

Committee Substitute for Senate Bill No. 1956

An act relating to motor vehicles; amending s. 316.1951, F.S.; revising provisions related to parking vehicles to display for sale; amending s. 316.1967, F.S.; authorizing counties to establish fine amounts for parking violations; amending s. 316.228, F.S.; requiring strobe lights to be placed on the exterior of a commercial vehicle transporting unprocessed forest products extending more than 4 feet beyond the rear of the vehicle; providing an alternate method for placing strobe lights in certain instances; requiring the use of a red flag; amending s. 318.18, F.S.; authorizing counties to establish fine amounts for parking violations; amending s. 319.23, F.S.; providing a limitation on the issuance of certain titles; amending s. 320.023, F.S.; conforming this section to the Florida Single Audit Act; amending s. 320.08056, F.S.; including two more colleges to the discontinuance exemptions provided for collegiate speciality license plates; providing for annual renewals in the discontinuance threshold amount; amending s. 320.08062, F.S.; conforming this section to the Florida Single Audit Act; amending s. 320.18, F.S.; providing for cancellation of license plates and fuel use tax decals for failure to pay motor carrier weight and safety violation penalties; amending s. 322.05, F.S.; correcting a statutory reference regarding the requirements for an individual under 18 years of age to apply for a driver's license; amending s. 322.081, F.S.; requiring certain organizations receiving voluntary check-off contributions to notify the department under certain circumstances and to meet specified requirements; conforming the section to the Florida Single Audit Act; requiring organizations seeking authorization to establish a voluntary contribution on a motor vehicle registration to register with the Department of Agriculture and Consumer Services; amending s. 322.161, F.S.; requiring restricted driving privileges after the accumulation of 6 points within a 12-month period; creating s. 322.222, F.S.; authorizing the Department of Highway Safety and Motor Vehicles to hold a hearing when an individual's driver's license has been suspended or revoked due to medical reasons; amending s. 322.2615, F.S.; complying with the USDOT's drunk driving prevention incentive program; reducing the timeframe for a temporary permit that is allotted when an individual is charged with driving with an unlawful blood-alcohol level; amending s. 322.292, F.S.; adding the requirement that DUI programs must be governmental programs or not-for-profit corporations; amending s. 322.61, F.S.; complying with the Federal Motor Carrier Safety Regulations; adding two more violations for which a commercial motor vehicle may be disqualified of driving privileges; amending s. 322.64, F.S.; reducing the timeframe for a temporary permit allotted when an individual holding a commercial driver's license is charged with an unlawful blood-alcohol level; amending s. 328.76, F.S.; providing for the appropriation allotted for fiscal year 2000-2001 to be deposited into the Highway Safety Operating Trust Fund; amending s. 320.60, F.S.; revising definitions used in ss. 320.61-320.70, F.S.; amending s. 320.61,

F.S.; amending procedures to be followed when a complaint of unfair cancellation of a dealer agreement has been made by a motor vehicle dealer against a licensee; defining the term “final decision”; amending s. 320.64, F.S.; providing penalties and remedies for violations; deleting subsections (13) and (16); amending subsection (18); creating subsections (22) through (32) and renumbering sections; amending s. 320.641, F.S.; providing procedures relating to discontinuations, cancellations, nonrenewals, modifications, and replacements of franchise agreements; amending s. 320.643, F.S.; amending provisions relating to the transfer, assignment, or sale of franchise agreements; amending s. 320.645, F.S.; amending provisions relating to restrictions upon a licensee’s owning a dealership; providing for “dealer development arrangements”; providing exceptions; amending s. 320.699, F.S.; amending procedures for administrative hearings; creating s. 320.6991; providing for severability; creating 320.275, F.S.; creating the Automobile Dealers Industry Advisory Board; providing definitions; prohibiting certain unfair or deceptive acts by such dealers; requiring the trial court to consider certain information when awarding attorney’s fees; providing for codification in part VI of chapter 501 and application of new act to vehicles sold after October 1, 2001; repealing s. 320.27(9)(n), F.S., relating to licensure sanctions for dealers who fail to disclose certain new vehicle damages to a purchaser; amending s. 520.12, F.S.; clarifying penalties application to particular circumstances; amending ss. 681.1096, 681.1097, F.S.; revising program requirements for the Pilot RV Mediation and Arbitration program; amending s. 681.115, F.S.; providing that an agreement that prohibits disclosure of its terms is void; amending s. 713.78, F.S.; adding the insurance company to the list of individuals to be contacted when a vehicle has been towed; providing storage periods before the expiration of which certain salvaged vehicles may not be sold; repealing s. 715.05, F.S., relating to the reporting of unclaimed motor vehicles; amending s. 212.08, F.S.; providing additional requirements on vehicle tax assessments; amending s. 320.01, F.S.; conforming the length limitation for a motor home to that established in chapter 316, F.S.; amending s. 320.27, F.S.; redefining the term “motor vehicle auction”; deleting the requirement for a license to have the certificate of title or ownership indicia in his or her possession at an auction; providing for an effective date.

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

Section 1. Effective July 1, 2001, subsection (4) of section 316.1951, Florida Statutes, is amended to read:

316.1951 Parking for certain purposes prohibited.—

(4) A law enforcement officer, compliance examiner, ~~or license inspector, or supervisor of the department, as authorized in s. 320.58(1)(a)~~, may cause to be removed at the owner’s expense any motor vehicle found upon a public street, public parking lot, other public property, or private property, where the public has the right to travel by motor vehicle, which is in violation of

subsection (1). Every written notice issued pursuant to this section shall be affixed in a conspicuous place upon a vehicle by a law enforcement officer, compliance examiner, ~~or~~ license inspector, or supervisor of the department. Any vehicle found in violation of subsection (1) within 10 days after a previous violation and written notice shall be subject to immediate removal without an additional waiting period.

Section 2. Subsection (4) of section 316.1967, Florida Statutes, is amended to read:

316.1967 Liability for payment of parking ticket violations and other parking violations.—

(4) Any person who elects to appear before a designated official to present evidence waives his or her right to pay the civil penalty provisions of the ticket. The official, after a hearing, shall make a determination as to whether a parking violation has been committed and may impose a civil penalty not to exceed \$100 or the fine amount designated by county ordinance, plus court costs. Any person who fails to pay the civil penalty within the time allowed by the court is deemed to have been convicted of a parking ticket violation, and the court shall take appropriate measures to enforce collection of the fine.

Section 3. Subsection (2) of section 316.228, Florida Statutes, is amended to read:

316.228 Lamps or flags on projecting load.—

(2) Any commercial motor vehicle or trailer, ~~except as stated in s. 316.515(7)~~, transporting a load of unprocessed logs, or long pulpwood, poles, or posts which load extends extend more than 4 feet beyond the rear of the body or bed of such vehicle, must have securely fixed as close as practical to the end of any such projection one amber strobe-type lamp equipped with a multidirectional type lens so mounted as to be visible from the rear and both sides of the projecting load. If the mounting of one strobe lamp cannot be accomplished so that it is visible from the rear and both sides of the projecting load, multiple strobe lights must be used to meet the visibility requirements of this subsection. The strobe lamp must flash at a rate of at least 60 flashes per minute and must be plainly visible from a distance of at least 500 feet to the rear and sides of the projecting load at any time of the day or night. The lamp must be operating at any time of the day or night when the vehicle is operated on any highway or parked on the shoulder or immediately adjacent to the traveled portion of any public roadway. The projecting load must also be marked with a red flag as described in subsection (1).

Section 4. Subsection (6) of section 318.18, Florida Statutes, is amended to read:

318.18 Amount of civil penalties.—The penalties required for a noncriminal disposition pursuant to s. 318.14 are as follows:

(6) One hundred dollars or the fine amount designated by county ordinance, plus court costs for illegally parking, under s. 316.1955, in a parking

space provided for people who have disabilities. However, this fine will be waived if a person provides to the law enforcement agency that issued the citation for such a violation proof that the person committing the violation has a valid parking permit or license plate issued pursuant to s. 316.1958, s. 320.0842, s. 320.0843, s. 320.0845, or s. 320.0848 or a signed affidavit that the owner of the disabled parking permit or license plate was present at the time the violation occurred, and that such a parking permit or license plate was valid at the time the violation occurred. The law enforcement officer, upon determining that all required documentation has been submitted verifying that the required parking permit or license plate was valid at the time of the violation, must sign an affidavit of compliance. Upon provision of the affidavit of compliance and payment of a \$5 dismissal fee to the clerk of the circuit court, the clerk shall dismiss the citation.

Section 5. Subsection (5) of section 319.23, Florida Statutes, is amended, and a new subsection (11) is added to that section to read:

319.23 Application for, and issuance of, certificate of title.—

(5) The certificate of title issued by the department for a motor vehicle or mobile home previously registered outside this state shall give the name of the state or country in which the vehicle was last registered outside this state. ~~The department shall retain the evidence of title presented by the applicant and based on which the certificate of title is issued.~~ The department shall use reasonable diligence in ascertaining whether or not the facts in the application are true; and, if satisfied that the applicant is the owner of the motor vehicle or mobile home and that the application is in the proper form, it shall issue a certificate of title.

(11) The department is not required to retain any evidence of title presented by the applicant and based on which the certificate of title is issued.

Section 6. Paragraph (b) of subsection (4) and subsections (5), (6), and (7) of section 320.023, Florida Statutes, are amended, and subsection (8) is added to said section, to read:

320.023 Requests to establish voluntary checkoff on motor vehicle registration application.—

(4)

(b) The department is authorized to discontinue the voluntary contribution and distribution of associated proceeds if the organization no longer exists, if the organization has stopped providing services that are authorized to be funded from the voluntary contributions, or pursuant to an organizational recipient's request. Organizations are required to notify the department immediately to stop warrants for voluntary check-off contributions if any of the conditions in this subsection exist, and must meet the requirements of paragraph (5)(b) or paragraph (5)(c), if applicable, for any period of operation during the fiscal year.

(5) A voluntary contribution collected and distributed under this chapter, or any interest earned from those contributions, may not be used for commercial or for-profit activities nor for general or administrative expenses,

except as authorized by law, ~~or to pay the cost of the audit or report required by law.~~

(a) All organizations that receive annual use fee proceeds from the department are responsible for ensuring that proceeds are used in accordance with law.

~~(b) All organizational recipients of any voluntary contributions in excess of \$15,000, not otherwise subject to annual audit by the Office of the Auditor General, shall submit an annual audit of the expenditures of these contributions and interest earned from these contributions, to determine if expenditures are being made in accordance with the specifications outlined by law. The audit shall be prepared by a certified public accountant licensed under chapter 473 at that organizational recipient's expense. The notes to the financial statements should state whether expenditures were made in accordance with law.~~

~~(b)(c) Any organization not subject to In lieu of an annual audit pursuant to s. 215.97 shall, any organization receiving less than \$15,000 in voluntary contributions directly from the department may annually attest report, under penalties of perjury, that such proceeds were used in compliance with law. The attestation shall be made annually in a form and format determined by the department.~~

~~(c)(d) Any voluntary contributions authorized by law shall only be distributed to an organization under an appropriation by the Legislature.~~

~~(d)(e) Any organization subject to audit pursuant to s. 215.97 shall submit an audit report in accordance with rules promulgated by the Auditor General. The annual attestation audit or report shall be submitted to the department for review within 9 months 180 days after the end of the organization's fiscal year.~~

(6) Within 90 days after receiving an organization's audit or attestation report, the department shall determine which recipients have not complied with subsection (5). If the department determines that an organization has not complied or has failed to use the revenues in accordance with law, the department must discontinue the distribution of the revenues to the organization until the department determines that the organization has complied. If an organization fails to comply within 12 months after the voluntary contributions are withheld by the department, the proceeds shall be deposited into the Highway Safety Operating Trust Fund to offset department costs.

(7) ~~The Auditor General and the department~~ has have the authority to examine all records pertaining to the use of funds from the voluntary contributions authorized.

(8) All organizations seeking to establish a voluntary contribution on a motor vehicle registration application that are required to operate under the Solicitation of Contributions Act, as provided in chapter 496, must do so before funds may be distributed.

Section 7. Paragraphs (a), (b) and (c) of subsection (8) of section 320.08056, Florida Statutes, are amended to read:

320.08056 Specialty license plates.—

(8)(a) The department must discontinue the issuance of an approved specialty license plate if:

1. Less than 8,000 plates, including annual renewals, are issued for that specialty license plate by the end of the 5th year of sales.
2. Less than 8,000 plates, including annual renewals, are issued for that specialty license plate during any subsequent 5-year period.

(b) The department is authorized to discontinue the issuance of a specialty license plate and distribution of associated annual use fee proceeds if the organization no longer exists, if the organization has stopped providing services that are authorized to be funded from the annual use fee proceeds, or pursuant to an organizational recipient's request. Organizations are required to notify the department immediately to stop all warrants for plate sales if any of the conditions in this section exist, and must meet the requirements of s. 320.08062 for any period of operation during a fiscal year.

(c) The requirements of paragraph (a) shall not apply to collegiate specialty license plates authorized in s. 320.08058(3), ~~and (13), (21), and (26).~~

Section 8. Section 320.08062, Florida Statutes, is amended to read:

320.08062 Audits and attestation required; annual use fees of specialty license plates.—

(1)(a) All organizations that receive annual use fee proceeds from the department are responsible for ensuring that proceeds are used in accordance with ss. 320.08056 and 320.08058.

~~(b) All organizational recipients of any specialty license plate annual use fee authorized in this chapter, not otherwise subject to annual audit by the Office of the Auditor General, shall submit an annual audit of the expenditures of annual use fees and interest earned from these fees, to determine if expenditures are being made in accordance with the specifications outlined by law. The audit shall be prepared by a certified public accountant licensed under chapter 473 at that organizational recipient's expense. The notes to the financial statements should state whether expenditures were made in accordance with ss. 320.08056 and 320.08058.~~

(b)(c) Any organization not subject to In lieu of an annual audit pursuant to s. 215.97 shall, any organization receiving less than \$25,000 in annual use fee proceeds directly from the department, or from another state agency, may annually attest report, under penalties of perjury, that such proceeds were used in compliance with ss. 320.08056 and 320.08058. The attestation shall be made annually in a form and format determined by the department.

(c)(d) Any organization subject to audit pursuant to s. 215.97 shall submit an audit report in accordance with rules promulgated by the Auditor

General. The annual attestation audit or report shall be submitted to the department for review within 9 months ~~180 days~~ after the end of the organization's fiscal year.

(2) Within 90 days after receiving an organization's audit or attestation report, the department shall determine which recipients of revenues from specialty license plate annual use fees have not complied with subsection (1). If the department determines that an organization has not complied or has failed to use the revenues in accordance with ss. 320.08056 and 320.08058, the department must discontinue the distribution of the revenues to the organization until the department determines that the organization has complied. If an organization fails to comply within 12 months after the annual use fee proceeds are withheld by the department, the proceeds shall be deposited into the Highway Safety Operating Trust Fund to offset department costs related to the issuance of specialty license plates.

~~(3) The Auditor General and the~~ department has ~~have~~ the authority to examine all records pertaining to the use of funds from the sale of specialty license plates.

Section 9. Subsection (1) of section 320.18, Florida Statutes, is amended to read:

320.18 Withholding registration.—

(1) The department may withhold the registration of any motor vehicle or mobile home the owner of which has failed to register it under the provisions of law for any previous period or periods for which it appears registration should have been made in this state, until the tax for such period or periods is paid. The department may cancel any license plate or fuel-use tax decal if the owner pays for the license plate, fuel-use tax decal, or any tax liability, penalty, or interest specified in chapter 207 by a dishonored check, or if the vehicle owner or motor carrier has failed to pay a penalty for a weight or safety violation issued by the Department of Transportation Motor Carrier Compliance Office. The Department of Transportation and the Department of Highway Safety and Motor Vehicles may impound any commercial motor vehicle that has a canceled license plate or fuel-use tax decal until the tax liability, penalty, and interest specified in chapter 207, the license tax, or the fuel-use decal fee, and applicable administrative fees have been paid for by certified funds.

Section 10. Subsection (4) of section 322.05, Florida Statutes, is amended to read:

322.05 Persons not to be licensed.—The department may not issue a license:

(4) Except as provided by this subsection, to any person, as a Class A licensee, Class B licensee, Class C licensee, or Class D licensee, who is under the age of 18 years. A person age 16 or 17 years who applies for a Class D driver's license is subject to all the requirements and provisions of ss. 322.09, and 322.16(2) and (3), and 322.05(2)(a) and (b). ~~Any person who applies for a Class D driver's license who is age 16 or 17 years must have had a learner's~~

~~driver's license or a driver's license for at least 90 days before he or she is eligible to receive a Class D driver's license.~~ The department may require of any such applicant for a Class D driver's license such examination of the qualifications of the applicant as the department considers proper, and the department may limit the use of any license granted as it considers proper.

Section 11. Paragraph (b) of subsection (4) and subsections (5), (6), and (7) of section 322.081, Florida Statutes, are amended, and subsection (8) is added to said section, to read:

322.081 Requests to establish voluntary check-off ~~checkoff~~ on driver's license application.—

(4)

(b) The department is authorized to discontinue the voluntary contribution and distribution of associated proceeds if the organization no longer exists, if the organization has stopped providing services that are authorized to be funded from the voluntary contributions, or pursuant to an organizational recipient's request. Organizations are required to notify the department immediately to stop warrants for voluntary check-off contribution, if any of the conditions in this subsection exist, and must meet the requirements of paragraph (5)(b) or paragraph (5)(c), if applicable, for any period of operation during the fiscal year.

(5) A voluntary contribution collected and distributed under this chapter, or any interest earned from those contributions, may not be used for commercial or for-profit activities nor for general or administrative expenses, except as authorized by law, ~~or to pay the cost of the audit or report required by law.~~

(a) All organizations that receive annual use fee proceeds from the department are responsible for ensuring that proceeds are used in accordance with law.

~~(b) All organizational recipients of any voluntary contributions in excess of \$15,000, not otherwise subject to annual audit by the Office of the Auditor General, shall submit an annual audit of the expenditures of these contributions and interest earned from these contributions, to determine if expenditures are being made in accordance with the specifications outlined by law. The audit shall be prepared by a certified public accountant licensed under chapter 473 at that organizational recipient's expense. The notes to the financial statements should state whether expenditures were made in accordance with law.~~

~~(b)(c)~~ Any organization not subject to ~~In lieu of an annual audit pursuant to s. 215.97 shall, any organization receiving less than \$15,000 in voluntary contributions directly from the department may annually attest report, under penalties of perjury, that such proceeds were used in compliance with law. The attestation shall be made annually in a form and format determined by the department.~~

~~(c)(d)~~ Any voluntary contributions authorized by law shall only be distributed to an organization under an appropriation by the Legislature.

(d)(e) Any organization subject to audit pursuant to s. 215.97 shall submit an audit report in accordance with rules promulgated by the Auditor General. The annual attestation audit or report must be submitted to the department for review within 9 months 180 days after the end of the organization's fiscal year.

(6) Within 90 days after receiving an organization's audit or attestation report, the department shall determine which recipients have not complied with subsection (5). If the department determines that an organization has not complied or has failed to use the revenues in accordance with law, the department must discontinue the distribution of the revenues to the organization until the department determines that the organization has complied. If an organization fails to comply within 12 months after the voluntary contributions are withheld by the department, the proceeds shall be deposited into the Highway Safety Operating Trust Fund to offset department costs.

(7) ~~The Auditor General and the department~~ has have the authority to examine all records pertaining to the use of funds from the voluntary contributions authorized.

(8) All organizations seeking to establish a voluntary contribution on a driver's license application that are required to operate under the Solicitation of Contributions Act, as provided in chapter 496, must do so before funds may be distributed.

Section 12. Section 322.161, Florida Statutes, is amended to read:

322.161 High-risk drivers; restricted licenses.—

(1)(a) Notwithstanding any provision of law to the contrary, the department shall restrict the driving privilege of any Class D or Class E licensee who is age 15 through 17 and who has accumulated six ~~four~~ or more points pursuant to s. 318.14, excluding parking violations, within a 12-month period.

(b) Upon determination that any person has accumulated six ~~four~~ or more points, the department shall notify the licensee and issue the licensee a restricted license for business purposes only. The licensee must appear before the department within 10 days after notification to have this restriction applied. The period of restriction shall be for a period of no less than 1 year beginning on the date it is applied by the department.

(c) The restriction shall be automatically withdrawn by the department after 1 year if the licensee does not accumulate any additional points. If the licensee accumulates any additional points, then the period of restriction shall be extended 90 days for each point. The restriction shall also be automatically withdrawn upon the licensee's 18th birthday if no other grounds for restriction exist. The licensee must appear before the department to have the restriction removed and a duplicate license issued.

(2)(a) Any Class E licensee who is age 15 through 17 and who has accumulated six ~~four~~ or more points pursuant to s. 318.14, excluding parking

violations, within a 12-month period shall not be eligible to obtain a Class D license for a period of no less than 1 year. The period of ineligibility shall begin on the date of conviction for the violation that results in the licensee's accumulation of ~~six four~~ or more points.

(b) The period of ineligibility shall automatically expire after 1 year if the licensee does not accumulate any additional points. If the licensee accumulates any additional points, then the period of ineligibility shall be extended 90 days for each point. The period of ineligibility shall also automatically expire upon the licensee's 18th birthday if no other grounds for ineligibility exist.

(3) Any action taken by the department pursuant to this section shall not be subject to any formal or informal administrative hearing or similar administrative procedure.

(4) The department shall adopt rules to carry out the purposes of this section.

Section 13. Section 322.222, Florida Statutes, is created to read:

322.222 Right to review.—A driver may request an administrative hearing to review a revocation under s. 322.221(3). The hearing must be held in accordance with the department's administrative rules adopted under chapter 120.

Section 14. Subsections (1), (3), and (10) of section 322.2615, Florida Statutes, are amended to read:

322.2615 Suspension of license; right to review.—

(1)(a) A law enforcement officer or correctional officer shall, on behalf of the department, suspend the driving privilege of a person who has been arrested by a law enforcement officer for a violation of s. 316.193, relating to unlawful blood-alcohol level or breath-alcohol level, or of a person who has refused to submit to a breath, urine, or blood test authorized by s. 316.1932. The officer shall take the person's driver's license and issue the person a 10-day ~~30-day~~ temporary permit if the person is otherwise eligible for the driving privilege and shall issue the person a notice of suspension. If a blood test has been administered, the results of which are not available to the officer at the time of the arrest, the agency employing the officer shall transmit such results to the department within 5 days after receipt of the results. If the department then determines that the person was arrested for a violation of s. 316.193 and that the person had a blood-alcohol level or breath-alcohol level of 0.08 or higher, the department shall suspend the person's driver's license pursuant to subsection (3).

(b) The suspension under paragraph (a) shall be pursuant to, and the notice of suspension shall inform the driver of, the following:

1.a. The driver refused to submit to a lawful breath, blood, or urine test and his or her driving privilege is suspended for a period of 1 year for a first refusal or for a period of 18 months if his or her driving privilege has been previously suspended as a result of a refusal to submit to such a test; or

b. The driver violated s. 316.193 by driving with an unlawful blood-alcohol level as provided in that section and his or her driving privilege is suspended for a period of 6 months for a first offense or for a period of 1 year if his or her driving privilege has been previously suspended for a violation of s. 316.193.

2. The suspension period shall commence on the date of arrest or issuance of the notice of suspension, whichever is later.

3. The driver may request a formal or informal review of the suspension by the department within 10 days after the date of arrest or issuance of the notice of suspension, whichever is later.

4. The temporary permit issued at the time of arrest will expire at midnight of the 10th ~~30th~~ day following the date of arrest or issuance of the notice of suspension, whichever is later.

5. The driver may submit to the department any materials relevant to the arrest.

(3) If the department determines that the license of the person arrested should be suspended pursuant to this section and if the notice of suspension has not already been served upon the person by a law enforcement officer or correctional officer as provided in subsection (1), the department shall issue a notice of suspension and, unless the notice is mailed pursuant to s. 322.251, a temporary permit which expires 10 ~~30~~ days after the date of issuance if the driver is otherwise eligible.

(10) A person whose driver's license is suspended under subsection (1) or subsection (3) may apply for issuance of a license for business or employment purposes only if the person is otherwise eligible for the driving privilege pursuant to s. 322.271.

(a) If the suspension of the driver's license of the person for failure to submit to a breath, urine, or blood test is sustained, the person is not eligible to receive a license for business or employment purposes only, pursuant to s. 322.271, until 90 days have elapsed after the expiration of the last temporary permit issued. If the driver is not issued a 10-day ~~30-day~~ permit pursuant to this section or s. 322.64 because he or she is ineligible for the permit and the suspension for failure to submit to a breath, urine, or blood test is not invalidated by the department, the driver is not eligible to receive a business or employment license pursuant to s. 322.271 until 90 days have elapsed from the date of the suspension.

(b) If the suspension of the driver's license of the person arrested for a violation of s. 316.193, relating to unlawful blood-alcohol level, is sustained, the person is not eligible to receive a license for business or employment purposes only pursuant to s. 322.271 until 30 days have elapsed after the expiration of the last temporary permit issued. If the driver is not issued a 10-day ~~30-day~~ permit pursuant to this section or s. 322.64 because he or she is ineligible for the permit and the suspension for a violation of s. 316.193, relating to unlawful blood-alcohol level, is not invalidated by the depart-

ment, the driver is not eligible to receive a business or employment license pursuant to s. 322.271 until 30 days have elapsed from the date of the arrest.

Section 15. Subsection (3) is added to section 322.292, Florida Statutes, to read:

322.292 DUI programs supervision; powers and duties of the department.—

(3) DUI programs must be operated by either governmental entities or not-for-profit corporations.

Section 16. Subsections (8), (9), and (10) are added to section 322.61, Florida Statutes, to read:

322.61 Disqualification from operating a commercial motor vehicle.—

(8) A driver who is convicted of or otherwise found to have committed a violation of an out-of-service order while driving a commercial motor vehicle is disqualified as follows:

(a) Not less than 90 days nor more than 1 year if the driver is convicted of or otherwise found to have committed a first violation of an out-of-service order.

(b) Not less than 1 year nor more than 5 years if, during any 10-year period, the driver is convicted of or otherwise found to have committed two violations of out-of-service orders in separate incidents.

(c) Not less than 3 years nor more than 5 years if, during any 10-year period, the driver is convicted of or otherwise found to have committed three or more violations of out-of-service orders in separate incidents.

(d) Not less than 180 days nor more than 2 years if the driver is convicted of or otherwise found to have committed a first violation of an out-of-service order while transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act, 49 U.S.C. 5101 et seq., or while operating motor vehicles designed to transport more than 15 passengers, including the driver. A driver is disqualified for a period of not less than 3 years nor more than 5 years if, during any 10-year period, the driver is convicted of or otherwise found to have committed any subsequent violations of out-of-service orders, in separate incidents, while transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act 49 U.S.C. 5101 et seq., or while operating motor vehicles designed to transport more than 15 passengers, including the driver.

(9) A driver who is convicted of or otherwise found to have committed an offense of operating a commercial motor vehicle in violation of federal, state, or local law or regulation pertaining to one of the following six offenses at a railroad-highway grade crossing must be disqualified for the period of time specified in subsection (10):

(a) For drivers who are not always required to stop, failing to slow down and check that the tracks are clear of approaching trains.

(b) For drivers who are not always required to stop, failing to stop before reaching the crossing if the tracks are not clear.

(c) For drivers who are always required to stop, failing to stop before driving onto the crossing.

(d) For all drivers, failing to have sufficient space to drive completely through the crossing without stopping.

(e) For all drivers, failing to obey a traffic control device or all directions of an enforcement official at the crossing.

(f) For all drivers, failing to negotiate a crossing because of insufficient undercarriage clearance.

(10)(a) A driver must be disqualified for not less than 60 days if the driver is convicted of or otherwise found to have committed a first violation of a railroad-highway grade crossing violation.

(b) A driver must be disqualified for not less than 120 days if, during any 3-year period, the driver is convicted of or otherwise found to have committed a second railroad-highway grade crossing violation in separate incidents.

(c) A driver must be disqualified for not less than 1 year if, during any 3-year period, the driver is convicted of or otherwise found to have committed a third or subsequent railroad-highway grade crossing violation in separate incidents.

Section 17. Subsections (1) and (3) of section 322.64, Florida Statutes, are amended to read:

322.64 Holder of commercial driver's license; driving with unlawful blood-alcohol level; refusal to submit to breath, urine, or blood test.—

(1)(a) A law enforcement officer or correctional officer shall, on behalf of the department, disqualify from operating any commercial motor vehicle a person who while operating or in actual physical control of a commercial motor vehicle is arrested for a violation of s. 316.193, relating to unlawful blood-alcohol level or breath-alcohol level, or a person who has refused to submit to a breath, urine, or blood test authorized by s. 322.63 arising out of the operation or actual physical control of a commercial motor vehicle. Upon disqualification of the person, the officer shall take the person's driver's license and issue the person a 10-day 30-day temporary permit if the person is otherwise eligible for the driving privilege and shall issue the person a notice of disqualification. If the person has been given a blood, breath, or urine test, the results of which are not available to the officer at the time of the arrest, the agency employing the officer shall transmit such results to the department within 5 days after receipt of the results. If the department then determines that the person was arrested for a violation of s. 316.193 and that the person had a blood-alcohol level or breath-alcohol level of 0.08 or higher, the department shall disqualify the person from operating a commercial motor vehicle pursuant to subsection (3).

(b) The disqualification under paragraph (a) shall be pursuant to, and the notice of disqualification shall inform the driver of, the following:

1.a. The driver refused to submit to a lawful breath, blood, or urine test and he or she is disqualified from operating a commercial motor vehicle for a period of 1 year, for a first refusal, or permanently, if he or she has previously been disqualified as a result of a refusal to submit to such a test; or

b. The driver violated s. 316.193 by driving with an unlawful blood-alcohol level and he or she is disqualified from operating a commercial motor vehicle for a period of 6 months for a first offense or for a period of 1 year if he or she has previously been disqualified, or his or her driving privilege has been previously suspended, for a violation of s. 316.193.

2. The disqualification period shall commence on the date of arrest or issuance of notice of disqualification, whichever is later.

3. The driver may request a formal or informal review of the disqualification by the department within 10 days after the date of arrest or issuance of notice of disqualification, whichever is later.

4. The temporary permit issued at the time of arrest or disqualification will expire at midnight of the 10th ~~30th~~ day following the date of disqualification.

5. The driver may submit to the department any materials relevant to the arrest.

(3) If the department determines that the person arrested should be disqualified from operating a commercial motor vehicle pursuant to this section and if the notice of disqualification has not already been served upon the person by a law enforcement officer or correctional officer as provided in subsection (1), the department shall issue a notice of disqualification and, unless the notice is mailed pursuant to s. 322.251, a temporary permit which expires 10 ~~30~~ days after the date of issuance if the driver is otherwise eligible.

Section 18. Effective July 1, 2001, subsection (1) of section 328.76, Florida Statutes, is amended to read:

328.76 Marine Resources Conservation Trust Fund; vessel registration funds; appropriation and distribution.—

(1) Except as otherwise specified and less \$1.4 million for any administrative costs which shall be deposited in the Highway Safety Operating Trust Fund, in each fiscal year beginning on or after July 1, 2001, all funds collected from the registration of vessels through the Department of Highway Safety and Motor Vehicles and the tax collectors of the state, except for those funds designated for the use of the counties pursuant to s. 328.72(1), shall be deposited in the Marine Resources Conservation Trust Fund for recreational channel marking; public launching facilities; law enforcement and quality control programs; aquatic weed control; manatee protection,

recovery, rescue, rehabilitation, and release; and marine mammal protection and recovery. The funds collected pursuant to s. 328.72(1) shall be transferred as follows:

(a) In each fiscal year, an amount equal to \$1.50 for each vessel registered in this state shall be transferred to the Save the Manatee Trust Fund and shall be used only for the purposes specified in s. 370.12(4).

(b) Two dollars from each noncommercial vessel registration fee, except that for class A-1 vessels, shall be transferred to the Invasive Plant Control Trust Fund for aquatic weed research and control.

(c) Forty percent of the registration fees from commercial vessels shall be transferred to the Invasive Plant Control Trust Fund for aquatic plant research and control.

(d) Forty percent of the registration fees from commercial vessels shall be transferred by the Department of Highway Safety and Motor Vehicles, on a monthly basis, to the General Inspection Trust Fund of the Department of Agriculture and Consumer Services. These funds shall be used for shellfish and aquaculture law enforcement and quality control programs.

Section 19. Paragraph (a) of subsection (11) of section 320.60, Florida Statutes, is amended and a new subsection (15) is added to read:

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

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

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

2. Who sells, exchanges, buys, leases or rents, or offers, or attempts to negotiate a sale or exchange of any interest in, motor vehicles, or

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

(15) “Sell,” “selling,” “sold,” “exchange,” “retail sales,” and “leases” includes any transaction where the title of motor vehicle or used motor vehicle is transferred to a retail consumer, and also any retail lease transaction where a retail customer leases a vehicle for a period of at least 12 months. Establishing a price for sale pursuant to s. 320.64(24) does not constitute a sale or lease.

Section 20. Subsection (4) of section 320.61, Florida Statutes, is amended to read:

320.61 Licenses required of motor vehicle manufacturers, distributors, importers, etc.—

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

Section 21. Subsections (13) and (16) are repealed, subsections (14), (15), and (17)-(23) are renumbered, subsection (20) is amended and renumbered as (18), and subsections (22)-(33) are added to section 320.64, Florida Statutes, to read:

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

~~(13) The applicant or licensee has refused to deliver, in reasonable quantities and within a reasonable time, 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, product shortage, 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.~~

~~(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.~~

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

(22) The applicant or licensee has refused to deliver, in reasonable quantities and within a reasonable time, 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. Such refusal includes the failure to offer to its same line-make franchised motor vehicle dealers all models manufactured for that line-make, or requiring a dealer to pay any extra fee, require a dealer to execute a separate franchise agreement, purchase unreasonable advertising displays or other materials, or remodel, renovate, or recondition the dealer's existing facilities, or provide exclusive facilities as a prerequisite to receiving a model or series of vehicles. 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 an act of God, work stoppage, or delay due to a strike or labor difficulty, a freight embargo, product shortage, or other cause over which the applicant or licensee has no control. An applicant or licensee may impose reasonable requirements on the motor vehicle dealer, other than the items listed above, including, but not limited to, the purchase of special tools required to properly service a motor vehicle, the undertaking of sales person or service person training related to the motor vehicle.

(23) The applicant or licensee has competed or is competing with respect to any activity covered by the franchise agreement with a motor vehicle dealer of the same line-make located in this state with whom the applicant or licensee has entered into a franchise agreement, except as permitted in s. 320.645.

(24) The applicant or licensee has sold a motor vehicle to any retail consumer in the state except through a motor vehicle dealer holding a franchise agreement for the line-make that includes the motor vehicle. This section does not apply to sales by the applicant or licensee of motor vehicles to its current employees, employees of companies affiliated by common ownership, charitable not-for-profit-organizations, and the federal government.

(25) The applicant or licensee has undertaken an audit of warranty payments or incentive payment previously paid to a motor vehicle dealer in violation of this section or has failed to comply with s. 320.696. An applicant or licensee may reasonably and periodically audit a motor vehicle dealer to

determine the validity of paid claims. Audit of warranty payments shall only be for the 1-year period immediately following the date the claim was paid. Audit of incentive payments shall only be for an 18-month period immediately following the date the incentive was paid. An applicant or licensee shall not deny a claim or charge a motor vehicle dealer back subsequent to the payment of the claim unless the applicant or licensee can show that the claim was false or fraudulent or that the motor vehicle dealer failed to substantially comply with the reasonable written and uniformly applied procedures of the applicant or licensee for such repairs or incentives.

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

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

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

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

(30) The applicant or licensee has conducted or threatened to conduct any audit of a motor vehicle dealer in order to coerce or attempt to coerce

the dealer to forego any rights granted to the dealer under ss. 320.60-320.70 or under the agreement between the licensee and the motor vehicle dealer. Nothing in this section shall prohibit an applicant or licensee from reasonably and periodically auditing a dealer to determine the validity of paid claims.

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

(a) Requires that a motor vehicle dealer bring an administrative or legal action in a venue outside of this state;

(b) Requires that any arbitration, mediation, or other legal proceeding be conducted outside of this state; or

(c) Requires that a law of a state other than Florida be applied to any legal proceeding between a motor vehicle dealer and a licensee.

(32) Notwithstanding the terms of any franchise agreement, the applicant or licensee has rejected or withheld approval of any proposed transfer in violation of s. 320.643 or a proposed change of executive management in violation of s. 320.644.

Section 22. Section 320.641, Florida Statutes, is amended and a new subsection (8) is added to read:

320.641 Discontinuations, cancellations, nonrenewals, modifications, and replacement ~~Unfair cancellation~~ of franchise agreements.—

(1)(a) An applicant or licensee shall give written notice to the motor vehicle dealer and 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 a franchise 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 will substantially impair the sales, service obligations, or investment of the motor vehicle dealer, 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, 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 constitutes 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, 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 who receives a notice of intent to discontinue, cancel, not renew, modify, or replace whose franchise agreement is discontinued, canceled, not renewed, modified, or replaced may, within the 90-day notice period, file a petition or complaint for a determination of whether such action is an unfair or prohibited discontinuation, cancellation, nonrenewal, modification, or replacement. Agreements and certificates of appointment shall continue in effect until final determination of the issues raised in such petition or complaint by the motor vehicle dealer. A discontinuation, cancellation, or nonrenewal of a franchise agreement is unfair if it is not clearly permitted by the franchise agreement; is not undertaken in good faith; is not undertaken for good cause; or is based on an alleged breach of the franchise agreement which is not in fact a material and substantial breach; or, if the grounds relied upon for termination, cancellation, or nonrenewal have not been applied in a uniform and consistent manner by the licensee. A modification or replacement is unfair if it is not clearly permitted by the franchise agreement; is not undertaken in good faith; or is not undertaken for good cause. The applicant or licensee shall have burden of proof that such action is fair and not prohibited.

(4) Notwithstanding any other provision of this section, the failure of a motor vehicle dealer to be engaged in business with the public for 10 consecutive business days constitutes abandonment by the dealer of his or her franchise agreement. If any motor vehicle dealer abandons his or her franchise agreement, he or she has no cause of action under this section. For the purpose of this section, a dealer shall be considered to be engaged in business with the public if a sales and service facility is open and is performing such services 8 hours a day, 5 days a week, excluding holidays. However, it will 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) Notwithstanding any other provision of this section, if a motor vehicle dealer has abandoned his or her franchise agreement as provided in subsection (4), the licensee may give written notice to the dealer and the department of the licensee's intention to discontinue, cancel, or fail to renew the franchise agreement with the dealer at least 15 days before the effective date thereof, specifying the grounds for such action. A motor vehicle dealer receiving such notice may file a petition or complaint for determination of whether in fact there has been an abandonment of the franchise.

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

(7) Except as provided in s. 320.643, no replacement motor vehicle dealer shall be named for this point or location to engage in business and the franchise agreement shall remain in effect until a final judgment is entered after all appeals are exhausted, provided that, when a motor vehicle dealer appeals a decision upholding a discontinuation, cancellation, or nonrenewal based upon abandonment or revocation of the dealer's license pursuant to

~~s. 320.27, as lawful reasons for such discontinuation, cancellation, or non-renewal, the franchise agreement shall remain in effect pending exhaustion of all appeals only if the motor vehicle dealer establishes a likelihood of success on appeal and that the public interest will not be harmed by keeping the franchise agreement in effect pending entry of final judgment after such appeal, prior to the final adjudication by the department on the petition or complaint and the exhaustion of all appellate remedies by the canceled or discontinued dealer, if a stay is issued by either the department or an appellate court.~~

(8) If a transfer is proposed pursuant to s. 320.643(1) or (2) after a notice of intent to discontinue, cancel, or not renew a franchise agreement is received but, prior to the final determination, including exhaustion of all appellate remedies of a motor vehicle dealer's complaint or petition contesting such action, the termination proceedings shall be stayed, without bond, during the period that the transfer is being reviewed by the licensee pursuant to s. 320.643., During the period that the transfer is being reviewed by the licensee, pursuant to s. 320.643, the franchise agreement shall remain in full force and effect, and the motor vehicle dealer shall retain all rights and remedies pursuant to the terms and conditions of the franchise agreement and applicable law, including all rights of transfer until such time as the licensee has accepted or rejected the proposed transfer. If the proposed transfer is rejected, the motor vehicle dealer shall retain all of its rights pursuant to s. 320.643 to an administrative determination as to whether the licensee's rejection is in compliance with the provisions of s. 320.643, and during the pendency of any such administrative proceeding, and any related appellate proceedings, the termination proceedings shall remain stayed without bond, the franchise agreement shall remain in full force and effect and the motor vehicle dealer shall retain all rights and remedies pursuant to the terms and conditions of the franchise agreement and applicable law, including all rights of transfer. If a transfer is approved by the licensee or mandated by law, the termination proceedings shall be dismissed with prejudice as moot. The subsection (8) applies only to the first two proposed transfers pursuant to s. 320.643(1) or (2) after notice of intent to discontinue, cancel, or not renew is received.

Section 23. 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 the dealer's 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 the licensee's 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 will 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, the acceptance by the licensee of the proposed transferee shall not be unreasonably withheld. For the purposes of this section, the 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 or qualifications, if any, of the licensee relating to financial qualifications of the transferee and the business experience of the transferee or the transferee's executive management required by the licensee of its motor vehicle dealers is presumed to be unreasonable. A motor vehicle dealer whose proposed sale is rejected licensee who receives such notice may, within 60 days following such receipt of such rejection, file with the department a verified complaint for a determination that the proposed transferee has been rejected in violation of is not a person qualified to be a transferee under this section. The licensee has the burden of proof with respect to all issues raised by such verified complaint. The department shall determine, and enter an order providing, that the proposed transferee is either qualified or is not and cannot be qualified for specified reasons, or the order may provide the conditions under which a proposed transferee would be qualified. If the licensee fails to file such a response to the motor vehicle dealer's verified complaint within 30 such 60 days after receipt of the complaint, unless the parties agree in writing to an extension, period or if the department, after a hearing, dismisses the complaint or renders a decision other than one disqualifying the proposed transferee, the franchise agreement between the motor vehicle dealer and the licensee shall be deemed amended to incorporate such transfer or 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.~~

(2)(a) Notwithstanding the terms of any franchise agreement, a licensee shall not, 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 who holds or otherwise owns 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 good moral character. A motor vehicle dealer, or any proprietor, partner, stockholder, owner, or other person who holds or otherwise owns an interest in the motor vehicle dealer, 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, in writing, of the identity and address of the proposed transferee. A licensee who receives such notice may, within 60 days following such receipt, notify the motor vehicle dealer in writing 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 and setting forth the material reasons for such rejection. Failure of the licensee to notify the motor vehicle dealer within the 60-day period of such rejection shall be deemed an approval of

the transfer. Any person whose proposed sale of stock is rejected may file within 60 days of receipt of such rejection a complaint with the department alleging that the rejection was in violation of the law or the franchise agreement. The licensee has the burden of proof with respect to all issues raised by such verified complaint. The department shall determine, and enter an order providing, that the proposed transferee either is qualified or is not and cannot be qualified for specified reasons; or the order may provide the conditions under which a proposed transferee would be qualified. If the licensee fails to file a response to the motor vehicle dealer's complaint within 30 days of receipt of the complaint, unless the parties agree in writing to an extension, or if the licensee fails to file such verified complaint within such 60-day period or if the department, after a hearing, dismisses the complaint or renders a decision on the complaint other than one disqualifying the proposed transferee, the transfer shall be deemed approved franchise agreement between the motor vehicle dealer and the licensee shall be deemed amended to incorporate such transfer or 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.

(b) 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.

(3) Notwithstanding the terms of any franchise agreement, the acceptance by the licensee of the proposed transferee shall not be unreasonably withheld. For the purposes of this section, the refusal by the licensee to accept a proposed transferee who satisfies the criteria set forth in subsection (1) or (2) is presumed to be unreasonable.

Section 24. Section 320.645, Florida Statutes, is amended to read:

320.645 Restriction upon ownership of dealership by licensee.—

(1) No licensee, ~~including a distributor~~, manufacturer, or agent of a manufacturer or distributor, 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. A licensee may not be issued a motor vehicle dealer license pursuant to s. 320.27. However, no such licensee will 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 for the exclusive purpose of broadening the diversity of its dealer body and enhancing opportunities for qualified persons who are part of a group that has historically been underrepresented in its dealer body, or for other qualified persons who the licensee deems lack the resources to purchase or capitalize the dealership outright, not to exceed 1 year, or in a bona

vide relationship with an independent person, other than a licensee or its agent or affiliate, who has made a significant investment that is subject to loss in the dealership within the dealership's first year of operation and who can reasonably expect to acquire full ownership of the 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 the motor vehicle dealership in a manner consistent with the public interest.

In any such case, the licensee must continue to 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.

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

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

(b) "Reasonable terms and conditions" requires that profits from the dealership are reasonably expected to be sufficient to allow full ownership of the dealership by the independent person within a reasonable time period not to exceed 10 years, which time period may be extended if there is a reasonable basis to do so and is not being sought to evade the purpose of this section; that the independent person has sufficient control to permit acquisition of ownership; and that the relationship cannot be terminated solely to avoid full ownership. The terms and conditions are not reasonable if they preclude the independent person from an expedited purchase of the dealership using a monetary source other than profits from the dealership's operation; provided, however, that the independent person must pay or make an agreement to pay to the licensee any and all reasonable prepayment charges and costs, including all unrecouped restored losses, associated with the expedited purchase of the dealership. For the purpose of this section, unrecouped restored losses are monies that the manufacturer has provided to the dealership to restore losses of the dealership that the manufacturer has not been paid back through profits of the dealership.

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

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

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

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

2. Warranty repairs performed under any manufacturer's new vehicle warranty by such person on motor vehicles are limited to those motor vehicles that it owns. As to previously owned vehicles, warranty repairs can be performed only if pursuant to a motor vehicle service agreement as defined in chapter 634, part I, issued by such person or an express warranty issued by such person on the retail sale of those vehicles previously owned; and

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

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

(4) Nothing in this section shall prohibit a licensee-distributor as defined in s. 320.60(5) that is not a manufacturer, a division of a manufacturer, an entity that is controlled by a manufacturer, or a common entity of a manufacturer, and that is not owned, in whole or in part, directly or indirectly, by a manufacturer, as defined in s. 320.60(9), and that has owned and operated a motor vehicle dealer in this state on or before July 1, 1996, other than a motor vehicle dealer permitted by s. 320.645(1)(b), from receiving a license as defined in s. 320.27 while owning and operating a motor vehicle dealership that sells or services motor vehicles other than any line-make of motor vehicles distributed by the licensee-distributor.

~~(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 May 31, 1984.~~

Section 25. Subsection (2) of section 320.699, Florida Statutes, is amended to read:

320.699 Administrative hearings and adjudications; procedure.—

(2) If a written objection or notice of protest is filed with the department under paragraph (1)(b), a hearing shall be held not sooner than 180 days nor later than 240 days from within 180 days of the date of filing of the first objection or notice of protest, unless the time is extended by the Administrative Law Judge for good cause shown. This subsection shall govern the schedule of hearings in lieu of any other provision of law with respect to administrative hearings conducted by the Department of Highway Safety and Motor Vehicles or the Division of Administrative Hearings, including performance standards of state agencies, which may be included in current and future appropriations acts. hearing officer for good cause shown. If a hearing is not scheduled within said time, any party may request such hearing which shall be held forthwith by the hearing officer.

Section 26. Section 320.6991, Florida Statutes, is created to read:

320.6991 Severability.—If a provision of ss. 320.60-320.70 or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of ss. 320.60-320.70 that can be given effect without the invalid provision or application, and to this end the provisions of ss. 320.60-320.70 are severable.

Section 27. Section 320.275, Florida Statutes, is created to read:

320.275 Automobile Dealers Industry Advisory Board.—

(1) AUTOMOBILE DEALERS INDUSTRY ADVISORY BOARD.—The Automobile Dealers Industry Advisory Board is created within the Department of Highway Safety and Motor Vehicles. The board shall make recommendations on proposed legislation, make recommendations on proposed rules and procedures, present licensed motor vehicle dealer industry issues to the department for its consideration, consider any matters relating to the motor vehicle dealer industry presented to it by the department, and submit an annual report to the Executive Director of the department and file copies with the Governor, President of the Senate, and the Speaker of the House of Representatives.

(2) MEMBERSHIP, TERMS, MEETINGS.—

(a) The board shall be composed of 12 members. The Executive Director of the Department of Highway Safety and Motor Vehicles shall appoint the members from names submitted by the entities for the designated categories the member will represent. The Executive Director shall appoint one representative of the Department of Highway Safety and Motor Vehicles, who must represent the Division of Motor Vehicles; two representatives of the independent motor vehicle industry as recommended by the Florida Independent Automobile Dealers Association; two representatives of the franchise motor vehicle industry as recommended by the Florida Automobile Dealers Association; one representative of the auction motor vehicle industry who is from an auction chain and is recommended by a group affiliated with the National Auto Auction Association; one representative of the auction motor vehicle industry who is from an independent auction and is recommended by a group affiliated with the National Auto Auction Association; one representative from the Department of Revenue; a Florida Tax Collector representative recommended by the Florida Tax Collectors Association; one representative from the Better Business Bureau; one representative from the Department of Agriculture and Consumer Services, who must represent the Division of Consumer Services; and one representative of the insurance industry who writes motor vehicle dealer surety bonds.

(b)1. The Executive Director shall appoint the following initial members to 1-year terms: one representative from the motor vehicle auction industry who represents an auction chain, one representative from the independent motor vehicle industry, one representative from the franchise motor vehicle industry, one representative from the Department of Revenue, one Florida Tax Collector, and one representative from the Better Business Bureau.

2. The Executive Director shall appoint the following initial members to 2-year terms: one representative from the motor vehicle auction industry

who represents an independent auction, one representative from the independent motor vehicle industry, one representative from the franchise motor vehicle industry, one representative from the Division of Consumer Services, one representative from the insurance industry, and one representative from the Division of Motor Vehicles.

3. As the initial terms expire, the Executive Director shall appoint successors from the same designated category for terms of 2 years. If renominated, a member may succeed himself or herself.

4. The board shall appoint a chair and vice chair at its initial meeting and every 2 years thereafter.

(c) The board shall meet at least two times per year. Meetings may be called by the chair of the board or by the Executive Director of the department. One meeting shall be held in the fall of the year to review legislative proposals. The board shall conduct all meetings in accordance with applicable Florida Statutes and shall keep minutes of all meetings. Meetings may be held in locations around the state in department facilities or in other appropriate locations.

(3) PER DIEM, TRAVEL, AND STAFFING.—Members of the board from the private sector are not entitled to per diem or reimbursement for travel expenses. However, members of the board from the public sector are entitled to reimbursement, if any, from their respective agency. Members of the board may request assistance from the Department of Highway Safety and Motor Vehicles as necessary.

Section 28. Definitions.—As used in section 29, the following terms shall have the following meaning:

(1) “Customer” includes a customer’s designated agent.

(2) “Dealer” means a motor vehicle dealer as defined in section 320.27, Florida Statutes, but does not include a motor vehicle auction as defined in section 320.27(1)(c)4., Florida Statutes.

(3) “Replacement item” means a tire, bumper, bumper fascia, glass, in-dash-board equipment, seat or upholstery cover or trim, exterior illumination unit, grill, sunroof, external mirror and external body cladding. The replacement of up to three of these items does not constitute repair of damage if each item is replaced because of a product defect or damaged due to vandalism while the new motor vehicle is under the control of the dealer and the items are replaced with original manufacturer equipment, unless an item is replaced due to a crash, collision, or accident.

(4) “Threshold amount” means 3 percent of the manufacturer’s suggested retail price of a motor vehicle or \$650, whichever is less.

(5) “Vehicle” means any automobile, truck, bus, recreational vehicle or motorcycle required to be licensed under chapter 320, Florida Statutes, for operation over the roads of Florida, but does not include trailers, mobile homes, travel trailers or trailer coaches without independent motive power.

Section 29. It is an unfair or deceptive act or practice, actionable under the Florida Deceptive and Unfair Trade Practices Act, for a dealer to:

(1) Represent directly or indirectly that a motor vehicle is a factory executive vehicle or executive vehicle unless such vehicle was purchased directly from the manufacturer or a subsidiary of the manufacturer and the vehicle was used exclusively by the manufacturer, its subsidiary, or a dealer for the commercial or personal use of the manufacturer's, subsidiary's, or dealer's employees.

(2) Represent directly or indirectly that a vehicle is a demonstrator unless the vehicle was driven by prospective customers of a dealership selling the vehicle and such vehicle complies with the definition of a demonstrator in section 320.60(3), Florida Statutes.

(3) Represent the previous usage or status of a vehicle to be something that it was not, or make usage or status representations unless the dealer has correct information regarding the history of the vehicle to support the representations.

(4) Represent the quality of care, regularity of servicing, or general condition of a vehicle unless known by the dealer to be true and supportable by material fact.

(5) Represent orally or in writing that a particular vehicle has not sustained structural or substantial skin damage unless the statement is made in good faith and the vehicle has been inspected by the dealer or his agent to determine whether the vehicle has incurred such damage.

(6) Sell a vehicle without fully and conspicuously disclosing in writing at or before the consummation of sale any warranty or guarantee terms, obligations, or conditions that the dealer or manufacturer has given to the buyer. If the warranty obligations are to be shared by the dealer and the buyer, the method of determining the percentage of repair costs to be assumed by each party must be disclosed. If the dealer intends to disclaim or limit any expressed or implied warranty, the disclaimer must be in writing in a conspicuous manner and in layman's terms in accordance with chapter 672, Florida Statutes, and the Magnuson-Moss Warranty - Federal Trade Commission Improvement Act.

(7) Provide an express or implied warranty and fail to honor such warranty unless properly disclaimed pursuant to subsection (6).

(8) Misrepresent warranty coverage, application period, or any warranty transfer cost or conditions to a customer.

(9) Obtain signatures from a customer on contracts that are not fully completed at the time the customer signs or which do not reflect accurately the negotiations and agreement between the customer and the dealer.

(10) Require or accept a deposit from a prospective customer prior to entering into a binding contract for the purchase and sale of a vehicle unless the customer is given a written receipt that states how long the dealer will

hold the vehicle from other sale and the amount of the deposit, and clearly and conspicuously states whether and upon what conditions the deposit is refundable or nonrefundable.

(11) Add to the cash price of a vehicle as defined in section 520.02(2), Florida Statutes, any fee or charge other than those provided in that section and in Rule 3D-50.001, Florida Administrative Code. All fees or charges permitted to be added to the cash price by Rule 3D-50.001, Florida Administrative Code, must be fully disclosed to customers in all binding contracts concerning the vehicle's selling price.

(12) Alter or change the odometer mileage of a vehicle.

(13) Sell a vehicle without disclosing to the customer the actual year and model of the vehicle.

(14) File a lien against a new vehicle purchased with a check unless the dealer fully discloses to the purchaser that a lien will be filed if purchase is made by check and fully discloses to the buyer the procedures and cost to the buyer for gaining title to the vehicle after the lien is filed.

(15) Increase the price of the vehicle after having accepted an order of purchase or a contract from a buyer, notwithstanding subsequent receipt of an official price change notification. The price of a vehicle may be increased after a dealer accepts an order of purchase or a contract from a buyer if:

(a) A trade-in vehicle is reappraised because it subsequently is damaged, or parts or accessories are removed;

(b) The price increase is caused by the addition of new equipment, as required by state or federal law;

(c) The price increase is caused by the revaluation of the U.S. dollar by the Federal Government, in the case of a foreign-made vehicle;

(d) The price increase is caused by state or federal tax rate changes; or

(e) Price protection is not provided by the manufacturer, importer, or distributor.

(16) Advertise the price of a vehicle unless the vehicle is identified by year, make, model, and a commonly accepted trade, brand, or style name. The advertised price must include all fees or charges that the customer must pay, including freight or destination charge, dealer preparation charge, and charges for undercoating or rustproofing. State and local taxes, tags, registration fees, and title fees, unless otherwise required by local law or standard, need not be disclosed in the advertisement. When two or more dealers advertise jointly, with or without participation of the franchiser, the advertised price need not include fees and charges that are variable among the individual dealers cooperating in the advertisement, but the nature of all charges that are not included in the advertised price must be disclosed in the advertisement.

(17) Charge a customer for any pre-delivery service required by the manufacturer, distributor, or importer for which the dealer is reimbursed by the manufacturer, distributor, or importer.

(18) Charge a customer for any pre-delivery service without having printed on all documents that include a line item for pre-delivery service the following disclosure: "This charge represents costs and profit to the dealer for items such as inspecting, cleaning, and adjusting vehicles, and preparing documents related to the sale."

(19) Add an additional charge for pre-delivery service other than those shown on a conspicuous label attached to the window of the vehicle specifying any charges for pre-delivery services and describing the charges as pre-delivery services, delivery and handling, dealer preparation, or in similar terms the dealer's charge for each dealer-installed option, and a total price line.

(20) Fail to disclose damage to a new motor vehicle, as defined in subsection 319.001(4), Florida Statutes, of which the dealer had actual knowledge, if the dealer's actual cost of repairs exceeds the threshold amount, excluding replacement items.

In any civil litigation resulting from a violation of this section, when evaluating the reasonableness of an award of attorney's fees to a private person, the trial court shall consider the amount of actual damages in relation to the time spent.

Section 30. Sections 28 and 29 shall be codified as part VI of chapter 501, and applies to any vehicle sold after October 1, 2001.

Section 31. Paragraph (n) of subsection (9) of section 320.27, Florida Statutes, is repealed.

Section 32. A new subsection (3) is added to section 520.12, Florida Statutes, to read:

520.12 Penalties.—

(3) Section 520.12(2) does not apply to any violation of the requirement in s. 520.07(1)(c) that the seller deliver or mail to the buyer a copy of the contract signed by the seller, if the seller delivered to the buyer at the time the buyer signed the contract an exact copy of the contract that the buyer signed.

Section 33. Subsection (1) of section 681.1096, Florida Statutes, is amended to read:

681.1096 Pilot RV Mediation and Arbitration Program; creation and qualifications.—

(1) This section and s. 681.1097 shall apply to disputes determined eligible under this chapter involving recreational vehicles acquired on or after October 1, 1997, and shall remain in effect until September 30, ~~2002~~ 2001,

at which time recreational vehicle disputes shall be subject to the provisions of ss. 681.109 and 681.1095. The Attorney General shall report ~~annually~~ to the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of each house of the Legislature, and appropriate legislative committees regarding the effectiveness ~~efficiency and cost-effectiveness~~ of the pilot program.

Section 34. Subsections (5) and (7) of section 681.1097, Florida Statutes, are amended to read:

681.1097 Pilot RV Mediation and Arbitration Program; dispute eligibility and program function.—

(5) If the mediation ends in an impasse, or if a manufacturer fails to comply with the settlement entered into between the parties, the program administrator shall schedule the dispute for an arbitration hearing. Arbitration proceedings shall be open to the public on reasonable and nondiscriminatory terms.

(a) The arbitration hearing shall be conducted by a single arbitrator assigned by the program administrator. The arbitrator shall not be the same person as the mediator who conducted the prior mediation conference in the dispute. The parties may factually object to an arbitrator based on the arbitrator's past or present relationship with a party or a party's attorney, direct or indirect, whether financial, professional, social, or of any other kind. The program administrator shall consider any such objection, determine its validity, and notify the parties of any determination. If the objection is determined valid, the program administrator shall assign another arbitrator to the case.

(b) The arbitrator may issue subpoenas for the attendance of witnesses and for the production of records, documents, and other evidence. Subpoenas so issued shall be served and, upon application to the court by a party to the arbitration, enforced in the manner provided by law for the service and enforcement of subpoenas in civil actions. Fees for attendance as a witness shall be the same as for a witness in the circuit court.

(c) At all program arbitration proceedings, the parties may present oral and written testimony, present witnesses and evidence relevant to the dispute, cross-examine witnesses, and be represented by counsel. The arbitrator shall record the arbitration hearing and shall have the power to administer oaths. The arbitrator may inspect the vehicle if requested by a party or if the arbitrator considers such inspection appropriate.

(d) The program arbitrator may continue a hearing on his or her own motion or upon the request of a party for good cause shown. A request for continuance by the consumer constitutes a waiver of the time period set forth in s. 681.1096(3)(k) for completion of all proceedings under the program.

(e) Where the arbitration is the result of a manufacturer's failure to perform in accordance with a settlement ~~mediation~~ agreement, any relief to

the consumer granted by the arbitration will be no less than the relief agreed to by the manufacturer in the settlement agreement.

(f) The arbitrator shall grant relief if a reasonable number of attempts have been undertaken to correct a nonconformity or nonconformities.

(g) The program arbitrator shall render a decision within 10 days of the closing of the hearing. The decision shall be in writing on a form prescribed or approved by the department. The program administrator shall send a copy of the decision to the consumer and each involved manufacturer by registered mail. The program administrator shall also send a copy of the decision to the department within 5 days of mailing to the parties.

(h) A manufacturer shall comply with an arbitration decision within 40 days of the date the manufacturer receives the written decision. Compliance occurs on the date the consumer receives delivery of an acceptable replacement motor vehicle or the refund specified in the arbitration award. If a manufacturer fails to comply within the time required, the consumer must notify the program administrator in writing within 10 days. The program administrator shall notify the department of a manufacturer's failure to comply. The department shall have the authority to enforce compliance with arbitration decisions under this section in the same manner as is provided for enforcement of compliance with board decisions under s. 681.1095(10). In any civil action arising under this chapter and relating to a dispute arbitrated pursuant to this section, the decision of the arbitrator is admissible in evidence.

(i) Either party may request that the program arbitrator make a technical correction to the decision by filing a written request with the program administrator within 10 days after receipt of the written decision. Technical corrections shall be limited to computational errors, correction of a party's name or information regarding the recreational vehicle, and typographical or spelling errors. Technical correction of a decision shall not toll the time for filing an appeal or for manufacturer compliance.

~~(7) A decision of the arbitrator is binding unless appealed by either party by filing a petition with the circuit court within the time and in the manner prescribed by s. 681.1095(10) and (12). Section 681.1095(13) and (14) apply to appeals filed under this section. Either party may make application to the circuit court for the county in which one of the parties resides or has a place of business or, if neither party resides or has a place of business in this state, the county where the arbitration hearing was held, for an order confirming, vacating, modifying, or correcting any award, in accordance with the provisions of this section and ss. 682.12, 682.13, 682.14, 682.15, and 682.17. Such application must be filed within 30 days of the moving party's receipt of the written decision or the decision becomes final. Upon filing such application, the moving party shall mail a copy to the department and, upon entry of any judgment or decree, shall mail a copy of such judgment or decree to the department. A review of such application by the circuit court shall be confined to the record of the proceedings before the program arbitrator. The court shall conduct a de novo review of the questions of law raised in the application. In addition to the grounds set forth in ss. 682.13 and 682.14, the~~

~~court shall consider questions of fact raised in the application. In reviewing questions of fact, the court shall uphold the award unless it determines that the factual findings of the arbitrator are not supported by substantial evidence in the record and that the substantial rights of the moving party have been prejudiced. If the arbitrator fails to state findings or reasons for the stated award, or the findings or reasons are inadequate, the court shall search the record to determine whether a basis exists to uphold the award. The court shall expedite consideration of any application filed under this section on the calendar.~~

(a) If a decision of a program arbitrator in favor of a consumer is confirmed by the court, recovery by the consumer shall include the pecuniary value of the award, attorney's fees incurred in obtaining confirmation of the award, and all costs and continuing damages in the amount of \$25 per day for each day beyond the 40-day period following a manufacturer's receipt of the arbitrator's decision. If a court determines the manufacturer acted in bad faith in bringing the appeal or brought the appeal solely for the purpose of harassment, or in complete absence of a justiciable issue of law or fact, the court shall double, and may triple, the amount of the total award.

~~(b) An appeal of a judgment or order by the court confirming, denying confirmation, modifying or correcting, or vacating the award may be taken in the manner and to the same extent as from orders or judgments in a civil action.~~

Section 35. Section 681.115, Florida Statutes, is amended to read:

681.115 Certain agreements void.—Any agreement entered into by a consumer that waives, limits, or disclaims the rights set forth in this chapter, or that requires a consumer not to disclose the terms of such agreement as a condition thereof, is void as contrary to public policy. The rights set forth in this chapter shall extend to a subsequent transferee of such motor vehicle.

Section 36. Subsections (4) and (6) of section 713.78, Florida Statutes, are amended to read:

713.78 Liens for recovering, towing, or storing vehicles and documented vessels.—

(4)(a) Any person regularly engaged in the business of recovering, towing, or storing vehicles or vessels who comes into possession of a vehicle or vessel pursuant to subsection (2), and who claims a lien for recovery, towing, or storage services, shall give notice to the registered owner, the insurance company insuring the vehicle notwithstanding the provisions of s. 627.736, and to all persons claiming a lien thereon, as disclosed by the records in the Department of Highway Safety and Motor Vehicles or of a corresponding agency in any other state.

(b) Whenever any law enforcement agency authorizes the removal of a vehicle or whenever any towing service, garage, repair shop, or automotive service, storage, or parking place notifies the law enforcement agency of possession of a vehicle pursuant to s. 715.07(2)(a)2., the applicable law enforcement agency shall contact the Department of Highway Safety and

Motor Vehicles, or the appropriate agency of the state of registration, if known, within 24 hours through the medium of electronic communications, giving the full description of the vehicle. Upon receipt of the full description of the vehicle, the department shall search its files to determine the owner's name, the insurance company insuring the vehicle, and whether any person has filed a lien upon the vehicle as provided in s. 319.27(2) and (3) and notify the applicable law enforcement agency within 72 hours. The person in charge of the towing service, garage, repair shop, or automotive service, storage, or parking place shall obtain such information from the applicable law enforcement agency within 5 days from the date of storage and shall give notice pursuant to paragraph (a). The department may release the insurance company information to the requestor notwithstanding the provisions of s. 627.736.

(c)(b) Notice by certified mail, return receipt requested, shall be sent within 7 business days after the date of storage of the vehicle or vessel to the registered owner, the insurance company insuring the vehicle notwithstanding the provisions of s. 627.736, and to all persons of record claiming a lien against the vehicle or vessel. It shall state the fact of possession of the vehicle or vessel, that a lien as provided in subsection (2) is claimed, that charges have accrued and the amount thereof, that the lien is subject to enforcement pursuant to law, and that the owner or lienholder, if any, has the right to a hearing as set forth in subsection (5), and that any vehicle or vessel which remains unclaimed, or for which the charges for recovery, towing, or storage services remain unpaid, may be sold after 35 days free of all prior liens after 35 days if the vehicle or vessel is more than 3 years of age and after 50 days if the vehicle or vessel is 3 years of age or less.

(d)(c) If attempts to locate the owner or lienholder prove unsuccessful, the towing-storage operator shall, after 7 working days, excluding Saturday and Sunday, of the initial tow or storage, notify the public agency of jurisdiction in writing by certified mail or acknowledged hand delivery that the towing-storage company has been unable to locate the owner or lienholder and a physical search of the vehicle or vessel has disclosed no ownership information and a good faith effort has been made. For purposes of this paragraph and, subsection (9), and s. 715.05, "good faith effort" means that the following checks have been performed by the company to establish prior state of registration and for title:

1. Check of vehicle or vessel for any type of tag, tag record, temporary tag, or regular tag.
2. Check of law enforcement report for tag number or other information identifying the vehicle or vessel, if the vehicle or vessel was towed at the request of a law enforcement officer.
3. Check of trip sheet or tow ticket of tow truck operator to see if a tag was on vehicle at beginning of tow, if private tow.
4. If there is no address of the owner on the impound report, check of law enforcement report to see if an out-of-state address is indicated from driver license information.

5. Check of vehicle or vessel for inspection sticker or other stickers and decals that may indicate a state of possible registration.
6. Check of the interior of the vehicle or vessel for any papers that may be in the glove box, trunk, or other areas for a state of registration.
7. Check of vehicle for vehicle identification number.
8. Check of vessel for vessel registration number.
9. Check of vessel hull for a hull identification number which should be carved, burned, stamped, embossed, or otherwise permanently affixed to the outboard side of the transom or, if there is no transom, to the outmost seaboard side at the end of the hull that bears the rudder or other steering mechanism.

(6) Any vehicle or vessel which is stored pursuant to subsection (2) and which remains unclaimed, or for which reasonable charges for recovery, towing, or storing remain unpaid or for which a lot rental amount is due and owing to the mobile home park owner, as evidenced by a judgment for unpaid rent, and any contents not released pursuant to subsection (10), may be sold by the owner or operator of the storage space for such towing or storage charge or unpaid lot rental amount after 35 days from the time the vehicle or vessel is stored therein if the vehicle or vessel is more than 3 years of age and after 50 days from the time the vehicle or vessel is stored therein if the vehicle or vessel is 3 years of age or less. The sale shall be at public auction for cash. If the date of the sale was not included in the notice required in subsection (4), notice of the sale shall be given to the person in whose name the vehicle, vessel, or mobile home is registered, to the mobile home park owner, and to all persons claiming a lien on the vehicle or vessel as shown on the records of the Department of Highway Safety and Motor Vehicles or of the corresponding agency in any other state. Notice shall be sent by certified mail, return receipt requested, to the owner of the vehicle or vessel and the person having the recorded lien on the vehicle or vessel at the address shown on the records of the registering agency and shall be mailed not less than 15 days before the date of the sale. After diligent search and inquiry, if the name and address of the registered owner or the owner of the recorded lien cannot be ascertained, the requirements of notice by mail may be dispensed with. In addition to the notice by mail, public notice of the time and place of sale shall be made by publishing a notice thereof one time, at least 10 days prior to the date of the sale, in a newspaper of general circulation in the county in which the sale is to be held. The proceeds of the sale, after payment of reasonable towing and storage charges, costs of the sale, and the unpaid lot rental amount, in that order of priority, shall be deposited with the clerk of the circuit court for the county if the owner is absent, and the clerk shall hold such proceeds subject to the claim of the person legally entitled thereto. The clerk shall be entitled to receive 5 percent of such proceeds for the care and disbursement thereof. The certificate of title issued under this law shall be discharged of all liens unless otherwise provided by court order.

Section 37. Section 715.05, Florida Statutes, is repealed.

Section 38. Subsection (10) of section 212.08, Florida Statutes, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(10) PARTIAL EXEMPTION; MOTOR VEHICLE SOLD TO RESIDENT OF ANOTHER STATE.—The tax collected on the sale of a new or used motor vehicle in this state to a resident of another state shall be an amount equal to the sales tax which would be imposed on such sale under the laws of the state of which the purchaser is a resident, except that such tax shall not exceed the tax that would otherwise be imposed under this chapter. At the time of the sale, the purchaser shall execute a notarized statement of his or her intent to license the vehicle in the state of which the purchaser is a resident within 45 days of the sale and of the fact of the payment to the State of Florida of a sales tax in an amount equivalent to the sales tax of his or her state of residence and shall submit the statement to the appropriate sales tax collection agency in his or her state of residence. Nothing in this subsection shall be construed to require the removal of the vehicle from this state following the filing of an intent to license the vehicle in the purchaser's home state if the purchaser licenses the vehicle in his or her home state within 45 days after the date of sale. Nothing herein shall require the payment of tax to the State of Florida for assessments made prior to July 1, 2001, if the tax imposed by this section has been paid to the state in which the vehicle was licensed and the department has assessed a like amount of tax on the same transactions. This provision shall apply retroactively to assessments that have been protested prior to August 1, 1999, and have not been paid on the date this act takes effect.

Section 39. Subsection (1) of section 320.01, Florida Statutes, is amended to read:

320.01 Definitions, general.—As used in the Florida Statutes, except as otherwise provided, the term:

(1) “Motor vehicle” means:

(a) An automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated on the roads of this state, used to transport persons or property, and propelled by power other than muscular power, but the term does not include traction engines, road rollers, such vehicles as run only upon a track, bicycles, or mopeds.

(b) A recreational vehicle-type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. Recreational vehicle-type units, when traveling on the public roadways of this state, must comply with the length and width provisions of s. 316.515, as that section may hereafter be amended. As defined below, the basic entities are:

1. The "travel trailer," which is a vehicular portable unit, mounted on wheels, of such a size or weight as not to require special highway movement permits when drawn by a motorized vehicle. It is primarily designed and constructed to provide temporary living quarters for recreational, camping, or travel use. It has a body width of no more than 8½ feet and an overall body length of no more than 40 feet when factory-equipped for the road.

2. The "camping trailer," which is a vehicular portable unit mounted on wheels and constructed with collapsible partial sidewalls which fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping, or travel use.

3. The "truck camper," which is a truck equipped with a portable unit designed to be loaded onto, or affixed to, the bed or chassis of the truck and constructed to provide temporary living quarters for recreational, camping, or travel use.

4. The "motor home," which is a vehicular unit which does not exceed the 40 feet in length, and the height, and the width limitations provided in s. 316.515, is a self-propelled motor vehicle, and is primarily designed to provide temporary living quarters for recreational, camping, or travel use.

5. The "private motor coach," which is a vehicular unit which does not exceed the length, width, and height limitations provided in s. 316.515(9), is built on a self-propelled bus type chassis having no fewer than three load-bearing axles, and is primarily designed to provide temporary living quarters for recreational, camping, or travel use.

6. The "van conversion," which is a vehicular unit which does not exceed the length and width limitations provided in s. 316.515, is built on a self-propelled motor vehicle chassis, and is designed for recreation, camping, and travel use.

7. The "park trailer," which is a transportable unit which has a body width not exceeding 14 feet and which is built on a single chassis and is designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances. The total area of the unit in a setup mode, when measured from the exterior surface of the exterior stud walls at the level of maximum dimensions, not including any bay window, does not exceed 400 square feet when constructed to ANSI A-119.5 standards, and 500 square feet when constructed to United States Department of Housing and Urban Development Standards. The length of a park trailer means the distance from the exterior of the front of the body (nearest to the drawbar and coupling mechanism) to the exterior of the rear of the body (at the opposite end of the body), including any protrusions.

8. The "fifth-wheel trailer," which is a vehicular unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, of such size or weight as not to require a special highway movement permit, of gross trailer area not to exceed 400 square feet in the setup mode, and designed to be towed by a motorized vehicle that contains a

towing mechanism that is mounted above or forward of the tow vehicle's rear axle.

Section 40. Paragraph (c) of subsection (1) of section 320.27, Florida Statutes, is amended, paragraph (f) is added to said subsection, and subsections (7) and (9) of said section are amended, to read:

320.27 Motor vehicle dealers.—

(1) **DEFINITIONS.**—The following words, terms, and phrases when used in this section have the meanings respectively ascribed to them in this subsection, except where the context clearly indicates a different meaning:

(c) “Motor vehicle dealer” means any person engaged in the business of buying, selling, or dealing in motor vehicles or offering or displaying motor vehicles for sale at wholesale or retail, or who may service and repair motor vehicles pursuant to an agreement as defined in s. 320.60(1). Any person who buys, sells, or deals in three or more motor vehicles in any 12-month period or who offers or displays for sale three or more motor vehicles in any 12-month period shall be prima facie presumed to be engaged in such business. The terms “selling” and “sale” include lease-purchase transactions. A motor vehicle dealer may, at retail or wholesale, sell a recreational vehicle as described in s. 320.01(1)(b)1.-6. and 8., acquired in exchange for the sale of a motor vehicle, provided such acquisition is incidental to the principal business of being a motor vehicle dealer. However, a motor vehicle dealer may not buy a recreational vehicle for the purpose of resale unless licensed as a recreational vehicle dealer pursuant to s. 320.771. A motor vehicle dealer may apply for a certificate of title to a motor vehicle required to be registered under s. 320.08(2)(b), (c), and (d), using a manufacturer's statement of origin as permitted by s. 319.23(1), only if such dealer is authorized by a franchised agreement as defined in s. 320.60(1), to buy, sell, or deal in such vehicle and is authorized by such agreement to perform delivery and preparation obligations and warranty defect adjustments on the motor vehicle; provided this limitation shall not apply to recreational vehicles, van conversions, or any other motor vehicle manufactured on a truck chassis. The transfer of a motor vehicle by a dealer not meeting these qualifications shall be titled as a used vehicle. The classifications of motor vehicle dealers are defined as follows:

1. “Franchised motor vehicle dealer” means any person who engages in the business of repairing, servicing, buying, selling, or dealing in motor vehicles pursuant to an agreement as defined in s. 320.60(1).

2. “Independent motor vehicle dealer” means any person other than a franchised or wholesale motor vehicle dealer who engages in the business of buying, selling, or dealing in motor vehicles, and who may service and repair motor vehicles.

3. “Wholesale motor vehicle dealer” means any person who engages exclusively in the business of buying, selling, or dealing in motor vehicles at wholesale or with motor vehicle auctions. Such person shall be licensed to do business in this state, shall not sell or auction a vehicle to any person who is not a licensed dealer, and shall not have the privilege of the use of dealer

license plates. Any person who buys, sells, or deals in motor vehicles at wholesale or with motor vehicle auctions on behalf of a licensed motor vehicle dealer and as a bona fide employee of such licensed motor vehicle dealer is not required to be licensed as a wholesale motor vehicle dealer. In such cases it shall be prima facie presumed that a bona fide employer-employee relationship exists. A wholesale motor vehicle dealer shall be exempt from the display provisions of this section but shall maintain an office wherein records are kept in order that those records may be inspected.

4. “Motor vehicle auction” means any person offering motor vehicles or recreational vehicles for sale to the highest bidder where ~~both sellers and~~ buyers are licensed motor vehicle dealers. Such person shall not sell a vehicle to anyone other than a licensed motor vehicle dealer.

5. “Salvage motor vehicle dealer” means any person who engages in the business of acquiring salvaged or wrecked motor vehicles for the purpose of reselling them and their parts.

The term “motor vehicle dealer” does not include persons not engaged in the purchase or sale of motor vehicles as a business who are disposing of vehicles acquired for their own use or for use in their business or acquired by foreclosure or by operation of law, provided such vehicles are acquired and sold in good faith and not for the purpose of avoiding the provisions of this law; persons engaged in the business of manufacturing, selling, or offering or displaying for sale at wholesale or retail no more than 25 trailers in a 12-month period; public officers while performing their official duties; receivers; trustees, administrators, executors, guardians, or other persons appointed by, or acting under the judgment or order of, any court; banks, finance companies, or other loan agencies that acquire motor vehicles as an incident to their regular business; motor vehicle brokers; and motor vehicle rental and leasing companies that sell motor vehicles to motor vehicle dealers licensed under this section. Vehicles owned under circumstances described in this paragraph may be disposed of at retail, wholesale, or auction, unless otherwise restricted. A manufacturer of fire trucks, ambulances, or school buses may sell such vehicles directly to governmental agencies or to persons who contract to perform or provide firefighting, ambulance, or school transportation services exclusively to governmental agencies without processing such sales through dealers if such fire trucks, ambulances, school buses, or similar vehicles are not presently available through motor vehicle dealers licensed by the department.

(f) “Bona fide employee” means a person who is employed by a licensed motor vehicle dealer and receives annually an Internal Revenue Service Form W-2, or an independent contractor who has a written contract with a licensed motor vehicle dealer and receives annually an Internal Revenue Service Form 1099, for the purpose of acting in the capacity of or conducting motor vehicle sales transactions as a motor vehicle dealer.

(7) CERTIFICATE OF TITLE REQUIRED.—For each used motor vehicle in the possession of a licensee and offered for sale by him or her, the licensee either shall have in his or her possession or control a duly assigned

certificate of title from the owner in accordance with the provisions of chapter 319, from the time when the motor vehicle is delivered to the licensee and offered for sale by him or her until it has been disposed of by the licensee, or shall have reasonable indicia of ownership or right of possession, or shall have made proper application for a certificate of title or duplicate certificate of title in accordance with the provisions of chapter 319. A motor vehicle dealer may not sell or offer for sale a vehicle in his or her possession unless the dealer satisfies the requirements of this subsection. Reasonable indicia of ownership shall include a duly assigned certificate of title; in the case of a new motor vehicle, a manufacturer's certificate of origin issued to or reassigned to the dealer; a consignment contract between the owner and the dealer along with a secure power of attorney from the owner to the dealer authorizing the dealer to apply for a duplicate certificate of title and assign the title on behalf of the owner; a court order awarding title to the vehicle to the dealer; a salvage certificate of title; a photocopy of a duly assigned certificate of title being held by a financial institution as collateral for a business loan of money to the dealer ("floor plan"); a copy of a canceled check or other documentation evidencing that an outstanding lien on a vehicle taken in trade by a licensed dealer has been satisfied and that the certificate of title will be, but has not yet been, received by the dealer; a vehicle purchase order or installment contract for a specific vehicle identifying that vehicle as a trade-in on a replacement vehicle; or a duly executed odometer disclosure statement as required by Title IV of the Motor Vehicle Information and Cost Savings Act of 1972 (Pub. L. No. 92-513, as amended by Pub. L. No. 94-364 and Pub. L. No. 100-561) and by 49 C.F.R. part 580 bearing the signatures of the titled owners of a traded-in vehicle.

Section 41. This act shall take effect upon becoming a law.

Approved by the Governor June 8, 2001.

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