the provisions contained in ss. 320.60-320.70.

CODING: Words in struck through type are deletions from existing law, words underlined are additions.
Section 4. Section 320.632, Florida Statutes, is created to read:

320.632 Franchise agreements, agency. -- Any parent, subsidiary, or common entity of a manufacturer, any importer, distributor, factory branch, or other entity, which by contractual arrangement or otherwise engages in the distribution of a manufacturer's products, shall be deemed to be the agent of the manufacturer for purposes of any franchise agreement entered into between such agent and a motor vehicle dealer, and shall be bound by the terms and provisions of such franchise agreement as if it were the principal. A manufacturer whose products are offered for sale in this state under any franchise agreement which is executed by an agent of such manufacturer shall be bound by the terms and provisions of such franchise agreement as if it and not the agent had executed the franchise agreement.

Section 5. Section 320.64, Florida Statutes, is amended to read:

320.64 Denial, suspension, or revocation of license; grounds -- A license may be denied, suspended, or revoked within the entire state or at any specific location or locations at which a licensee engages in business and at which a violation of ss. 320.60-320.70 has occurred, on the following grounds:

(1) The department has proof of unfitness of applicant.

(2) The applicant has made a material misstatement in his application for a license.

CODING: Words in struck through type are deletions from existing law, words underlined are additions.
(3) The applicant or licensee has failed willfully to comply with any provision of ss. 320.60-320.70 or with any lawful rule or regulation adopted or promulgated by the department.

(4) The applicant or licensee has indulged in any illegal act relating to his business.

(5) The applicant or licensee has coerced, or attempted to coerce any motor vehicle dealer into accepting delivery of any motor vehicle or vehicles or parts or accessories therefor or any other commodities which have not been ordered by the dealer.

(6) The applicant or licensee has coerced or attempted to coerce any motor vehicle dealer to enter into any agreement with the licensee.

(7) The applicant or licensee has unfairly or without due regard to the equities of a motor vehicle dealer, or without just provocation, threatened to cancel or not to renew the franchise agreement of such motor vehicle dealer.

(8) The applicant or licensee has unfairly or without due regard to the equities of a motor vehicle dealer, or without just provocation, canceled, or failed to renew, the franchise agreement of such motor vehicle dealer.

(9) The applicant or licensee has threatened to modify or replace or has modified or replaced a franchise agreement with a succeeding franchise agreement which would adversely alter the rights or obligations of a motor vehicle dealer under an existing franchise agreement or which substantially impairs the motor vehicle dealer's sales, service obligations, or investment.

(10) The applicant or licensee has attempted to enter, or entered, into a franchise agreement with a motor
vehicle dealer who does not, at the time of the franchise
agreement, have proper facilities to provide the services to
his purchasers of new motor vehicles which are covered by the
new motor vehicle warranty issued by the applicant or
licensee.

(11) The applicant or licensee has coerced a motor
vehicle dealer to provide installment financing for the motor
vehicle dealer's purchasers with a specified financial
institution.

(12) The applicant or licensee has advertised,
printed, displayed, published, distributed, broadcast, or
televised, or caused or permitted to be advertised, printed,
displayed, published, distributed, broadcast, or televised, in
any manner whatsoever, any statement or representation with
regard to the sale or financing of motor vehicles which is
false, deceptive, or misleading.

(13) The applicant or licensee has refused to
deliver, in reasonable quantities and within a reasonable time
after receipt of an order, to any duly licensed motor vehicle
dealer who has an agreement with such applicant or licensee
for the retail sale of new motor vehicles and parts for motor
vehicles sold or distributed by the applicant or licensee, any
such motor vehicles or parts as are covered by such agreee-
specifically publicly advertised by such applicant or licensee
to be available for immediate delivery. However, the failure
to deliver any motor vehicle or part will not be considered a
violation of this section if the failure is due to act of God,
work stoppage, or delay due to a strike or labor difficulty, a
freight embargo, or other cause over which the applicant or
licensee has no control. The failure to deliver parts or
components for the current, and 5 preceding years', models
within 60 days from date of order shall be deemed prima facie unreasonable.

(14) The applicant or licensee has sold, exchanged, or rented a motorcycle or motor scooter which produces in excess of 5 brake horsepower, knowing the use thereof to be by, or intended for, the holder of a restricted Florida driver's license.

(15) The applicant or licensee has engaged in previous conduct which would have been a ground for revocation or suspension of a license if the applicant had been licensed.

(16) Notwithstanding the terms of any franchise agreement, and unless it can be shown that the licensee's franchised dealer is actively negligent, the applicant or licensee has failed to indemnify and hold harmless its franchised motor vehicle dealer against any judgment for damages or settlement agreed to in writing by the applicant or licensee, including, but not limited to, court costs and reasonable attorney's fees of the motor vehicle dealer, which judgment or settlement arose out of complaints, claims, or lawsuits based upon such grounds as strict liability; negligence, misrepresentation; warranty, express or implied; or rescission of the sale as described in s. 672 608, less any offset for use recovered by the licensee's franchised motor vehicle dealer, and only to the extent that the judgment or settlement relates to the alleged defective or negligent manufacture, assembly, or design of new motor vehicles, parts, or accessories or other functions of the manufacturer.

(17) The applicant or licensee, directly or indirectly, through the actions of any parent, subsidiary, or common entity causes a termination, cancellation, or nonrenewal of a franchise agreement by a present or previous

CODING: Words in struck through type are deletions from existing law; words underlined are additions.
importer, factory branch, or distributor unless, by the
effective date of such action, the applicant or licensee
offers the motor vehicle dealer whose franchise agreement is
terminated, canceled, or not renewed a franchise agreement
containing substantially the same provisions contained in the
previous franchise agreement or files an affidavit with the
department acknowledging its undertaking to assume and fulfill
the rights, duties, and obligations of its predecessor
importer, factory branch, or distributor under the terminated,
canceled, or nonrenewed franchise agreement and the same is
reinstated.

(18) Notwithstanding the terms of any franchise
agreement, the applicant or licensee prevents or refuses to
accept the succession to any interest in a franchise agreement
by any legal heir or devisee under the will of a motor vehicle
dealer or under the laws of descent and distribution of this
state; provided, the applicant or licensee shall not be
required to accept a succession which, after notice and
administrative hearing pursuant to chapter 120, is
demonstrated to be detrimental to the public interest or to
the representation of the applicant or licensee. Nothing
contained herein, however, shall prevent a motor vehicle
dealer, during his lifetime, from designating any person as
his successor in interest by written instrument filed with and
accepted by the applicant or licensee.

(19) The applicant or licensee has included in any
franchise agreement with a motor vehicle dealer terms or
provisions that are contrary to, prohibited by, or otherwise
inconsistent with the provisions contained in ss. 320.60-
320.70, or has filed a false affidavit pursuant to s
320.63(3).
Section 6. Section 320.641, Florida Statutes, is amended to read:

320.641 Unfair cancellation of franchise agreements --
(1)(a) An applicant or licensee shall give written notice to notify the motor vehicle dealer and forward a copy of such notice to the department of the licensee's intention to discontinue, cancel, or fail to renew a franchise agreement or of the licensee's intention to modify or replace a franchise with a succeeding franchise, which modification or replacement will adversely alter the rights or obligations of a motor vehicle dealer under an existing franchise agreement or which substantially impairs the motor vehicle dealer's sales, service obligations, or investment, of any of its motor vehicle dealers at least 90 days before the effective date thereof, together with the specific grounds for such action.

(b) The failure by the licensee to comply with the 90-day notice period and procedure prescribed herein shall render voidable, at the option of the motor vehicle dealer, any discontinuation, cancellation, or failure to renew of said agreement if discontinued, canceled, or not renewed.

(2) Franchise agreements are deemed to be continuing unless the applicant or licensee has notified the department of the discontinuation of, cancellation of, or failure to renew, modification of, or replacement of the agreement of any of its motor vehicle dealers, and annual renewal of the

CODING: Words in double-underline type are deletions from existing law, words underlined are additions.
license provided for under ss. 320.60-320.70 is not necessary
for any cause of action against the licensee.

(3) Any motor vehicle dealer whose franchise agreement
is discontinued, canceled, or not renewed, modified, or
replaced may, within such 90-day notice period, file with the
deptartment a verified complaint for a
determination of whether such action is an unfair or
prohibited discontinuation, or cancellation, nonrenewal,
modification, or replacement. Agreements and certificates of
appointment shall continue in effect until final determination
by the department of the issues raised in such complaint by
the motor vehicle dealer, and, except pursuant to s. 320.643,
no replacement motor vehicle dealer shall be named for this
point or location to engage in business prior to the final
adjudication by the department on the complaint
 discontinuation, cancellation, or failure to renew

(4) Notwithstanding any other provisions of this
section, the failure of a motor vehicle dealer to be engaged
in business with the public for 10 consecutive business days
shall constitute abandonment by the dealer of his franchise
agreement. If any motor vehicle dealer abandons his franchise
agreement, he shall have no cause of action under this
section. However, it shall not be considered abandonment if
such failure to engage in business is due to an act of God, a
work stoppage, or a delay due to a strike or labor difficulty,
a freight embargo, or other cause over which the motor vehicle
dealer has no control, including any violation of ss 320.60-
320.70

(5) If said complainant motor vehicle dealer prevails,
he shall have a cause of action against the licensee defendant
for reasonable attorneys' fees and costs incurred by him in

CODING: Words in struck through type are deletions from existing law, words underlined are additions.
such proceeding and he shall have a cause of action under a.

Section 7 Section 320.6415, Florida Statutes, is created to read:

320.6415 Changes in plan or system of distribution --

1 (1) A motor vehicle dealer franchise agreement shall continue in full force and operation, notwithstanding a change, in whole or in part, of an established plan or system of distribution of the motor vehicles offered for sale under such franchise agreement. The appointment of a newly appointed importer or distributor for motor vehicles offered for sale under such franchise agreement shall be deemed to be such a change of an established plan or system of distribution.

2 (2) Upon the occurrence of such change, the department shall deny an application.

(a) For any license filed pursuant to ss. 320.60-320.70 unless the applicant offers to a motor vehicle dealer who is a party to the franchise agreement a new franchise agreement containing substantially the same provisions as contained in the previous franchise agreement or files an affidavit with the department acknowledging its undertaking to assume and fulfill the rights, duties, and obligations of its predecessor under the previous franchise agreement.

(b) For any license filed pursuant to s. 320.27 in any community or territory in which such franchise or selling agreement is continuing in full force and operation hereunder, until this section is complied with.

Section 8. Section 320.643, Florida Statutes, is amended to read.

CODING: Words in struck through type are deletions from existing law, words underlined are additions.
320.643 Transfer, assignment, or sale of franchise agreements.--

(1) A motor vehicle dealer shall not transfer, assign, or sell a franchise agreement to another person, unless the dealer first notifies the licensee of his decision to make such transfer, by written notice setting forth the prospective transferee's name, address, financial qualification, and business experience during the previous 5 years. The licensee shall, in writing, within 60 days after receipt of such notice, inform the dealer either of his approval of the transfer, assignment, or sale or of the unacceptability of the proposed transferee, setting forth the material reasons for the rejection. If the licensee does not so inform the dealer within the 60-day period, its approval of the proposed transfer is deemed granted. No such transfer, assignment, or sale shall be valid unless the transferee agrees in writing to comply with all requirements of the franchise then in effect.

Notwithstanding the terms of any franchise agreement, acceptance by the licensee of the proposed transferee shall not be unreasonably withheld. For the purposes of this section, refusal by the licensee to accept a proposed transferee who is of good moral character and who otherwise meets the written, reasonable, and uniformly applied standards, if any, of the licensee relating to the business experience of executive management required by the licensee of its motor vehicle dealers, shall be presumed to be unreasonable.

(2) Notwithstanding the terms of any franchise agreement, no licensee shall, by contract or otherwise, fail or refuse to give effect to, prevent, prohibit, or penalize, or attempt to refuse to give effect to, prevent, prohibit, or
penalize, any motor vehicle dealer or any proprietor, partner, 
stockholder, owner, or other person holding or otherwise 
owning an interest therein, from selling, assigning, 
transferring, alienating, or otherwise disposing of, in whole 
or in part, the equity interest of any of them in such motor 
vehicle dealer to any other person or persons, including a 
corporation established or existing for the purpose of owning 
or holding the stock or ownership interests of other entities, 
unless the licensee proves at a hearing pursuant to this 
section that such sale, transfer, alienation, or other 
disposition is to a person who is not, or whose controlling 
executive management is not, of a good moral character. A 
motor vehicle dealer, or any proprietor, partner, stockholder, 
owner, or other person holding or otherwise owning an interest 
therein who desires to sell, assign, transfer, alienate, or 
otherwise dispose of any interest in such motor vehicle dealer 
shall notify or cause the proposed transferee to so notify the 
licensee by written notice, setting forth the identity and 
address of the proposed transferee. A licensee who receives 
such notice may, within 60 days following such receipt, file 
with the department a verified complaint for a determination 
that the proposed transferee is not a person qualified to be a 
transferee under this section. The licensee shall have the 
burden of proof with respect to all issues raised by such 
verified complaint. The department shall determine and enter 
an order providing either that the proposed transferee is 
qualified or is not and cannot be qualified for specified 
reasons, or providing the conditions under which a proposed 
transferee would be qualified. If the licensee fails to file 
such verified complaint within the aforesaid 60-day period or 
the department, after a hearing, dismisses the complaint or 

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renders a decision other than disqualifying the proposed
transferee, then the franchise agreement between the motor
vehicle dealer and the licensee shall be deemed amended in
accordance with the determination and order rendered,
effective upon compliance by the proposed transferee with any
conditions set forth in the determination or order.

(3) During the pendency of any such hearing, the
franchise agreement of the motor vehicle dealer shall continue
in effect in accordance with its terms. The department shall
expedite any determination requested under this section.

Section 9. Section 320.644, Florida Statutes, is
created to read:

320.644 Change of executive management control.--

(1) No licensee shall prohibit, prevent, or attempt to
prohibit or prevent any motor vehicle dealer from changing the
executive management control of the motor vehicle dealer
unless the licensee, who shall have the burden of proof,
proves at a hearing as provided herein that such change of
executive management control of the motor vehicle dealer is to
a person or persons not of good moral character or who do not
meet the written, reasonable, and uniformly applied standards
of the licensee relating to the business experience of
executive management required by the licensee of its motor
vehicle dealers. A motor vehicle dealer who desires to change
its executive management control shall notify the licensee by
written notice, setting forth the name, address, and business
experience of the proposed executive management. A licensee
who receives such notice may, within 60 days following such
receipt, file with the department a verified complaint for a
determination that the proposed change of executive management
will result in executive management control by persons who are
not of good moral character or who do not meet such licensee's standards. The licensee shall have the burden of proof with respect to all issues raised by such verified complaint. If the licensee fails to file such verified complaint within the aforesaid 60-day period or the department, after a hearing, dismisses the complaint, then the franchise agreement between the motor vehicle dealer and the licensee shall be deemed amended in accordance with the decision rendered.

(2) During the pendency of any such hearing, the franchise agreement of the motor vehicle dealer shall continue in effect in accordance with its terms. The department shall expedite any determination requested under this section.

Section 10. Section 320.645, Florida Statutes, is created to read:

320.645 Restriction upon ownership of dealership by licensee.--

(1) No licensee, including a manufacturer, agent of a manufacturer, or any parent subsidiary common entity, or officer or representative of the licensee shall own or operate, either directly or indirectly, 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, no such licensee shall be deemed to be in violation of this section:

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

(b) When operating a motor vehicle dealership temporarily for a reasonable period not to exceed 1 year or in a bona fide relationship with an independent person, other
than a licensee or its agent or affiliate, who has made a significant investment subject to loss in the dealership and who can reasonably expect to acquire full ownership of said dealership on reasonable terms and conditions; or

(c) If the department determines after a hearing on the matter, pursuant to chapter 120, at the request of any person that there is no independent person available in the community or territory to own and operate a motor vehicle dealership in a manner consistent with the public interest, provided that in any such case, the licensee must, on a continuing basis, make the motor vehicle dealership available for sale to an independent person at a fair and reasonable price. Approval of the sale of such a motor vehicle dealership to a proposed motor vehicle dealer shall not be unreasonably withheld. It is not necessary for the proposed motor vehicle dealer to provide exclusive facilities and personnel.

(2) This section shall not be construed to prohibit any licensee from owning or operating a motor vehicle dealership in this state if such dealership was owned or operated by the licensee on the effective date of this act.

Section 11. Section 320.697, Florida Statutes, is amended to read.

320.697 Civil damages.--Any person suffering pecuniary loss or otherwise adversely affected because of a violation by a licensee of ss 320.60-320.70, notwithstanding the existence of any other remedies under ss. 320.60-320.70, shall have a cause of action against the licensee for damages, and may recover damages therefor in any court of competent jurisdiction in an amount equal to 3 times the pecuniary loss,
together with costs and a reasonable attorney's fee to be assessed by the court. Upon a prima facie showing by the person bringing the action that such a violation by the licensee occurred, the burden of proof shall then be upon the licensee to prove that such violation or unfair practice did not occur.

Section 12. This act shall apply to all presently existing or established systems of distribution of motor vehicles in this state, except to the extent such application would impair contractual agreements in violation of the Florida or federal constitutions. All agreements renewed or entered into subsequent to the effective date of this act shall be governed hereby.

Section 13. Each section which is added to chapter 320, Florida Statutes, by this act is repealed on October 1, 1988, and shall be reviewed by the Legislature pursuant to s 11.61, Florida Statutes.

Section 14. This act shall take effect upon becoming a law, except section 2, which shall take effect on July 1, 1984.

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

ANALYST | STAFF DIRECTOR | REFERENCE | ACTION
---|---|---|---
1. Stubbings | Martin | 1. COM | 
2. | 2. AP | 
3. | 3. | 

SUBJECT: Motor Vehicle Dealers
BILL NO. AND SPONSOR: SB 1077 by Senator Jenne

I. SUMMARY:

A. Present Situation:

Chapter 320, F.S., is entitled Motor Vehicle Licenses. Among other things, sections 320.60-320.70, F.S., require motor vehicle manufacturers, factory branches, distributors and importers to be licensed by the Department of Highway Safety and Motor Vehicles in order to engage in business in Florida. (Motor vehicles include new automobiles, motor cycles and trucks).

Section 320.60(1), F.S., defines manufacturer to mean any person, resident or nonresident, who manufacturers or assembles motor vehicles or installs special bodies on previously assembled truck chassis if the special bodies form an integral part of the vehicle and result in a major alteration.

The bill amends definitions relating to sections 320.61-320.70, F.S. The definition of manufacturer is amended to provide that a parent, subsidiary, controlled entity or common entity of a manufacturer, or any person other than a motor vehicle dealer, who is affiliated with a manufacturer by contractual arrangement or otherwise, is considered to be the manufacturer’s agent regarding any agreement with a dealer to distribute the manufacturer’s motor vehicles. "Common entity" means any person who shares common ownership with the manufacturer. "Common ownership" means a common equity interest in the manufacturer and the common entity where the percentage of such interest exceeds 50 percent.

Section 320.60(5), F.S., defines person to include a person, firm, corporation or association. The bill amends the definition of person to include a natural person, partnership, joint venture, trust, or other legal entity.

Section 320.60(12), F.S., defines agreement to mean contract or franchise or any term used to describe the contractual relationship between manufacturers, distributors, importers and dealers.

The bill amends s. 320.60(12), F.S., to provide that an agreement or franchise agreement also includes a sales and service agreement or dealer agreement between a manufacturer or its distributor, importer, or factory branch and a dealer who is authorized to sell motor vehicles and perform warranty or other service upon vehicles under a common name of the manufacturer.

Section 320.61, F.S., sets out the licensing requirements for manufacturers, factory branches, distributors and importers (all referred to as licensees).
For direct dealings of domestic vehicles, either the manufacturer or factory branch must be licensed; for direct dealings of foreign manufacturers, the distributor must be licensed; and for indirect dealings of either domestic or foreign vehicles, the distributor must be licensed in order for the licensees' vehicles to be sold in Florida. (s. 320.61, F.S.)

The bill amends this section to provide that no motor vehicles, foreign or domestic, must be sold, leased, or offered for sale or lease in Florida, unless the manufacturer and the appropriate party are licensed under sections 320.60-320.70, F.S. The factory branch must be licensed for direct dealership of domestic vehicles, the importer for foreign manufactured vehicles on direct dealings, or the distributor on indirect dealings of either domestic or foreign vehicles.

Section 320.64, F.S., provides a number of grounds for the denial, suspension or revocation of a license in the entire state or at a specific location. Included in these are a licensee's unfairly or inequitably, or without just cause threatening to cancel or not renew, or cancelling or failing to renew, a franchise agreement of a motor vehicle dealer. (Section 320.64(7), (8), F.S.)

The bill amends these subsections to add that a licensee's threatening to modify or replace a franchise agreement with an agreement which would substantially impair the dealer's sales, service obligation or investment is grounds for license suspension or revocation. New subsection (16) is added to provide that a license may be suspended or revoked if certain parties affiliated with a licensee inequitably or without just provocation cause a dealer's franchise agreement to be cancelled or replaced, and the dealer has not been offered a franchise with substantially the same terms as the former franchise. New subsection (17) states that a license may be suspended or revoked if, in spite of the terms of any franchise agreement, the licensee refuses to accept succession to a dealership by any legal heir, except if the public interest would not be served, as determined in a chapter 120 hearing.

Section 320.641, F.S., relates to unfair cancellation of franchise agreements and provides that an applicant for a license or a licensee must give the motor vehicle dealer and the department notification of the licensee's intent to discontinue, cancel or fail to renew a franchise agreement at least 90 days before the effective date. Specific grounds must be cited. If these requirements are not met, the cancellation is voidable at the dealer's option. Franchise agreements are deemed to be continuing unless the applicant or licensee has notified the department of discontinuation, cancellation or failure to renew the agreement of its motor vehicle dealer. A dealer has a cause of action for reasonable attorneys fees for unfair cancellation.

The bill specifies that written notice of the above events be given to the dealer and the department and that notice must be given of a licensee's intention to modify or replace an agreement. The bill also provides that all franchise agreements must continue in full force in spite of a change by a licensee in a system of distribution if the change substantially affects or impairs the dealer's sales or investment. The bill also provides that if a dealer prevails in an action for unfair cancellation of a franchise, he also has a cause of action under s. 320.697, F.S. (civil damages).

The bill creates s. 320.645, F.S., to provide restrictions upon ownership of dealerships by licensees. A licensee or other
specified party is prohibited from owning or operating a motor vehicle dealership in a community in which a dealer is operating. An exception is provided for a licensee operating a dealership for a period not to exceed 1 year during a transition of ownership. Two other exceptions are provided.

The bill applies to all agreements, as defined, existing or yet to be made.

The bill contains a severability clause.

Newly created s. 320.645, F.S., is repealed on October 1, 1988, and scheduled for review under the Regulatory Sunset Act.

The bill takes effect on becoming law.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

This bill will strengthen the position of new motor vehicle dealers relative to that of the manufacturers, factory branches, distributors and importers whose products they sell by incorporating features into the law which make it more difficult for a licensee to not renew, cancel, modify or change franchise agreements. Precise impact is not determinable. However, the bill's provisions apply to approximately 800 new automobile dealers, and 550 truck or motorcycle dealers.

For the licensing year of October 1983 - September 1984, there have been a total of 113 licenses issued for manufacturers, distributors, factory branches, and importers of new motor vehicles as of May, 1984.

B. Government:

None.

III. COMMENTS:

IV. AMENDMENTS:

None.
I. SUMMARY:

Chapter 320, F.S., is entitled Motor Vehicle Licenses. Among other things, sections 320.60-320.70, F.S., require motor vehicle manufacturers, factory branches, distributors and importers to be licensed by the Department of Highway Safety and Motor Vehicles in order to engage in business in Florida. (Motor vehicles include new automobiles, motor cycles and trucks).

Section 320.60(1), F.S., defines manufacturer to mean any person, resident or nonresident, who manufactures or assembles motor vehicles or installs special bodies on previously assembled truck chassis if the special bodies form an integral part of the vehicle and result in a major alteration. In the case of a corporation or copartnership, the term manufacturer includes its central or principal sales corporation or other agency through which its products are distributed.

The bill amends definitions relating to sections 320.61-320.70, F.S. The definition of manufacturer is amended to provide that the term includes a central sales corporation or other entity through which, by contractual agreement or otherwise, its products are distributed.

Section 320.60(5), F.S., defines person to include a person, firm, corporation or association. The bill amends the definition of person to include a natural person, partnership, joint venture, trust, or other legal entity.

Section 320.60(12), F.S., defines agreement to mean contract or franchise or any term used to describe the contractual relationship between manufacturers, distributors, importers and dealers.

The bill amends s. 320.60(12), F.S., to provide that an agreement or franchise agreement also includes a sales and service agreement or dealer agreement between manufacturers, distributors, importers, or factory branches and a dealer who is authorized to transact business relating to motor vehicles intended for sale under a common name of the manufacturer. The bill defines "common entity."

Section 320.61, F.S., sets out the licensing requirements for manufacturers, factory branches, distributors and importers (all referred to as licensees).

For direct dealerships of domestic vehicles, either the manufacturer or factory branch must be licensed; for direct dealerships of foreign manufacturers, the distributor must be licensed; and for indirect dealerships of either domestic or
foreign vehicles, the distributor must be licensed in order for the licensee to engage in business as such in Florida. (s. 320.61, F.S.)

The bill amends this section to provide that no motor vehicles, foreign or domestic, must be sold, leased, or offered for sale in Florida, unless the manufacturer or the appropriate party are licensed under sections 320.60-320.70, F.S. The factory branch must be licensed for direct dealerships of domestic vehicles, the importer for foreign manufactured vehicles on direct dealerships, or the distributor on indirect dealerships of either domestic or foreign vehicles.

Section 320.63, F.S., relates to application for license and provides that either the manufacturer, factory branch, distributor or importer, depending on certain factors, must file a written copy of the applicant's motor vehicle dealer agreements in Florida with the department, together with a list of authorized dealers and their addresses. Appointments of additional dealers must be reported as well as changes in existing franchise agreements.

The bill requires a licensee to notify the department no later than 60 days prior to a proposed change in a franchise agreement of the revision to the agreement on file with the department or of an individual supplement to the agreement. However, no franchise agreement must be offered to a dealer unless the licensee files an affidavit with the department acknowledging that the agreement's terms are not contrary to ss. 320.60-320.70, F.S.

The bill creates s. 320.632, F.S., to provide that entities which, by contract or otherwise, distribute a manufacturer's products are deemed to be agents of the manufacturer for the purpose of franchise agreements and shall be bound as if the principal.

Section 320.64, F.S., provides a number of grounds for the denial, suspension or revocation of a license in the entire state or at a specific location. Included in these are a licensee's unfairly or inequitably, or without just cause threatening to cancel or not renew, or cancelling or failing to renew, a franchise agreement of a motor vehicle dealer. (Section 320.64(7), (8), F.S.

The bill adds subsection 9 to provide that a licensee's threatening to modify or replace a franchise agreement with an agreement which would substantially impair the dealer's sales, service obligation or investment is grounds for license suspension or revocation. New subsection (17) is added to provide that a license may be suspended or revoked if a licensee or certain parties affiliated with a licensee cause a dealer's franchise agreement to be cancelled or replaced, and the dealer has not been offered a franchise with substantially the same terms as the former franchise or another specified remedy. New subsection (18) states that a license may be suspended or revoked if, in spite of the terms of any franchise agreement, the licensee refuses to accept succession to a dealership by any legal heir, except if the public interest would not be served, as determined in a chapter 120 hearing. New subsection (19) provides for suspension or revocation of a licensee's license if any franchise agreement contains terms contrary to sections 320.60-320.70, F.S., or if a licensee files a false affidavit under s. 320.63(3).

Section 320.641, F.S., relates to unfair cancellation of franchise agreements and provides that an applicant for a
license or a licensee must give the motor vehicle dealer and
the department notification of the licensee's intent to
discontinue, cancel or fail to renew a franchise agreement at
least 90 days before the effective date. Specific grounds must
be cited. If these requirements are not met, the cancellation
is voidable at the dealer's option. Franchise agreements are
deemed to be continuing unless the applicant or licensee has
notified the department of discontinuation, cancellation or
failure to renew the agreement of its motor vehicle dealer. A
dealer has a cause of action for reasonable attorneys fees for
unfair cancellation in a proceeding before the department.

The bill specifies that written notice of the above events be
given to the dealer and the department and that notice must be
given of a licensee's intention to modify or replace certain
agreements. The bill also provides that if a dealer prevails
in an action for unfair cancellation of a franchise, in
addition to attorneys fees authorized in an administrative
proceeding, he also has a cause of action under s. 320.697,
F.S. (civil damages).

The bill creates s. 320.6415 to provide that all franchise
agreements must continue in full force in spite of a change by
a licensee in a system of distribution. The appointment of a
newly appointed importer or distributor for vehicles offered
for sale under the franchise agreement equates to a change in a
system of distribution. If a change occurs, the department
must deny an application for a license unless the applicant
offers a dealer who is a party to the franchise agreement a new
agreement with substantially the same terms, or files an
affidavit with the department agreeing to assume the previous
franchise agreement.

Section 320.643, F.S., relates to the transfer, assignment or
sale of franchise agreements and requires a dealer to notify
the licensee in writing of his decision to transfer his
franchise agreement to another person. The licensee is
required to approve or disapprove the proposed transfer within
60 days of receiving notice or the transfer or sale is deemed
approved.

The bill amends the law to provide that in spite of any
franchise agreement, if a licensee refuses to accept a proposed
transferee who meets specified criteria, this shall be deemed
unreasonable. The bill also provides that, in spite of any
terms in a franchise agreement, a licensee must not prevent
transfer, sale or other disposition, of part or all of an
equity interest in a motor vehicle dealer. Procedures are
provided for a licensee to file a complaint with the department
to show that a proposed transferee is not qualified. The
burden of proof is on the licensee.

The bill creates s. 320.644, F.S., relating to changes in
executive management control. A licensee is prohibited from
preventing changes in the executive management of a dealer
unless certain elements are proved by the licensee in a
department hearing. Certain procedures for changing management
control must be followed by a dealer. If a licensee files no
complaint or a complaint is dismissed, the franchise agreement
is deemed amended.

The bill creates s. 320.645, F.S., to provide restrictions upon
ownership of dealerships by licensees. A licensee, as defined,
is prohibited from owning or operating a motor vehicle
dealership to sell vehicles which are offered for sale under a
franchise agreement with a dealer. This does not prohibit such
arrangements which exist on the date of the act. An exception
is provided for a licensee operating a dealership for a period
not to exceed 1 year during a transition of ownership. Two other exceptions are provided.

The bill amends s. 320.697, F.S., relating to civil damages to provide that in addition to the current remedy for pecuniary loss, a person otherwise adversely affected also has a cause of action, and may recover damages.

The bill applies to existing systems of distribution except to the extent that application would impair contracts in violation of the Florida or federal constitutions. All agreements renewed or entered into after the effective date are covered.

The bill contains a severability clause.

Each newly created section is repealed on October 1, 1988, and scheduled for review under the Regulatory Sunset Act.

The bill takes effect on becoming law, except that section 2 becomes effective July 1, 1984

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

This bill will strengthen the position of new motor vehicle dealers relative to that of the manufacturers, factory branches, distributors and importers whose products they sell by incorporating features into the law which make it more difficult for a licensee to not renew, cancel, modify or change franchise agreements. Precise impact is not determinable. However, the bill's provisions apply to approximately 800 new automobile dealers, and 550 truck or motorcycle dealers.

For the licensing year, of October 1983 - September 1984, there have been a total of 113 licenses issued for manufacturers, distributors, factory branches, and importers of new motor vehicles as of May, 1984.

B. Government:

None.

III. COMMENTS:

IV. AMENDMENTS:

None.
STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR SENATE BILL 1077.

Revises definitions.

Provides that entities which, by contract or otherwise, distribute a manufacturer's products are agents of the manufacturer for purpose of franchise agreements and shall be bound as if the principal.

Provides that if terms in a franchise agreement are contrary to ss. 320.60-320.70, F.S., or if a false affidavit under s. 320.63(3) has been filed, this is grounds for suspension or revocation of a license.

Provides that a dealer franchise agreement stays in force in spite of a change in an established plan of distribution and that appointment of a newly appointed importer or distributor for motor vehicles offered for sale under the franchise agreement is a change in distribution.

Prohibits a licensee from preventing a dealer, or any person having an interest therein, from selling or alienating an equity interest in the dealer, and provides procedures for a complaining licensee to follow.

Provides that a licensee shall not prohibit a change in the executive management of a dealer unless certain elements are proved by the licensee in a hearing before the department.

Provides that a licensee may continue to own and operate a dealership if such was owned or operated by the licensee on the act's effective date.

Provides that any person adversely affected by a violation of a licensee has a civil remedy.

Provides that the act applies to all existing systems of distribution except if this would impair obligations of contract under the Florida or Federal Constitutions.

Section 2 of bill takes effect July 1, 1984.

Committee on Commerce
Fred A. Martin
Staff Director

FM/ml
C14(4-74) (File 2 copies with Committee Substitutes)
A bill to be entitled
An act relating to motor vehicle manufacturers, distributors, importers, and dealers; amending s. 320.60, F.S., defining "line-make"; amending s. 320.61, F.S., requiring certain licensure for the sale or lease of motor vehicles; amending s. 320.64, F.S., providing an additional ground for denial, suspension, or revocation of a license; amending s. 320.642, F.S., providing for the effect of certain changes in manufacturer, importer, or distributor of a line-make of vehicles upon existing dealer franchise or selling agreements; restricting provisions relating to dealer licenses in areas previously served; creating s. 320.645, F.S., restricting ownership of a motor vehicle dealership by suppliers; providing for future repeal and review; providing an effective date.

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

Section 1. Subsection (13) is added to section 320.60, Florida Statutes, 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:

(13) "Line-make" means motor vehicles of such models and types intended for sale or distribution under a common name designated by a manufacturer.
subsection (1) of section 320.61, Florida
shall engage in business as such in this state without a
license, as provided in ss. 320.60-320.70. No motor
vehicles, parts or accessories, shall be sold, leased, or
offered for sale or lease in this state, unless the
manufacturer, or a person acting in like manner and capacity,
shall have a "factory branch" in direct dealership of

the importers of foreign manufactured vehicles, on

and not dealerships of either

No foreign-licensed

No person engaged in business in this state unless either the
manufacturer, or factory branch, direct dealerships of
importers of imported foreign-manufactured vehicles, or an importer of foreign-manufactured vehicles, or a distributor, or

uf-partnership of foreign-domestic or foreign-vehicles

Section 1. Subsection (10) is added to section 320.64,

and in section 320.641, 320.642, and 320.643.

Judicial. In cases of

Revocation of license;

30

or revoked

at any specific location or
locations at which a licensee engages in business and at which a violation of ss. 320.60-320.70 has occurred, on the following grounds:

(16) The applicant or licensee, directly or indirectly through any subsidiary, parent, or affiliated company or firm, has unfairly or without due regard to the equities of a motor vehicle dealer or without just provocation caused a present or previous importer, factory branch, or distributor of the applicant's line-make of motor vehicles to terminate, cancel, not renew, or breach a franchise agreement with any duly licensed motor vehicle dealer.

Section 4. Section 320.642, Florida Statutes, is amended to read:

320.642 Dealer licenses in areas previously served.--

(1) All new motor vehicle dealer franchise or selling agreements, within the meaning of s. 320.60(12), shall continue in full force and operation notwithstanding the appointment of a newly appointed importer or distributor for any line-make of motor vehicles covered by such agreement, or a change, in whole or in part, by a manufacturer, importer, or distributor of foreign or domestic motor vehicles of an established plan or system of distribution of such line-make to motor vehicle dealers in this state, unless and until a written release of such agreement, agreed to, executed, and acknowledged by the motor vehicle dealer who is a party to such agreement, is filed with the department. Upon the occurrence of either such appointment or change, the department shall deny an application:

(a) For any license filed pursuant to ss. 320.60-320.70 with respect to such line-make, unless the applicant files an affidavit with the department acknowledging such
applicant's undertaking to assume and fulfill the rights, privileges, and obligations of the manufacturer, distributor, or importer under any such new motor vehicle dealer agreement.

1b) For any license filed pursuant to s. 320.27 in any community or territory in which such franchise or selling agreements are continuing in full force and operation hereunder, until the manufacturer, importer, or distributor of such line-make is licensed pursuant to ss. 320.60-320.70.

2. The department shall deny an application for a motor vehicle dealer license in any community or territory in which one or more where-the-licensee's presently licensed franchised motor vehicle dealer or dealers with franchise or selling agreements covering the same line-make as that which the applicant intends to sell are complying with their franchise or selling have-complied-with-licensee's agreements and are providing adequate representation in the community or territory for such licensee. The burden of proof in showing inadequate representation shall be on the manufacturer, importer, factory branch, or distributor which intends to supply new motor vehicles of that line-make to the applicant licensee.

Section 5. Section 320.645, Florida Statutes, is created to read:

320.645 Restrictions upon ownership of dealership by supplier.—No manufacturer, factory branch, importer, or distributor, nor any parent, subsidiary, affiliated company or firm, or means of interlocking directorates, commonality of ownership or otherwise, nor any officer, agent, or other representative thereof (individually and collectively sometimes referred to hereinafter as "supplier") shall own or
operate, either directly or indirectly, a motor vehicle
dealership within any community or territory in which a motor
vehicle dealer of the same line-make is operating, or, but for
the supplier's decision to change an established system of
distribution for that line-make, would continue to operate.
However, no supplier shall be deemed to be in violation of
this section:

(1) When operating a motor vehicle dealership
temporarily for a reasonable period not to exceed 1 year or in
a bona fide relationship with an independent person other than
a supplier who has made a significant investment subject to
loss in the dealership and who can reasonably expect to
acquire full ownership of said dealership on reasonable terms
and conditions:

(2) When a supplier sells motor vehicles at retail,
if, for at least 3 years prior to January 1, 1984, such
supplier has engaged in the sale of motor vehicles at retail
in this state; or

(3) If the department determines, after a hearing on
the matter at the request of any party, that there is no
independent person available in the community or territory to
own and operate a motor vehicle dealership in the same line-
make in a manner consistent with the public interest.

Section 6. This act shall apply to all agreements as
defined in s. 320.60(12), Florida Statutes, whether presently
existing or hereafter entered into, as well as to all
amendments, extensions, and renewals of such agreements and
all presently established systems of distribution of motor
vehicles.

Section 7. If any provision of this act or the
application thereof to any person or circumstance is held

CODING. Words in square through type are deletions from existing law, words underlined are additions.
invalid, it is the legislative intent that the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of the act are declared severable.

Section 8. Each section which is added to chapter 320, Florida Statutes, by this act is repealed on October 1, 1988, and shall be reviewed by the Legislature pursuant to s. 11.61, Florida Statutes.

Section 9. This act shall take effect upon becoming a law.

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HOUSE SUMMARY

Requires motor vehicle manufacturers and either the factory branch, importer, or distributor to be licensed in the state prior to the sale or lease of motor vehicles. Provides as a ground for denial, suspension, or revocation of a license certain interference with franchise agreements between an importer, factory branch, or distributor and a motor vehicle dealer relating to the same line-make of motor vehicles as the applicant's or licensee's. (The term "line-make" is defined by the act.)

Provides for the effect of the appointments of a new importer or distributor of any line-make of motor vehicles, or any change in the distribution of any such line-make, upon new dealer franchise or selling agreements. Provides related restrictions upon the issuance of licenses with respect to such vehicles. Restricts provisions which restrict the issuance of dealer licenses in areas previously served to existing franchises covering the same line-make. Restricts the ownership of dealers by motor vehicle suppliers. Provides exceptions.
A bill to be entitled
An act relating to motor vehicle manufacturers, distributors, importers, and dealers; amending s. 320.60, F.S., providing definitions; amending s. 320.61, F.S., requiring certain licensing; creating s. 320.632, F.S., relating to franchise agreements; amending s. 320.64, F.S., providing additional grounds for denial, suspension, or revocation of a license; amending s. 320.641, F.S., relating to unfair cancellation of franchise agreements; creating s. 320.6415, F.S., relating to changes in plans or systems of distribution; amending s. 320.643, F.S., relating to transfer, assignment, or sale of franchise agreements; creating s. 320.644, F.S., relating to change of executive management control; creating s. 320.645, F.S., restricting ownership of a motor vehicle dealership by licensees; amending s. 320.697, F.S., providing for civil damages; providing for application of this act to existing and future agreements; providing for future repeal and review; providing effective dates.

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

Section 1. Subsections (1), (5), and (12) of section 320.60, Florida Statutes, are amended, and subsection (13) is added to said section to read:

CODING: Words in black through type are deletions from existing law, words underlined are additions.
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:

(1) "Manufacturer" means any person, whether a resident or nonresident of this state, who manufactures or assembles motor vehicles or who manufactures or installs on previously assembled truck chassis special bodies or equipment which, when installed, form an integral part of the motor vehicle and which constitute a major manufacturing alteration.

The term "manufacturer" includes gy-in-the-case-of-a corporation or partnership, its central or principal sales corporation or other entity agency through which, by contractual agreement or otherwise, it distributes its products.

(5) "Person" means any natural person, partnership, firm, corporation, or association, joint venture, trust, or other legal entity.

(16) "Agreement" or "franchise agreement" means contract, franchise, new motor vehicle franchise, sales and service setting agreement, dealer agreement, or any other terminology used to describe the contractual relationship between manufacturer, distributors, importers, factory branches, and motor vehicle dealers, pursuant to which a motor vehicle dealer is authorized to sell and perform warranty or other service upon motor vehicles which are intended for sale under a common name, trade name, trademark, or service mark of the manufacturer.

(18) "Common owner" means a person who is either controlled or owned, beneficially, in fact or of record, by one or more persons, who also control, or own more than 40 percent of the
voting equity interests of a manufacturer, or who shares
directors or officers or partners with a manufacturer.

Section 2. Subsection (1) of section 320.61, Florida Statutes, is amended to read:

320.61 Licenses required of motor vehicle manufacturers, factory branches, distributors, importers, etc.--

(1) No manufacturer, factory branch, distributor, or importer (all sometimes referred to hereinafter as "licensee") shall engage in business as such in this state without a license therefor as provided in ss. 320.60-320.70. No motor vehicles, foreign or domestic, shall be sold, leased, or offered for sale or lease in this state unless the manufacturer of such motor vehicles and, as the case may be:

(a) Any factory branch, on direct dealerships of domestic vehicles;
(b) Any importer of foreign manufactured vehicles, on direct dealerships; or
(c) Any distributor, on indirect dealerships of either domestic or foreign vehicles,

are licensed under ss. 320.60-320.70. No such licensee's vehicles shall be sold in this state unless either the manufacturer or factory branch, on direct dealerships of domestic vehicles, the importer of foreign manufactured vehicles, on direct dealerships of either domestic or foreign vehicles, is licensed under ss. 320.60-320.70.

Section 3. Section 320.632, Florida Statutes, is created to read:

CODING: Words stricken are deletions; words underlined are additions.
320.632 Franchise agreements, agency.—Any parent, subsidiary, or common entity of a manufacturer, any importer, distributor, factory branch, or other entity, which by contractual arrangement or otherwise engages in the business of sell ing a manufacturer’s products, shall be deemed to be the agent of the manufacturer for purposes of any franchise agreement entered into between such agent and a motor vehicle dealer, and shall be bound by the terms and provisions of such franchise agreement as if it were the principal. A manufacturer whose products are offered for sale in this state under any franchise agreement which is executed by an agent of such manufacturer shall be bound by the terms and provisions of such franchise agreement as if it, and not the agent, had executed the franchise agreement.

Section 4.—Section 320.64, Florida Statutes, is amended to read:

320.64 Denial, suspension, or revocation of license; grounds.—A license may be denied, suspended, or revoked within the entire state, or at any specific location or locations at which a licensee engages in business and at which a violation of any section 320.70 has occurred, on the following grounds:

(1) The department has proof of unfitness of applicant.

(2) The applicant has made a material misstatement in his application for a license.

(3) The applicant or licensee has failed willfully to comply with any provision of any 320.60-320.70 or with any lawful rule or regulation adopted or promulgated by the department.

Amendments: Words stricken are deletions; words underlined are additions.
(4) The applicant or licensee has indulged in any illegal act relating to his business.

(5) The applicant or licensee has coerced or attempted to coerce any motor vehicle dealer into accepting delivery of any motor vehicle or vehicles or parts or accessories therefor or any other commodities which have not been ordered by the dealer.

(6) The applicant or licensee has coerced or attempted to coerce any motor vehicle dealer to enter into any agreement with the licensee.

(7) The applicant or licensee has unfairly or without due regard to the equities of a motor vehicle dealer, or without just provocation, threatened to cancel or not to renew the franchise agreement of such motor vehicle dealer.

(8) The applicant or licensee has unfairly or without due regard to the equities of a motor vehicle dealer, or without just provocation, canceled, or failed to renew, the franchise agreement of such motor vehicle dealer.

(9) The applicant or licensee has threatened to modify or replace or has modified or replaced a franchise agreement with a succeeding franchise agreement which would adversely alter the rights or obligations of a motor vehicle dealer under an existing franchise agreement or which substantially impairs the motor vehicle dealer's sales, service obligations, or investment.

(10) The applicant or licensee has attempted to enter, or entered, into a franchise agreement with a motor vehicle dealer who does not, at the time of the franchise agreement, have proper facilities to provide the services to his purchasers of new motor vehicles which are covered by the
new motor vehicle warranty issued by the applicant or licensee.

(11) The applicant or licensee has coerced a motor vehicle dealer to provide installment financing for the motor vehicle dealer's purchasers with a specified financial institution.

(12) The applicant or licensee has advertised, printed, displayed, published, distributed, broadcast, or televised, or caused or permitted to be advertised, printed, displayed, published, distributed, broadcast, or televised, in any manner whatsoever, any statement or representation with regard to the sale or financing of motor vehicles which is false, deceptive, or misleading.

(13) The applicant or licensee has refused to deliver, in reasonable quantities and within a reasonable time after receipt of an order, to any duly licensed motor vehicle dealer who has an agreement with such applicant or licensee for the retail sale of new motor vehicles and parts for motor vehicles sold or distributed by the applicant or licensee, any such motor vehicles or parts as are covered by such agreement specifically publicly advertised by such applicant or licensee to be available for immediate delivery. However, the failure to deliver any motor vehicle or part will not be considered a violation of this section if the failure is due to act of God, work stoppage, or delay due to a strike or labor difficulty, a freight embargo, or other cause over which the applicant or licensee has no control. The failure to deliver parts or components for the current, and 5 preceding years', models within 60 days from date of order shall be deemed prima facie unreasonable.
(14) The applicant or licensee has sold, exchanged, or rented a motorcycle or motor scooter which produces in excess of 5 brake horsepower, knowing the use thereof to be by, or intended for, the holder of a restricted Florida driver’s license.

(15) The applicant or licensee has engaged in previous conduct which would have been a ground for revocation or suspension of a license if the applicant had been licensed.

(16) Notwithstanding the terms of any franchise agreement, and unless it can be shown that the licensee's franchised dealer is actively negligent, the applicant or licensee has failed to indemnify and hold harmless its franchised motor vehicle dealer against any judgment for damages or settlement agreed to in writing by the applicant or licensee, including, but not limited to, court costs and reasonable attorney’s fees of the motor vehicle dealer, which judgment or settlement arose out of complaints, claims, or lawsuits based upon such grounds as strict liability; negligence; misrepresentation; warranty, express or implied; or rescission of the sale as described in s. 672.608, less any offset for use recovered by the licensee's franchised motor vehicle dealer, and only to the extent that the judgment or settlement relates to the alleged defective or negligent manufacture, assembly, or design of new motor vehicles, parts, or accessories or other functions of the manufacturer.

(17) The applicant or licensee, directly or indirectly, through the actions of any parent, subsidiary, or common entity causes a termination, cancellation, or nonrenewal of a franchise agreement by a present or previous importer, factory branch, or distributor unless, by the effective date of such action, the applicant or licensee

CODING: Words stricken are deletions; words underlined are additions.
(16) Notwithstanding the terms of any franchise agreement, the applicant or licensee prevents or refuses to accept the succession to any interest in a franchise agreement by any legal heirs or devisees under the will of a motor vehicle dealer or under the laws of descent and distribution of the state; provided, the applicant or licensee shall not be required to accept a succession which, after notice and administrative hearing pursuant to chapter 120, is demonstrated to be detrimental to the public interest or to the representation of the applicant or licensee. Nothing contained herein, however, shall prevent a motor vehicle dealer, during his lifetime, from designating any person as his successor in interest. The written instrument filed with and accepted by the applicant or licensee.

Section 5. Section 320.641, Florida Statutes, is amended to read:

320.641 Unfair cancellation of franchise agreements.--
(1)(a) An applicant or licensee shall give written notice to notify the motor vehicle dealer and forward a copy of such notice to the Department of the licensee's intention to discontinue, cancel, or fail to renew the franchise agreement or of the licensee's intention to modify or replace it.

Annotations: Words stricken are deletions; words underlined are additions.
1. A franchise with a succeeding franchise, which modification or replacement will adversely alter the rights or obligations of a motor vehicle dealer under an existing franchise agreement, or which substantially impairs the motor vehicle dealer's sales, service obligations, or investment, of any of its motor vehicle dealers at least 90 days before the effective date thereof, together with the specific grounds for such action, discontinuation, cancellation, or failure-to-renew of said agreement, if discontinued, canceled, or not renewed.

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

3. Franchise agreements are deemed to be continuing unless the applicant or licensee has notified the department of the discontinuation of, cancellation of, or failure to renew, modification of, or replacement of the agreement of any of its motor vehicle dealers, and annual renewal of the license provided for under ss. 320.60-320.70 is not necessary for any cause of action against the licensee.

4. Any motor vehicle dealer whose franchise agreement is discontinued, canceled, or not renewed, modified, or replaced may, within such 90-day notice period, file with the department a verified complaint in triplicate for a determination of whether such action is an unfair or prohibited discontinuation, or cancellation, nonrenewal, modification, or replacement. Agreements and certificates of

CODING: Words struck are deletions; words underlined are additions.
appointment shall continue in effect until final determination by the department of the issues raised in such complaint by the motor vehicle dealer, and, except pursuant to s. 320.643,
no replacement motor vehicle dealer shall be named for this point or location to engage in business prior to the final adjudication by the department on the complaint discontinuation, cancellation, or failure to renew.

(4) Notwithstanding any other provisions of this section, the failure of a motor vehicle dealer to be engaged in business with the public for 10 consecutive business days shall constitute abandonment by the dealer of his franchise agreement. If any motor vehicle dealer abandons his franchise agreement, he shall have no cause of action under this section. However, it shall not be considered abandonment if such failure to engage in business is due to an act of God, a work stoppage, or a delay due to a strike or labor difficulty, a freight embargo, or other cause over which the motor vehicle dealer has no control, including any violation of ss. 320.60-320.70.

(5) If said complainant motor vehicle dealer prevails, he shall be saved from and against the licensee have a cause of action against the defendant for reasonable attorneys' fees and costs incurred by him in such proceeding and he shall have a cause of action under s. 320.697 for unfair discontinuation, cancellation, or failure to renew, pursuant to this section.

Section 6. Section 320.6415, Florida Statutes, is created to read:

320.6415 Changes in plan or system of distribution.--
(1) A motor vehicle dealer franchise agreement shall continue in full force and operation, notwithstanding a change, in whole or in part, of an established plan or system

CODING: Words stricken are deletions; words underlined are additions.
of distribution of the motor vehicles offered for sale under such franchise agreement. The appointment of a newly appointed importer or distributor for motor vehicles offered for sale under such franchise agreement shall be deemed to be such a change of an established plan or system of distribution.

(2) Upon the occurrence of such change, the department shall deny an application:

(a) For any license filed pursuant to ss. 320.60-320.70 unless the applicant offers to a motor vehicle dealer who is a party to the franchise agreement a new franchise agreement containing substantially the same provisions as contained in the previous franchise agreement or files an affidavit with the department acknowledging its undertaking to assume and fulfill the rights, duties, and obligations of its predecessor under the previous franchise agreement.

(b) For any license filed pursuant to s. 320.27 in any community or territory in which such franchise or selling agreement is continuing in full force and operation hereunder, until this section is complied with.

Section 7. Section 320.643, Florida Statutes, is amended to read:

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

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

CODING: Words stricken are deletions; words underlined are additions.
notice, inform the dealer either of his approval of the 
transfer, assignment, or sale of the unacceptable of the 
proposed transferee, setting forth the material reasons for 
the rejection. If the franchise does not so inform the dealer 
within the 60-day period, the his approval of the proposed 
transfer is deemed granted. No such transfer, assignment, or 
sale shall be valid unless the transferee agrees in writing to 
comply with all requirements of the franchise then in effect.

Notwithstanding the terms of any franchise agreement, 
acceptance by the licensee of the proposed transferee shall 
not be unreasonable conditions. For the purposes of this 
section, refusal by the licensee to accept a proposed 
transferee who is of good moral character and who otherwise 
meets the written, reasonable, and uniformly applied 
standards, if any, of the licensee relating to the business 
operation of execution, management required by the licensee of 
the motor vehicle dealer, shall be presumed to be 
reasonable.

(a) Notwithstanding the terms of any franchise 
agreement, no licensee shall, by contract or otherwise, fail 
or refuse to give effect to, prevent, prohibit, or penalize, 
or attempt to refuse to give effect to, prevent, prohibit, or 
penalize, any motor vehicle dealer, an any proprietor, partner, 
stockholder, owner, or other person holding or otherwise 
owning an interest therein, from selling, assigning, 
transferring, alienating, or otherwise disposing of, in whole 
or in part, the equity interest in any of them in such motor 
vehicle dealer to any other person or persons, including a 
subsidiary corporation established or existing for the purpose of owning 
management, the control, or operation of the business or other activities.

(b) Notwithstanding the terms of any franchise 
agreement, any court or administrative or other authority, 
sums the licensee ory does at a hearing pursuant to this 
section, words struck out are deletions; words underlined are additions.
That such sale, transfer, alienation, or other disposition is to a person who is not, or whose controlling executive management is not, of a good moral character. A motor vehicle dealer, or any proprietor, partner, stockholder, owner, or other person holding or otherwise owning an interest therein who desires to sell, assign, transfer, alienate, or otherwise dispose of any interest in such motor vehicle dealer shall notify or cause the proposed transferee to notify the licensee by written notice, setting forth the identity and address of the proposed transferee. A licensee who receives such notice may, within 60 days following such receipt, file with the department a verified complaint for a determination that the proposed transferee is not a person qualified to be a transferee under this section. The licensee shall have the burden of proof with respect to all issues raised by such verified complaint. The department shall determine and enter an order providing either that the proposed transferee is qualified or is not and cannot be qualified for specified reasons, or providing the conditions under which a proposed transferee would be qualified. If the licensee fails to file such verified complaint within the aforesaid 60-day period or the department, after a hearing, dismisses the complaint or renders a decision other than disqualifying the proposed transferee, then the franchise agreement between the motor vehicle dealer and the licensee shall be deemed amended in accordance with the determination and order rendered, effective upon compliance by the proposed transferee with any conditions set forth in the determination or order.

(3) During the pendency of any such hearing, the franchise agreement of the motor vehicle dealer shall continue

CODING: Words strucken are deletions; words underlined are additions.
in effect in accordance with its terms. The department shall
examine any determination requested under this section.

Section 8. Section 320.644, Florida Statutes, is
created to read:

320.644 Change of executive management control.--

(1) No licensee shall prohibit, prevent, or attempt to
prohibit or prevent any motor vehicle dealer from changing the
executive management control of the motor vehicle dealer
unless the licensee, who shall have the burden of proof,
proven at a hearing as provided herein that such change of
executive management control of the motor vehicle dealer is to
a person or persons not of good moral character or who do not
meet the written, reasonable, and uniformly applied standards
of the licensee relating to the business experience of
executive management required by the licensee of its motor
vehicle dealers. A motor vehicle dealer who desires to change
its executive management control shall notify the licensee by
written notice, setting forth the name, address, and business
experience of the proposed executive management. A licensee
who receives such notice may, within 60 days following such
receipt, file with the department a verified complaint for a
determination that the proposed change of executive management
will result in executive management control by persons who are
not of good moral character or who do not meet such licensee’s
standards. The licensee shall have the burden of proof with
respect to all issues raised by such verified complaint. If
the licensee fails to file such verified complaint within the
aforementioned 60-day period of the department, after a hearing,
disses the complaint, then the franchise agreement between
the motor vehicle dealer and the licensee shall be deemed
amended in accordance with the decision rendered.

Comm. Words struck are deletions; words underlined are additions.
(2) During the pendency of any such hearing, the franchise agreement of the motor vehicle dealer shall continue in effect in accordance with its terms. The department shall expedite any determination requested under this section.

Section 9. Section 320.645, Florida Statutes, is created to read:

320.645 Restriction upon ownership of dealership by licensee.--

(1) No licensee, including a manufacturer, agent of a manufacturer, or any parent, subsidiary, common entity, or officer or representative of the licensee shall own or operate, either directly or indirectly, 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, no such licensee shall be deemed to be in violation of this section:

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

(b) When operating a motor vehicle dealership temporarily for a reasonable period not to exceed 1 year or in a bona fide relationship with an independent person, other than a licensee or its agent or affiliate, who has made a significant investment subject to loss in the dealership and who can reasonably expect to acquire full ownership of said dealership on reasonable terms and conditions; or

(c) If the department determines after a hearing on the matter, pursuant to chapter 120, at the request of any person that there is no independent person available in the

CODING: Words stricken are deletions; words underlined are additions.
community on territory to own and operate a motor vehicle

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dealership, in a manner consistent with the public interest.

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provided that in any such case, the licensees must, on a

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continuing basis, make the motor vehicle dealership available

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for sale to an independent person at a fair and reasonable

price. Approval of a sale of such a motor vehicle

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shall not be

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unreasonably withheld. It is not necessary for the proposed

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motor vehicle dealer to provide exclusive facilities and

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personnel.

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(2) This section shall not be construed to prohibit

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any licensees from owning or operating a motor vehicle

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dealership in this state if such dealership was owned or

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operated by the licensee on the effective date of this act.

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Section 10. Section 320.697, Florida Statutes, is

5.43
amended to read:

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320.697 Civil damages. Any person suffering pecuniary

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loss or otherwise adversely affected because of a violation by

5.46
a licensee of ss. 320.66-320.76, notwithstanding the existence

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of any other remedial provision, sss. 60.620-620.70, shall have a

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cause of action against the licensee for damages, and may

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recover damages therefore in any court of competent

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jurisdiction in an amount equal to 3 times the pecuniary loss,

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together with costs and a reasonable attorney's fee to be

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assessed by the court. Upon a prima facie showing by the

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complainant bringing the action that such a violation by the

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licensee occurred, the burden of proof shall then be upon the

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licensee to prove that such violation or unfair practice did

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not occur.

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Deletions: Words stricken are deletions; words underlined are additions.
Section 11. This act shall apply to all presently existing or established systems of distribution of motor vehicles in this state, except to the extent such application would impair contractual agreements in violation of the Florida or federal constitutions. All agreements renewed or entered into subsequent to the effective date of this act shall be governed hereby.

Section 12. Each section which is added to chapter 320, Florida Statutes, by this act is repealed on October 1, 1988, and shall be reviewed by the Legislature pursuant to s. 11.61, Florida Statutes.

Section 13. This act shall take effect upon becoming a law, except section 2, which shall take effect on July 1, 1984.

CODING: Words stricken are deletions; words underlined are additions.
I. SUMMARY AND PURPOSE

This bill amends provisions in Chapter 320, F.S., "Motor Vehicle Licenses," relating to licensure of motor vehicle dealers, manufacturers, factory branches, importers, and distributors, to provide greater protection for existing franchisees of the above. It provides as a ground for denial, suspension, or revocation of a license certain interference with franchise agreements between an importer, factory branch, manufacturer or distributor and a motor vehicle dealer relating to the same line-make of motor vehicles as the applicant's or licensee's. The term "line-make" is defined in the bill. In addition, the bill restricts the ownership of dealerships by motor vehicle suppliers with certain exceptions, and it provides certain licensing criteria which must be complied with upon the appointment of a new importer, manufacturer, factory branch, or distributor of a line-make of motor vehicles or upon a change in the distribution of any such line-make if there is an existing franchisee handling that same line-make.

II. CURRENT LAW AND EFFECT OF CHANGES

A. CURRENT LAW

Chapter 320 of the Florida Statutes governs motor vehicle licenses. Section 320.27 requires motor vehicle dealers to be licensed. Sections 320.60-320.70 pertain to regulation of motor vehicle manufacturers, factory branches, distributors, and importers. More specifically, these sections provide for licensure (320.61, 320.62, 320.63); denial, suspension or revocation of a license (s. 320.64); unfair cancellation of franchise agreements (s. 320.641); and dealer licenses in areas previously served (s. 320.642).
Section 320.642, currently provides that the Department of Highway Safety and Motor Vehicles (hereafter referred to as "Department") shall deny an application for a motor vehicle dealer license if the licensee (which is defined in s. 320.60 as the manufacturer, factory branch, distributor or importer) has existing franchised dealers in that same community or territory and those dealers have complied with the licensee's agreements and are providing adequate representation in that area. The burden of proof for showing inadequate representation is upon the licensee, not upon the dealer/applicant.

Florida Administrative Code Rule 15C-1.08 requires the Department to notify existing franchisees of an applicant's intent to establish a new dealership or franchise. Existing franchisees have the opportunity to request a hearing challenging such new franchise. It is then up to the Director of the Division of Motor Vehicles to either grant or deny the license for the new franchise.

In addition to the above, both Florida law and federal law protect motor vehicle dealers and franchisees from any antitrust violations or from any coercion and intimidation which automobile manufacturers may be able to impose on their retail dealers by virtue of the manufacturers' superior economic position. (See for e.g., Chapter 542, F.S., Automobile Dealer's Day in Court Act (15 U.S.C.S. ss. 1221 et seq. (1956)), and the Sherman Act (15 U.S.C.S. ss. 1-7 (1890))).

B. EFFECT OF PROPOSED CHANGES

This bill contains nine sections which provide as follows:

SECTION 1 defines "line-make" for purposes of chapter 320 as "motor vehicles of such models and types intended for sale or distribution under a common name designated by a manufacturer."

SECTION 2 rearranges the provisions of s. 320.61, "Licenses required of motor vehicle manufacturers, factory branches, distributors, importers, etc.--," for the sake of clarity. Substantively, this amendment also requires such licensure prior to offering any motor vehicle for lease. Current law only requires a license prior to selling or offering for sale a motor vehicle.

SECTION 3 amends s. 320.64, F.S., "Denial, suspension, or revocation of license; grounds.--," to allow the Department to deny, suspend, or revoke a license of any manufacturer, factory branch, distributor, or importer which has caused an importer, factory branch, or distributor of the licensee or license applicant's line-make of motor vehicles to terminate, cancel, not renew, or breach a franchise agreement with any duly licensed motor vehicle dealer.

SECTION 4 of this bill seeks to protect existing motor vehicle dealers and franchisees in the event that a franchisor appoints a new manufacturer, importer, or distributor for any line-make of motor vehicle covered by the franchisee's franchise agreement or in the event that a manufacturer, importer, or distributor of motor vehicles changes an established plan or system of distribution of such line-make to dealers in this state. It provides such protection by amending s. 320.642, F.S., to expand the grounds on which the Department may deny applications for various licenses. Under this amendment, the Department may deny an application:

(1) For certain licenses if the applicant will handle a line-make currently handled by an existing franchisee, unless the applicant files an affidavit agreeing to assume and fulfill the
rights, privileges and obligations of the manufacturer, distributor, or importer, under any new dealer agreements; and,

(2) For any motor vehicle dealer license filed pursuant to s. 320.27, F.S., "Motor vehicle dealers.--," for any area covered by an existing franchise or selling agreement relating to the same line-make, the department may deny the application until the manufacturer, importer, or distributor of the line-make is licensed pursuant to the requirements of (1), above.

In addition, the Department is authorized by this section to deny any motor vehicle dealer license application for any area covered by a franchise or selling agreement for the same line-make, if the existing dealers are complying with their franchise or selling agreements and are providing adequate representation. The burden of proof in showing inadequate representation shall be on the manufacturer, importer, factory branch, or distributor intending to supply new motor vehicles of that line-make to the applicant.

SECTION 5 of the bill creates a new section in Chapter 320, s. 320.645, "Restrictions upon ownership of dealership by supplier.--," which prohibits a manufacturer, factory branch, importer, or distributor, either directly or indirectly, from owning or operating a dealership in the same community or territory in which a motor vehicle dealer of the same line-make is operating. Exempted from this prohibition are temporary dealerships operated in conjunction with an independent person; suppliers who have operated retail dealerships for at least 3 years prior to January 1, 1984; and those persons the Department determines should be exempt based on public interest.

SECTION 6 makes this act applicable to all existing and future agreements, amendments, extensions, and renewals.

SECTION 7 is the severability clause of the bill.

SECTION 8 provides that all sections added to chapter 320 by this bill shall be reviewed pursuant to sunset before October 1, 1988.

SECTION 9 provides that this act shall take effect upon becoming a law.

III. ECONOMIC IMPACT CONSIDERATIONS

A. PRIVATE SECTOR CONSIDERATIONS

For the most part, the economic impact of this bill in the private sector is indeterminable since no one knows how many licensees will be subject to its sanctions. Potentially, all licensees may be subject to this bill so the following figures may be instructive:

-In 1983, there were 1342 new motor vehicle dealer licenses issued in Florida. Of this number, approximately 800 were for automobile dealers. The remainder were for either truck or motorcycle dealers. Of these 800 automobile dealers, the majority only have a franchise with one manufacturer, according to the Florida Automobile Dealers Association.

-In the licensing year of October 1983-September 1984, to date there have been a total of 113 licenses issued for manufacturers, distributors, factory branches, and importers of new motor vehicles.

Inasmuch as this bill seeks to protect existing dealerships from having their franchise agreements terminated or breached by
a manufacturer, factory branch, distributor, or importer without just provocation or because of appointment of a new dealership, this bill should have its greatest impact on those manufacturers, factory branches, distributors, and importers who may have to continue abiding by franchise agreements that they otherwise may have been able to cancel or not renew prior to enactment of this bill.

The economic impact of this bill on consumers is indeterminable.

B. PUBLIC SECTOR CONSIDERATIONS

This bill should have little or no impact in the public sector.

IV. COMMENTS

Overall, this bill seeks to protect existing motor vehicle dealers. Protection similar to that provided for in Section 4 of this bill has been upheld against antitrust challenges by the United States Supreme Court in the case of New Motor Vehicle Bd. v. Orrin W. Fox Co., 439 U.S. 96 (1978). However, notwithstanding the constitutionality of this section, this section may need to be rewritten for the sake of clarity. For instance, the newly created subsection (l)(a) seems ambiguous with respect to whose "rights, privileges, and obligations" a particular licensee must swear to assume. In addition, this section which addresses the authority of the Department to deny an application for a manufacturer's, distributor's, factory branch's or importer's license, is contained in a section of the statutes relating to dealer licenses. Perhaps it would have been better to amend this language onto section 320.61, F.S., which specifically addresses licenses required of motor vehicle manufacturers, factory branches, distributors, and importers.

Restrictions similar to those placed on suppliers in Section 5 of this bill prohibiting them from owning dealerships were upheld by the United States Supreme Court in Exxon Corp. v. Governor of Maryland, 437 U.S. 117 (1978). In Exxon the Court upheld against constitutional challenges of due process, commerce clause, and antitrust violations, a Maryland statute which prohibited producers or refiners of petroleum products from operating retail service stations within the state.

Finally, Section 6 of this bill may be unconstitutional if its effect is to impair the obligations of existing contracts or franchise agreements, since such effect is violative of Article I, Section 10, of the Florida Constitution. "Article I, Section 10, of the Florida Constitution prohibits the legislature from passing any law which impairs the obligation of a contract. In other words, where the statute in question was not in effect at the time of contracting, it cannot be retroactively applied to alter the obligations of that contract. This is true even though the act which triggers the obligation occurs after the statute is enacted." (E.S.) Hausler v. State Farm Mutual Automobile Insurance Co., 363 So.2d 1037 (Fla. 2d DCA 1979). See also, Dewberry v. Auto-Owners Ins. Co., 363 So.2d 1077 (Fla. 1978); Bedell v. Lassiter, 196 So. 699 (Fla. 1940).

To remedy this constitutional defect, this section could either be stricken in its entirety, or in the alternative, that portion which makes the Act applicable to all agreements "presently existing" could be stricken.

V. AMENDMENTS
I. SUMMARY AND PURPOSE

This bill amends provisions in Chapter 320, F.S., "Motor Vehicle Licenses," relating to licensure, of motor vehicle dealers, manufacturers, factory branches, importers, and distributors, to provide greater protection for existing franchisees of the above. It provides as a ground for denial, suspension, or revocation of a license certain interference with franchise agreements between an importer, factory branch, manufacturer or distributor and a motor vehicle dealer. In addition, the bill restricts the ownership of dealerships by manufacturers, importers or factory branches with certain exceptions, and it provides certain licensing criteria which must be complied with upon the appointment of a new importer, manufacturer, factory branch, or distributor or upon a change in a system or plan of distribution if there is an existing franchisee adversely affected by such change.

II. CURRENT LAW AND EFFECT OF CHANGES

A. CURRENT LAW

Chapter 320 of the Florida Statutes governs motor vehicle licenses. Section 320.27 requires motor vehicle dealers to be licensed. Sections 320.60-320.70 pertain to regulation of motor vehicle manufacturers, factory branches, distributors, and importers. More specifically, these sections provide for licensure (320.61, 320.62, 320.63); denial, suspension or revocation of a license (s. 320.64); unfair cancellation of franchise agreements (s. 320.641); and dealer licenses in areas previously served (s. 320.642).

Section 320.642, currently provides that the Department of Highway Safety and Motor Vehicles (hereafter referred to as
"Department") shall deny an application for a motor vehicle dealer license if the licensee (which is defined in s. 320.60 as the manufacturer, factory branch, distributor or importer) has existing franchised dealers in that same community or territory and those dealers have complied with the licensee's agreements and are providing adequate representation in that area. The burden of proof for showing inadequate representation is upon the licensee, not upon the dealer/applicant.

Florida Administrative Code Rule 15C-l.08 requires the Department to notify existing franchisees of an applicant's intent to establish a new dealership or franchise. Existing franchisees have the opportunity to request a hearing challenging such new franchise. It is then up to the Director of the Division of Motor Vehicles to either grant or deny the license for the new franchise.

Section 320.697 allows any person suffering pecuniary loss because of a violation by a licensee of ss. 320.60-320.70 a cause of action for damages equal to three times the pecuniary loss together with costs and attorney's fees.

In addition to the above, both Florida law and federal law protect motor vehicle dealers and franchisees from any antitrust violations or from any coercion and intimidation which automobile manufacturers may be able to impose on their retail dealers by virtue of the manufacturers' superior economic position. (See for e.g., Chapter 542, F.S., Automobile Dealer's Day in Court Act (15 U.S.C.S. ss. 1221 et seq. (1956)), and the Sherman Act (15 U.S.C.S. ss. 1-7 (1890))).

B. EFFECT OF PROPOSED CHANGES

This bill contains thirteen sections which provide as follows:

SECTION 1 amends the definitional section of s. 320.60, F.S., by amending the definitions of "manufacturer," "person," and "agreement," and by creating a definition for "common entity." The definition of "manufacturer" is amended to include any entity through which a manufacturer distributes its products. The definition of "agreement" is amended to be interchangeable with "franchise agreement" and both are then defined to mean any agreement or a relationship pursuant to which a motor vehicle dealer is authorized to sell and perform warranty or other service upon motor vehicles which are intended for sale under a common name, trademark, or service mark of the manufacturer.

SECTION 2 of the bill amends s. 320.61, F.S., to expand the group of persons who must be licensed pursuant to ss. 320.60-320.70. Under this amendment, all manufacturers doing business in this state must be licensed. Prior to this amendment, only those manufacturers who were engaged in the business of manufacturing in this state had to be licensed. In addition, this section is amended to require any factory branch, importer, or distributor who leases or offers for lease motor vehicles in this state to be licensed. Previously, only those persons selling or offering for sale motor vehicles had to be licensed.

SECTION 3 of this bill creates a new section 320.632 which mandates an agency relationship between a manufacturer and any person distributing a manufacturer's products, and vice versa, for purposes of any franchise agreement entered into by either party with a motor vehicle dealer.

SECTION 4 amends the grounds provided for denial, suspension, or revocation of a manufacturer's, distributor's, importer's, or
factory branch's license provided for in section 320.64, F.S., to include the following:

(1) The applicant or licensee has threatened to modify or replace or has modified or replaced an existing franchise agreement with one which would adversely alter the rights or obligations of a motor vehicle dealer or would substantially impair the dealer's sales, service obligations, or investment.

(2) The applicant or licensee, directly or indirectly, causes a termination, cancellation, or non-renewal of a franchise agreement by a present or previous importer, factory branch, or distributor, unless, the applicant or licensee either (1) offers the affected dealer a franchise agreement containing substantiably the same provisions contained in the previous franchise agreement; or (2) files with the Department of Highway Safety and Motor Vehicles an affidavit acknowledging its undertaking to assume and fulfill the affected dealer's franchise agreement.

(3) Notwithstanding the terms of any franchise agreement, the applicant or licensee refuses to accept the succession to any interest in a franchise agreement by any legal heir or devisee of a dealer. However, if after a hearing it is determined that such succession would be detrimental to the public interest or to the representation of the applicant or licensee, such refusal shall be permitted.

SECTION 5 amends s. 320.641, F.S., to require an applicant or licensee to give written notice to a dealer and to the department of the licensee's intention to modify or replace a franchise agreement with a succeeding franchise agreement which will adversely alter the rights or obligations of a dealer under an existing agreement. Prior to this amendment, the applicant or licensee only had to notify the department and dealer of any intent to discontinue, cancel, or not renew a franchise agreement. Failure to comply with such notification requirements constitutes an unfair cancellation.

Dealers affected by the applicant or licensee's actions may file a complaint with the department for a hearing to determine whether such action is unfair or prohibited. The bill mandates a reasonable attorney's fee for any prevailing dealer, as well as allows her a civil cause of action under section 320.697.

Any affected franchise agreement is deemed to be continuing until a final determination is rendered by the department.

SECTION 6 creates a new section in the statutes, s. 320.6415, to govern changes in a plan or system of distribution. It provides that all dealer franchise agreements shall remain in full force and operation notwithstanding a change, in whole or in part, of an established plan or system of distribution. It further requires the department to deny a license to any manufacturer, distributor, importer, or factory branch that alters its plan or system of distribution, unless such person either (1) offers the affected dealer(s) a new franchise agreement containing substantially the same provisions as contained in the previous franchise agreement; or (2) files with the department an affidavit acknowledging its undertaking to assume and fulfill the previous franchise agreement. The department is also required by this section to deny any application for a dealer license in any community or territory covered by an existing franchise agreement until the above provisions have been complied with.
SECTION 7 amends s. 320.643 to expand the scope of that section with respect to the transfer, assignment, or sale of franchise agreements. This amendment provides as follows:

(1) It provides that refusal by the licensee to accept a proposed transferee who is of good moral character and who meets any uniformly applied standards of the licensee relating to the business experience of executive management, shall be presumed to be an unreasonable withholding of acceptance of such transfer.

(2) It prohibits a licensee (i.e., a manufacturer, distributor, importer, or factory branch) from prohibiting the transfer of any interest in a franchise agreement to any person unless the licensee proves at a hearing that such transfer is to a person who is not of good moral character. Any person transferring such interest must notify or cause the proposed transferee to notify the licensee in writing of such transfer. A notified licensee is given 60 days to file a complaint with the department contesting such transfer. At any hearing held to determine the qualification of a proposed transferee, the licensee shall have the burden of proof. An existing franchise agreement shall continue in effect in accordance with its terms during the pendency of any hearing held under this section.

SECTION 8 creates a new section in the statutes, s. 320.644, to govern change on executive management control. It prohibits a licensee from prohibiting or attempting to prohibit any motor vehicle dealer from changing the executive management control of a dealer unless the licensee proves at a hearing that such change is to a person who is not of good moral character or who do not meet any written, reasonable, and uniformly applied standards of the licensee relating to business experience of executive management required by the licensee.

Any dealer desiring to change its executive management control shall notify the licensee of the intended change. Within 60 days of such notices, the licensee may file a complaint with the department challenging such change. The licensee in the event of a hearing has the burden of proving the proposed change will result in persons who are not of good moral character or who do not meet the licensee's standards.

SECTION 9 creates a new section in the statutes, s. 320.645, to restrict the direct or indirect ownership of a dealership by a licensee in this state. Excepted from this provision are the following:

(1) Operation of a dealership for a temporary period, not to exceed one year, during the transition form one owner to another;

(2) Operation of a dealership temporarily for a reasonable period, not to exceed one year, or in a bona fide relationship with an independent person who has made a significant investment subject to loss in the dealership and who can reasonably expect to acquire full ownership of the dealership;

(3) Any dealership for which the department determines after a hearing that there is not independent person available in the community or territory to own and operate the dealership in a manner consistent with the public interest, however, the licensee must make the dealership available for sale to an independent person on a continuing basis; and

(4) Any dealership owned or operated by a licensee on the effective date of this act.
SECTION 10 amends s. 320.697, F.S., which relates to civil damages allowed to a person suffering pecuniary loss as a result of a violation by a licensee of ss. 320.60-320.70 to allow any person adversely affected by such violation to seek damages.

SECTION 11 makes this act applicable to all presently existing or established systems of distribution of motor vehicles in this state, except to the extent that such application is unconstitutional.

SECTION 12 provides that all sections added to chapter 320 by this act shall be reviewed by the Legislature pursuant to repeal on October 1, 1988.

SECTION 13 is the effective date clause. It provides that the act shall take effect upon becoming a law, except for Section 2, the licensure provisions, which shall take effect on July 1, 1984.

III. ECONOMIC IMPACT CONSIDERATIONS

A. PRIVATE SECTOR CONSIDERATIONS

For the most part, the economic impact of this bill in the private sector is indeterminable since no one knows how many licensees will be subject to its sanctions. Potentially, all licensees may be subject to this bill so the following figures may be instructive:

- In 1983, there were 1342 new motor-vehicle dealer licenses issued in Florida. Of this number, approximately 800 were for automobile dealers. The remainder were for either truck or motorcycle dealers. Of these 800 automobile dealers, the majority only have a franchise with one manufacturer, according to the Florida Automobile Dealers Association.

- In the licensing year of October 1983-September 1984, to date there have been a total of 113 licenses issued for manufacturers, distributors, factory branches, and importers of new motor vehicles.

Inasmuch as this bill seeks to protect existing dealerships from having their franchise agreements terminated or breached by a manufacturer, factory branch, distributor, or importer without just provocation or because of appointment of a new dealership, this bill should have its greatest impact on those manufacturers, factory branches, distributors, and importers who may have to continue abiding by franchise agreements that they otherwise may have been able to cancel or not renew prior to enactment of this bill.

The economic impact of this bill on consumers is indeterminable.

B. PUBLIC SECTOR CONSIDERATIONS

This bill should have little or no impact in the public sector.
IV. COMMENTS

Overall, this bill seeks to protect existing motor vehicle dealers. The term "franchise agreement" is defined in the bill to include only those agreements "pursuant to which a motor vehicle dealer is authorized to sell and perform warranty or other service upon motor vehicles." (e.s.) The use of the conjunctive "and" between "sell" and "perform warranty" would seem to indicate that any contractual arrangement between a dealer and a licensee which only allows the dealer to sell cars, or service cars, but not both, would not be a "franchise agreement" under this bill's definition and accordingly would not be covered by most provisions of this act.

Restrictions similar to those placed on licensees in Section 9 of this bill prohibiting them from owning dealerships were upheld by the United States Supreme Court in Exxon Corp. v. Governor of Maryland, 437 U.S. 117 (1978). In Exxon the Court upheld against constitutional challenges of due process, commerce clause, and antitrust violations, a Maryland statute which prohibited producers or refiners of petroleum products from operating retail service stations within the state.

Statement of Substantial Changes Made in Committee Substitute:

1. The definitional section of HB 890 has been completely revised in this bill. Section 1 of HB 890 added a new subsection to s. 320.60 (Definitions.--) defining "line-make." This bill deletes that definition, and amends the existing definitions of "manufacturer" (in order to define all distributors as manufacturers), "persons," and "agreement." Also, a definition for the term "common entity" has been added.

2. Section 2 of both bills amends s. 320.61 (Licenses required of motor vehicle manufacturers, factory branches, distributors, importers, etc.--). However, this bill makes a substantial change in that section which was not in HB 890. Under this bill, all manufacturers who engage in business in this state must be licensed. Under existing law and under HB 890, only those manufacturers who engage in business "as such" in this state have to be licensed.

3. Section 3 of this bill creates a new section in the statutes, s. 320.632 (Franchise agreements, agency.--). This new section mandates an agency relationship between any entity distributing a manufacturer's product, and the manufacturer, with respect to any franchise agreements entered into with dealers. There was no similar provision contained in HB 890.

4. Both bills amend s. 320.64 (Denial, suspension, or revocation of license; grounds.--), though this bill makes more substantial amendments to that section than did HB 890. HB 890 added as an additional ground for license denial, suspension, or revocation for an importer, factory branch, or distributor to cause either directly or indirectly and without just provocation, the termination, cancellation, non-renewal, or breach of a dealer's franchise agreement. This bill retains the substance of that section, but excuses such action in the event that the applicant or licensee either offers the affected dealer a franchise agreement containing substantially the same provisions contained in the previous franchise agreement, or, files an affidavit with the department agreeing to abide by the existing agreement.

In addition, this section adds two new subsections to that statutory section. These newly created subsections authorize the department to deny, suspend, or revoke a license because:
(1) The applicant or licensee has threatened to modify or replace or has modified or replaced a franchise agreement with a succeeding franchise agreement which adversely affects a dealer; or

(2) The applicant or licensee prevents or refuses to accept the succession to any interest in a franchise agreement by any legal heir or devisee of a dealer, unless it is determined after a hearing that accepting such succession would be detrimental to the public interest or to the representation of the applicant or licensee.

5. This bill amends s. 320.641 (Unfair cancellation of franchise agreements--) to require a manufacturer or distributor to give notice to a dealer of the manufacturer's intention to modify or replace a franchise agreement with a succeeding agreement which will adversely affect the dealer. After notice, it further provides for an administrative determination of the fairness of such modification or replacement.

In addition, this bill mandates an award of attorney's fees and costs in the event a dealer prevails at a hearing. Under current law a dealer has to file a separate court action to recover costs. There was no analogous amendment in HB 890.

6. Section 6 of this bill creates a new section in the statutes which was not contained in HB 890. This new section, s. 320.6415 (Changes in plan or system of distribution.--), provides that a dealer's franchise agreement shall continue in full force and operation, notwithstanding a change in whole or in part, of an established plan or system of distribution of motor vehicles offered for sale under such franchise agreement. This section further prohibits the licensing of a manufacturer, distributor, importer, factory branch, or importer, in the event of such change in an established plan of distribution unless the applicant or licensee either offers a new franchise agreement to the dealer containing substantially the same provisions as the old, or files an affidavit with the department agreeing to assume all duties and obligations under the existing franchise agreements.

7. Section 7 of this bill amends s. 320.643 (Transfer, assignment, or sale of franchise agreements--) to add two new subsections governing a dealer selling, assigning, or otherwise disposing of an interest in a franchise agreement. Procedures for notice and a hearing are provided. No similar provision was found in HB 890.

8. Section 8 of this bill creates a new statutory section, s. 320.644 (Change of executive management control.--). This new section prohibits a licensee from preventing or attempting to prevent a dealer from changing the executive management control of the dealer. No similar provision was contained in HB 890.

9. Section 9 of this bill creates a new statutory section, s. 320.645, to restrict the ownership of a dealership by a licensee. A similar provision was found in HB 890, though the provision in HB 890 only applied to those communities or territories in which there was a dealership. This bill expands on this prohibition to prohibit a manufacturer from operating a dealership if the motor vehicles to be sold are offered for sale under a franchise agreement with any dealer in this state.

10. Section 10 of this bill amends s. 320.697 (Civil damages--) to allow a person "adversely affected" to have a cause of action for violation of ss. 320.60-320.70, rather than just those persons "suffering pecuniary loss" as the statute now requires. There was no similar provision in HB 890.
11. Section 11 of this bill makes this act applicable to all presently existing or established systems of distribution of motor vehicles in this state, except to the extent that such application is unconstitutional. Section 6 of HB 890 made the act retrospectively and prospectively applicable to all agreements as well as to all systems of distribution.

12. The severability clause of HB 890 has been deleted as unnecessary.

13. The effective dates clause has been amended to provide that section 2 of the act (the licensing provisions) will take effect July 1, 1984. The remainder of the act will take effect upon becoming a law.

V. AMENDMENTS

Prepared by: [Signature]

Staff Director: [Signature]
THE FLORIDA HOUSE OF REPRESENTATIVES

HOUSE COMMITTEE ON COMMERCE

IN RE: MOTOR VEHICLE LICENSES (HB 890 1984)

TRANSCRIPT OF RECORD

Excerpts from the Florida House of Representatives
House Committee on Commerce
House Bill 890
April 18, 1984

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APRIL 18, 1984

WHEREUPON:

MR. CHAIRMAN [Mr. Lehtinen Presiding]: Okay, we are moving along and we are consulting on order, believe it or not. House Bill 890, number 13, by Mr. Lippman.

MR. LIPPMAN: Thank you, Mr. Chairman. Members of the Committee. House Bill 890 is a bill which amends the provisions of Chapter 320--Chapter 320 which talks to motor vehicle licenses, relating to the licensure of motor vehicle dealers, manufacturers, factory branches, importers and distributors. The purposes of this bill is to concern to the relationship between motor vehicle manufacturers, distributors, importers, etcetera. The bill strengthens the rights of dealers by and among other things requiring the manufacturer to be licensed in this state and not just by its distributor.

Mr. Chairman, I have before you--there is a amendment which strikes everything after the enacting clause, which has been worked on by your staff for long periods of time, primarily technical, which has been negotiated by the
industry and the warring parties, and I'd like to move that amendment so that we have a bill in front of us to talk to.

MR. CHAIRMAN: Okay, ladies and gentlemen, let's have your attention. On House Bill 890, Mr. Williams offers the following amendment: "Page 1, line 23, strike everything after the enacting clause and insert the following." The Chair will comment that this bill, unlike the other one that we discussed on subcommittee, this one was available to staff and discussed by staff extensively prior to this time. Mr. Lippman on the amendment.

MR. LIPPMAN: Yes, Mr. Chairman, we tried to also provide you with an analysis of the amendment. The amendment, as was said, is the bill and it talks to the rights of dealers; it talks about the unfair modification or replacement of a franchise agreement; it talks about prohibiting any benefit to a manufacturer which causes a de facto cancellation of an importer or distributor; it talks to the number of items which I believe most of you would feel are just and I can tell you that we have an impending problem, not only in the State of Florida but in this country, particularly from foreign interests who want to rid us of a system which is normal to the free enterprise process, and that is distribution, the dealership, and the sale of products known to us as automobiles. There have been cases brought to us recently and there are impending cases that we believe will come to us from offshore where international manufacturers are--would like to come into the state and rid themselves of
dealerships, of people who have placed millions upon millions of dollars into the community and into structures and businesses and just rid them of their contractual relationships to establish their own shall we say factory or in-store dealerships, and we believe that this is an improper thing. I'd like to move the amendment.

MR. CHAIRMAN: Okay, the Chairman realizes that some members are under the impression that the Constitution recognizes their position vis-a-vis staff, however, when I have made that argument on occasion to committee chairmen, it has failed, so--[inaudible comment]--many times. Further debate on the amendment. Without objection, all in favor--well, okay, all in favor of the amendment say aye [AYES], all opposed nay [None]. The amendment is adopted.

MR. LIPPMAN: I believe there is a technical amendment--

MR. CHAIRMAN: The technical amendment, we believe, has been withdrawn because you're all after the enacting clause handled that.

MR. LIPPMAN: --Okay, thank you.

MR. CHAIRMAN: A title amendment --

MR. LIPPMAN: Yes, sir.

MR. CHAIRMAN: -- is offered, show it adopted. Debate on the bill as amended. If Mr. Lippman has closed on the bill, --

MR. LIPPMAN: It's a good American bill. I'd like--a good American bill.

MR. CHAIRMAN: Without further debate, the Secretary
will call the roll on House Bill 890.

SECRETARY: Mr. Abrams? Mr. Abrams?

MR. ABRAMS: Yes.

SECRETARY: Mr. Danson?

MR. DANSON: No.

SECRETARY: Mr. Gallagher?

MR. LIPPMAN: He said yes.

SECRETARY: Yes? Okay. Mr. Gardner? I can't hear.

Mr. Gardner?

MR. GARDNER: Yes.

SECRETARY: Mr. Gustafson? Mr. Hargrett? Mrs. Hawkins?

Mr. Hazouri?

MR. HAZOURI: Yes.

MR. CHAIRMAN: Mrs. Hawkins?

SECRETARY: [Off Mike: The lady don't care to vote]

Mr. Hazouri?

MR. HAZOURI: Yes, yes.

SECRETARY: Mr. Johnson? [?] Mr. Kutun?

MR. KUTUN: Yes.

SECRETARY: Mr. Lehtinen?

MR. LEHTINEN: Yes.

SECRETARY: Mr. Martinez?

MR. MARTINEZ: Yes.

SECRETARY: Mr. McEwan? [?] Mr. Meffert?

MR. MEFFERT: Yes.

SECRETARY: Mr. Pajcic? Mr. Self?

MR. SELF: Yes.
SECRETARY: Mr. Silver?
MR. SILVER: Yes.
SECRETARY: Mr. Simon?
MR. SIMON: Yes.
SECRETARY: Mr. Thompson, Mr. Upchurch? Mr. Wallace?
MR. WALLACE: Yes.
SECRETARY: Mr. Williams?
MR. WILLIAMS: Yes.
MR. CHAIRMAN: So by your vote, the bill passes. Mr. Williams moves that it be made a Committee Substitute. Without objection, show that adopted.
MR. LIPPMAN: Thank you, Mr. Chairman.
MR. CHAIRMAN: We'll take up Mr. Silver's bill with Mr. Lewis in a moment, but Mr. Wetherall has an 11:48 . . .
WHEREUPON the Committee discussion on House Bill 890 was concluded.
CERTIFICATE OF TRANSCRIBER

I, KATHLEEN J. HILL, Notary Public, State of Florida at Large

DO HEREBY CERTIFY that the foregoing transcription, consisting of five (5), to the best of my ability, knowledge, and belief, is a true and accurate transcription of excerpts of the tapes provided by Florida Information Associates, Inc., P.O. Box 11144, Tallahassee, Florida 32302, Telephone: (904) 878-0188, which tapes are copies of the original tapes of the Florida House of Representatives, Full Committee on Commerce meeting held April 18, 1984.

DATED this 6th day of October, 1994.

[Signature]

KATHLEEN J. HILL, CLA
NOTARY PUBLIC, STATE OF FLORIDA
AT LARGE
My Commission Expires: 9/26/97
STATE OF FLORIDA)
     ) ss.
COUNTY OF LEON 

  I, CONNIE J. BEANE, do hereby certify that on October 5, 1994, I received from Florida State Archives, Florida Department of State, a copy of an original tape recording of the Florida Legislature, House Committee on Commerce, for April 18, 1984. Said original recording is in the Florida State Archives, Record Group 920, Series 414, Box 490. I further certify that I delivered said tape to Kathleen J. Hill, PLS, CLA, Capitol Services, 1406 Hays Street, Suite 2, Tallahassee, FL 32301, (904) 878-4734, for purposes of transcription of that portion of Side B relating to the discussion of House Bill 890.

CONNIE J. BEANE
Florida Information Associates, Inc.
P.O. Box 11144
Tallahassee, FL 32302
(904) 878-0188

Sworn to and subscribed before me, this 6th day of October, 1994.

NOTARY PUBLIC, State of Florida at Large
Printed Name:
My commission expires:
HB 890 AMENDMENT--SECTION-BY-SECTION ANALYSIS:

SECTION 1 contains technical amendments to the definitions of s. 320.60, F.S., and includes a provision making corporations or other entities an agent of a "manufacturer" by contractual agreement or otherwise.

This section also enlarges the definition of "agreement" to include "franchise agreement" and "dealer agreement" which terms are commonly used in the industry.

The section also adds a new definition of "common entity" which is defined as any person (including all legal entities) which is controlled or owned by one or more persons who also control or own 40% or more of voting interests of a manufacturer.

SECTION 2 amends s. 320.61, F.S., by requiring the licensing in the State of Florida of any manufacturer whose vehicles are offered for sale or lease in the state, in addition to the licensing of any factory branch, importer or distributor.

SECTION 3 creates a new s. 320.632, F.S., to make an importer, distributor, factory branch, parent, subsidiary, common entity, or other entity which is engaged in the distribution of a manufacturer's products, and any parent, subsidiary, or common entity of the manufacturer, an "agent" of the manufacturer for purposes of the franchise agreement. This section also provides that any agent shall be bound by the terms of such franchise agreement, and concomitantly, that a manufacturer is bound by the terms and provisions of a franchise agreement executed by one of its "agents."

SECTION 4 amends s. 320.64, F.S., by adding a new provision prohibiting the following:
(1) A licensee or an applicant for a manufacturer or
distributor license from modifying or replacing a franchise
agreement with a new agreement containing terms and provisions
which adversely affect the existing motor vehicle dealer.

(2) A licensee from causing a termination, cancellation
or non-renewal of a franchise agreement by a present or
previous importer, unless the motor vehicle dealer is offered a
new franchise or unless the licensee agrees to undertake and
assume the previous distributor's duties and obligations under
existing agreements.

(3) A manufacturer or distributor from refusing to accept
as a successor in interest of a franchise agreement any heir at
law in the event of the death of the principal owner of the
dealership, providing there is no detriment to the public
interest or to the manufacturer by any successor's operation of
the dealership.

SECTION 5 amends s. 320.641, F.S., by requiring a
manufacturer or distributor to give notice to the dealer of the
manufacturer's intention to modify or replace a franchise
agreement with a succeeding agreement which will adversely
affect the dealer, and provides for an administrative
determination with respect to the fairness of such modification
or replacement.

This section also is amended to require the department to
award attorney's fees and costs in the event a dealer prevails
in any administrative hearing under this section. Under
current law a dealer has to file a separate court action.

SECTION 6 creates a new s. 320.6415, F.S., to prohibit
the licensing of a new manufacturer, distributor or dealer in
the event of a change of an established plan of distribution or
in the event of the appointment of a new importer or
distributor, unless the new importer or distributor offers a
news franchise agreement containing substantially the same provisions as the old franchise agreement to all dealers or files an affidavit undertaking to assume all duties and obligations under the existing franchise agreements.

SECTION 7 amends s. 320.643, F.S., as follows:

(1) It provides that certain conduct by a licensee shall be presumed unreasonable with respect to withholding acceptance by a franchise agreement transfer;

(2) It creates a new subsection (2) which prohibits a licensee (i.e., manufacturer, distributor, importer, or factory branch) from prohibiting the transfer of any interest in a franchise agreement to any person unless the licensee proves at a hearing that such transfer is to a person who is not or whose controlling management is not of good moral character. Procedural requirements are provided for such transfer, including a hearing, if necessary, to determine whether a proposed transferee is qualified under this section. During the pendency of a hearing under this section, an existing franchise agreement of a dealer shall continue in effect in accordance with its terms.

SECTION 8 creates a new s. 320.644, F.S., to prohibit a manufacturer or distributor from preventing a dealer from changing the executive management control of the dealership unless the licensee proves at a hearing before the department that the change of management is to a person or persons not of good moral character or who fail to meet the "written, reasonable and uniformly applied standards" of the manufacturer relating to the business experience of executive management which the manufacturer or distributor requires of its dealers.

Provisions for administrative hearing and determination of this issue are set forth.
SECTION 9 creates a new s. 320.645, F.S., which prohibits any manufacturer or its agent or common entity from owning or operating a motor vehicle dealership in this state (i.e., prohibits factory stores) with the following exceptions:

(1) During a one-year transition period between dealers;

(2) During a one-year "buy-out period"; or

(3) If the department determines that there is no independent person available to operate the motor vehicle dealership consistent with the public interest. In the latter case, however, the manufacturer or distributor must continuously offer the dealership for sale to an independent person.

SECTION 10 amends s. 320.697, F.S., (civil damages) to allow a person "adversely affected" to have a cause of action for violation of this statute rather than just a person "suffering pecuniary loss" as now exists.

SECTION 11 makes this act applicable to all presently existing or established systems of distribution of motor vehicles in this state, except to the extent that such application is unconstitutional.

SECTION 12 provides that all sections added to chapter 320 by this act shall be reviewed by the Legislature prior to repeal on October 1, 1988.

SECTION 13 is the effective date clause. It provides that the act shall take effect upon becoming a law, except for section 2 (the licensure provisions), which shall take effect July 1, 1984.
Section 1. Subsections (1), (5) and (12) of section 320.60, Florida Statutes, are amended, and a new subsection (13), is added to said section, 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:

(1) "Manufacturer" means any person, whether a resident or nonresident of this state, who manufactures or assembles motor vehicles or who manufactures or installs on previously assembled truck chassis special bodies or equipment which, when installed, form an integral part of the motor vehicle and which constitute a major manufacturing alteration. The term "manufacturer" includes, in the case of a parent corporation or copartnership, its central or principal sales corporation or other entity agency through which, by contractual agreement or otherwise, it distributes its products.

(5) "Person" means any natural person, partnership, firm, corporation, or association, joint venture, trust or other legal entity.

(12) "Agreement" or "franchise agreement" means contract, franchise, new motor vehicle franchise, sales and service selling agreement, dealer agreement, or any other terminology used to describe the contractual relationship between manufacturers, distributors, importers, factory branches and motor vehicle dealers, pursuant to which a motor vehicle dealer is authorized to sell and perform warranty or other service upon motor vehicles which are intended for sale under a common name, trade name, trademark or service mark of the manufacturer.
(13) "Common entity" means a person who is either controlled or owned, beneficially or of record, by one or more persons who also control or own more than 40 percent of the voting equity interests of a manufacturer, or who shares directors or officers or partners with a manufacturer.

Section 2. Subsection (1) of section 320.61, Florida Statutes, is amended to read:

320.61 Licenses required of motor vehicle manufacturers, factory branches, distributors, importers, etc.--

(1) No manufacturer, factory branch, distributor, or importer (all sometimes referred to hereinafter as "licensee") shall engage in business as such in this state without a license therefor as provided in ss. 320.60-320.70. No motor vehicles, foreign or domestic, shall be sold, leased, or offered for sale or lease in this state unless the manufacturer of such motor vehicles and, as the case may be:

(a) Any factory branch, on direct dealership of domestic vehicles;

(b) Any importer of foreign manufactured vehicles, on direct dealerships; or

(c) Any distributor, on indirect dealerships of either domestic or foreign vehicles.

are licensed under ss. 320.60-320.70. No such licensee's vehicles shall be sold in this state unless either the manufacturer or factory branch, on direct dealerships of domestic vehicles, the importer of foreign manufactured vehicles, on direct dealerships, or the distributor, on indirect dealerships of either domestic or foreign vehicles, is licensed under ss. 320.60-320.70.

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Section 3. Section 320.632, Florida Statutes, is created to read:

320.632 Franchise agreements, agency.--Any parent, subsidiary, or common entity of a manufacturer, any importer, distributor, factory branch or other entity, which by contractual arrangement or otherwise engages in the distribution of a manufacturer's products, shall be deemed to be the agent of the manufacturer for purposes of any franchise agreement entered into between such agent and a motor vehicle dealer, and shall be bound by the terms and provisions of such franchise agreement as if it were the principal. A manufacturer whose products are offered for sale in this state under any franchise agreement which is executed by an agent of such manufacturer shall be bound by the terms and provisions of such franchise agreement as if it and not the agent had executed the franchise agreement.

Section 4. Section 320.64, Florida Statutes, is amended to read:

320.64 Denial, suspension, or revocation of license; grounds.--A license may be denied, suspended, or revoked within the entire state or at any specific location or locations at which a licensee engages in business and at which a violation of ss. 320.60-320.70 has occurred, on the following grounds:

(1) The department has proof of unfitness of applicant.

(2) The applicant has made a material misstatement in his application for a license.

(3) The applicant or licensee has failed willfully to comply with any provision of ss. 320.60-320.70 or with any
lawful rule or regulation adopted or promulgated by the department.

(4) The applicant or licensee has indulged in any illegal act relating to his business.

(5) The applicant or licensee has coerced or attempted to coerce any motor vehicle dealer into accepting delivery of any motor vehicle or vehicles or parts or accessories therefor or any other commodities which have not been ordered by the dealer.

(6) The applicant or licensee has coerced or attempted to coerce any motor vehicle dealer to enter into any agreement with the licensee.

(7) The applicant or licensee has unfairly or without due regard to the equities of a motor vehicle dealer, or without just provocation, threatened to cancel or not to renew the franchise agreement of such motor vehicle dealer.

(8) The applicant or licensee has unfairly or without due regard to the equities of a motor vehicle dealer, or without just provocation, canceled, or failed to renew, the franchise agreement of such motor vehicle dealer.

(9) The applicant or licensee has threatened to modify or replace or has modified or replaced a franchise agreement with a succeeding franchise agreement which would adversely alter the rights or obligations of a motor vehicle dealer under an existing franchise agreement or which substantially impairs the motor vehicle dealer's sales, service obligations or investment.

(10) The applicant or licensee has attempted to enter, or entered, into a franchise agreement with a motor vehicle dealer who does not, at the time of the franchise agreement, have proper facilities to provide the services to
his purchasers of new motor vehicles which are covered by the  
new motor vehicle warranty issued by the applicant or  
licensee.

(11) The applicant or licensee has coerced a motor  
vehicle dealer to provide installment financing for the motor  
vehicle dealer's purchasers with a specified financial  
institution.

(12) The applicant or licensee has advertised,  
printed, displayed, published, distributed, broadcast, or  
televisioned, or caused or permitted to be advertised, printed,  
displayed, published, distributed, broadcast, or televised, in  
any manner whatsoever, any statement or representation with  
regard to the sale or financing of motor vehicles which is  
false, deceptive, or misleading.

(13) The applicant or licensee has refused to  
deliver, in reasonable quantities and within a reasonable time  
after receipt of an order, to any duly licensed motor vehicle  
dealer who has an agreement with such applicant or licensee  
for the retail sale of new motor vehicles and parts for motor  
vehicles sold or distributed by the applicant or licensee, any  
such motor vehicles or parts as are covered by such agreement  
specifically publicly advertised by such applicant or licensee  
to be available for immediate delivery. However, the failure  
to deliver any motor vehicle or part will not be considered a  
violation of this section if the failure is due to act of God,  
work stoppage, or delay due to a strike or labor difficulty, a  
freight embargo, or other cause over which the applicant or  
licensee has no control. The failure to deliver parts or  
components for the current, and 5 preceding years', models  
within 60 days from date of order shall be deemed prima facie  
unreasonable.

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(14) The applicant or licensee has sold, exchanged, or rented a motorcycle or motor scooter which produces in excess of 5 brake horsepower, knowing the use thereof to be by, or intended for, the holder of a restricted Florida driver's license.

(15) The applicant or licensee has engaged in previous conduct which would have been a ground for revocation or suspension of a license if the applicant had been licensed.

(16) Notwithstanding the terms of any franchise agreement, and unless it can be shown that the licensee's franchised dealer is actively negligent, the applicant or licensee has failed to indemnify and hold harmless its franchised motor vehicle dealer against any judgment for damages or settlement agreed to in writing by the applicant or licensee, including, but not limited to, court costs and reasonable attorney's fees of the motor vehicle dealer, which judgment or settlement arose out of complaints, claims, or lawsuits based upon such grounds as strict liability, negligence; misrepresentation; warranty, express or implied; or rescission of the sale as described in s. 672.608, less any offset for use recovered by the licensee's franchised motor vehicle dealer, and only to the extent that the judgment or settlement relates to the alleged defective or negligent manufacture, assembly, or design of new motor vehicles, parts, or accessories or other functions of the manufacturer.

(17) The applicant or licensee, directly or indirectly, through the actions of any parent, subsidiary, or common entity causes a termination, cancellation, or non-renewal of a franchise agreement by a present or previous importer, factory branch, or distributor unless by the effective date of such action, the applicant or licensee

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offers the motor vehicle dealer whose franchise agreement is
terminated, cancelled or not renewed a franchise agreement
containing substantially the same provisions contained in the
previous franchise agreement or files an affidavit with the
department acknowledging its undertaking to assume and fulfill
the rights, duties and obligations of its predecessor
importer, factory branch or distributor under the terminated,
cancelled or not renewed franchise agreement and the same is
reinstated.

(18) Notwithstanding the terms of any franchise
agreement, the applicant or licensee prevents or refuses to
accept the succession to any interest in a franchise agreement
by any legal heir or devisee under the will of a motor vehicle
dealer or under the laws of descent and distribution of this
state; provided, the applicant or licensee shall not be
required to accept a succession which, after notice and
administrative hearing pursuant to chapter 120, is
demonstrated to be detrimental to the public interest or to
the representation of the applicant or licensee. Nothing
contained herein, however, shall prevent a motor vehicle
dealer, during his lifetime, from designating any person as
his successor in interest by written instrument filed with an
accepted by the applicant or licensee.

Section 5. Section 320.641, Florida Statutes, is
amended to read:

320.641 Unfair cancellation of franchise agreements.--
(1)(a) An applicant or licensee shall give written
notice to notify the motor vehicle dealer and forward a copy
eof such notice to the department of the licensee's intention
to discontinue, cancel, or fail to renew a the franchise
agreement or of the licensee's intention to modify or replace

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a franchise with a succeeding franchise, which modification or
replacement will adversely alter the rights or obligations of
a motor vehicle dealer under an existing franchise agreement
or which substantially impairs the motor vehicle dealer's
sales, service obligations or investment, of any of its motor
vehicle dealers at least 90 days before the effective date
thereof, together with the specific grounds for such action
discontinuation, cancellation, or failure to renew of said
agreement; if discontinued, canceled, or not renewed.
(b) The failure by the licensee to comply with the 90-
day notice period and procedure prescribed herein shall render
voidable, at the option of the motor vehicle dealer, any
discontinuation, cancellation, or nonrenewal, modification or
replacement of any franchise agreement. Designation of a
franchise agreement at a specific location as a "nondesignated
point" shall be deemed an evasion of this section and shall
constitute an unfair cancellation.
(2) Franchise agreements are deemed to be continuing
unless the applicant or licensee has notified the department
of the discontinuation of, cancellation of, or failure to
renew, modification of, or replacement of the agreement of any
of its motor vehicle dealers, and annual renewal of the
license provided for under ss. 320.60-320.70 is not necessary
for any cause of action against the licensee.
(3) Any motor vehicle dealer whose franchise agreement
is discontinued, canceled, or not renewed, modified or
replaced, may, within such 90-day notice period, file with the
department a verified complaint in triplicate for a
determination of whether such action is an unfair or
prohibited discontinuation, or cancellation, non-renewal,
modification or replacement. Agreements and certificates of

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appointment shall continue in effect until final determination by the department of the issues raised in such complaint by the motor vehicle dealer, and, except pursuant to s. 320.643, no replacement motor vehicle dealer shall be named for this point or location to engage in business prior to the final adjudication by the department on the complaint.

(4) Notwithstanding any other provisions of this section, the failure of a motor vehicle dealer to be engaged in business with the public for 10 consecutive business days shall constitute abandonment by the dealer of his franchise agreement. If any motor vehicle dealer abandons his franchise agreement, he shall have no cause of action under this section. However, it shall not be considered abandonment if such failure to engage in business is due to an act of God, a work stoppage, or a delay due to a strike or labor difficulty, a freight embargo, or other cause over which the motor vehicle dealer has no control, including any violation of ss. 320.60-320.70.

(5) If said complainant motor vehicle dealer prevails, he shall be awarded from and against licensee have a cause of action against the defendant for reasonable attorneys' fees and costs incurred by him in such proceeding and he shall have a cause of action under s. 320.697, for unfair discontinuation, cancellation, or failure to renew, pursuant to this section.

Section 6. Section 320.6415, Florida Statutes, is created to read:

320.6415 Changes in plan or system of distribution.--

(1) A motor vehicle dealer franchise agreement shall continue in full force and operation, notwithstanding a change, in whole or in part, of an established plan or system.
of distribution of the motor vehicles offered for sale under
such franchise agreement. The appointment of a newly-
appointed importer or distributor for motor vehicles offered
for sale under such franchise agreement shall be deemed to be
such a change of an established plan or system of
distribution.

(2) Upon the occurrence of such change, the department
shall deny an application:

(a) For any license filed pursuant to ss. 320.60-
320.70 unless the applicant offers to a motor vehicle dealer
who is a party to the franchise agreement a new franchise
agreement containing substantially the same provisions as
contained in the previous franchise agreement or files an
affidavit with the department acknowledging its undertaking to
assume and fulfill the rights, duties and obligations of its
predecessor under the previous franchise agreement.

(b) For any license filed pursuant to s. 320.27 in any
community or territory in which such franchise or selling
agreement is continuing in full force and operation hereunder,
until this section is complied with.

Section 7. Section 320.643, Florida Statutes, is
amended to read:

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

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

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notice, inform the dealer either of his approval of the
transfer, assignment, or sale or of the unacceptability of the
proposed transferee, setting forth the material reasons for
the rejection. If the licensee does not so inform the dealer
within the 60-day period, its approval of the proposed
transfer is deemed granted. No such transfer, assignment, or
sale shall be valid unless the transferee agrees in writing to
comply with all requirements of the franchise then in effect.
Notwithstanding the terms of any franchise agreement,
acceptance by the licensee of the proposed transferee shall
not be unreasonably withheld. For the purposes of this
section, refusal by the licensee to accept a proposed
transferee who is of good moral character and who otherwise
meets the written, reasonable and uniformly applied standards,
if any, of the licensee relating to the business experience of
executive management required by the licensee of its motor
vehicle dealer, shall be presumed to be unreasonable.

(2) Notwithstanding the terms of any franchise
agreement no licensee shall, by contract or otherwise, fail or
refuse to give effect to, prevent, prohibit or penalize, or
attempt to refuse to give effect to, prevent, prohibit or
penalize, any motor vehicle dealer or any proprietor, partner,
stockholder, owner, or other person holding or otherwise
owning an interest therein, from selling, assigning,
transferring, alienating or otherwise disposing of, in whole
or in part, the equity interest of any of them in such motor
vehicle dealer to any other person or persons, including a
corporation established or existing for the purpose of owning
or holding the stock or ownership interests of other entities,
unless the licensee proves at a hearing pursuant to this
section, that such sale, transfer, alienation or other
disposition is to a person who is not, or whose controlling executive management is not, of a good moral character. A motor vehicle dealer, or any proprietor, partner, stockholder, owner or other person holding or otherwise owning an interest therein who desires to sell, assign, transfer, alienate, or otherwise dispose of any interest in such motor vehicle dealer shall notify or cause the proposed transferee to so notify the licensee by written notice, setting forth the identity and address of the proposed transferee. A licensee who receives such notice may, within 60 days following such receipt, file with the department a verified complaint for a determination that the proposed transferee is not a person qualified to be a transferee under this section. The licensee shall have the burden or proof with respect to all issues raised by such verified complaint. The department shall determine and enter an order providing either that the proposed transferee is qualified, is not and cannot be qualified for specified reasons, or the conditions under which a proposed transferee would be qualified. If the licensee fails to file such verified complaint within the aforesaid 60-day period, or the department, after a hearing, dismisses the complaint or renders a decision other than disqualifying the proposed transferee, then the franchise agreement between the motor vehicle dealer and the licensee shall be deemed amended in accordance with the determination and order rendered, effective upon compliance by the proposed transferee with any conditions set forth in the determination or order.

(3) During the pendency of any such hearing the franchise agreement of the motor vehicle dealer shall continue in effect in accordance with its terms. The department shall expedite any determination requested under this section.
Section 8. Section 320.644, Florida Statutes, is created to read:

320.644 Change of executive management control.--

(1) No licensee shall prohibit, prevent or attempt to prohibit or prevent any motor vehicle dealer from changing the executive management control of the motor vehicle dealer unless the licensee, who shall have the burden of proof, proves at a hearing as provided herein, that such change of executive management control of the motor vehicle dealer is to a person or persons not of good moral character or who do not meet the written, reasonable and uniformly applied standards of the licensee relating to the business experience of executive management required by the licensee of its motor vehicle dealers. A motor vehicle dealer who desires to change its executive management control shall notify the licensee by written notice, setting forth the name, address, and business experience of the proposed executive management. A licensee who receives such notice may, within 60 days following such receipt, file with the department a verified complaint for a determination that the proposed change of executive management will result in executive management control by persons who are not of good moral character or who do not meet such licensee's standards. The licensee shall have the burden of proof with respect to all issues raised by such verified complaint. If the licensee fails to file such verified complaint within the aforesaid 60-day period or the department, after a hearing, dismisses the complaint, then the franchise agreement between the motor vehicle dealer and the licensee shall be deemed amended in accordance with the decision rendered.

(2) During the pendency of any such hearing the franchise agreement of the motor vehicle dealer shall continue...
in effect in accordance with its terms. The department shall expedite any determination requested under this section.

Section 9. Section 320.645, Florida Statutes, is created to read:

320.645 Restriction upon ownership of dealership by licensee.--

(1) No licensee, including a manufacturer, agent of a manufacturer, or any parent, subsidiary, common entity or officer or representative of the licensee shall own or operate, either directly or indirectly, 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, no such licensee shall be deemed to be in violation of this section:

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

(b) When operating a motor vehicle dealership temporarily for a reasonable period not to exceed 1 year or in a bona fide relationship with an independent person, other than a licensee or its agent or affiliate, who has made a significant investment subject to loss in the dealership and who can reasonably expect to acquire full ownership of said dealership on reasonable terms and conditions; or

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

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provided that in such cases, the licensee must, on a continuing basis, make the motor vehicle dealership available for sale to an independent person at a fair and reasonable price. Approval of the sale of such a motor vehicle dealership to a proposed motor vehicle dealer shall not be unreasonably withheld. It is not necessary for the proposed motor vehicle dealer to provide exclusive facilities and personnel.

(2) This section shall not be construed to prohibit any licensee from owning or operating a motor vehicle dealership in this state if such dealership was owned or operated by the licensee on the effective date of this act.

Section 10. Section 320.697, Florida Statutes, is amended to read:

320.697 Civil damages.—Any person suffering pecuniary loss or otherwise adversely affected because of a violation by a licensee of ss. 320.60-320.70, notwithstanding the existence of any other remedies under ss. 320.60-320.70, shall have a cause of action against the licensee for damages, and may recover damages therefor in any court of competent jurisdiction in an amount equal to 3 times the pecuniary loss, together with costs and a reasonable attorney's fee to be assessed by the court. Upon a prima facie showing by the person bringing the action that such a violation by the licensee occurred, the burden of proof shall then be upon the licensee to prove that such violation or unfair practice did not occur.

Section 11. This act shall apply to all presently existing or established systems of distribution of motor vehicles in this state, except to the extent such application...
would impair contractual agreements in violation of the Florida or federal constitutions. All agreements renewed or entered into subsequent to the effective date of this act shall be governed hereby.

Section 12. Each section which is added to chapter 320, Florida Statutes, by this act is repealed on October 1, 1988, and shall be reviewed by the Legislature pursuant to s. 11.61, Florida Statutes.

Section 13. This act shall take effect upon becoming a law, except section 2, which shall take effect on July 1, 1984.