

1 A bill to be entitled
2 An act relating to motor vehicle dealers; amending s.
3 320.64, F.S.; revising prohibitions against actions by a
4 licensed motor vehicle manufacturer, factory branch,
5 distributor, or importer; prohibiting requiring a motor
6 vehicle dealer to relocate, expand, improve, remodel,
7 renovate, or alter certain approved facilities; providing
8 for the licensee to offer certain inducements for such
9 changes under certain conditions; prohibiting adverse
10 action for refusal; revising a prohibition against certain
11 changes in supply to a dealer; prohibiting adverse action
12 against a dealer who sold or leased a motor vehicle to a
13 customer who exported the vehicle to a foreign country, or
14 who resold the vehicle, unless the licensee proves actual
15 knowledge; revising prohibitions against certain audits;
16 prohibiting certain acts that discriminate against one
17 dealer in favor of another; creating s. 320.6412, F.S.;
18 providing that no franchise agreement shall be terminated,
19 canceled, discontinued, or not renewed on the basis of
20 misrepresentation, fraud, or filing false or fraudulent
21 statements or claims, unless the licensee proves actual
22 knowledge; amending s. 320.696, F.S.; revising provisions
23 for responsibilities of a licensee for work performed
24 pursuant to warranty, preparation procedures, or recall,
25 directive, or bulletin; providing requirements for
26 compensation to a motor vehicle dealer for such work;
27 providing procedures for determining compensation amounts;
28 providing for changes in compensation amounts; prohibiting

29 certain acts to recover compensation costs; prohibiting
 30 certain acts of discrimination against a dealer; providing
 31 for severability; providing an effective date.

32

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

34

35 Section 1. Subsections (10), (18), (22), (25), (26), and
 36 (30) of section 320.64, Florida Statutes, are amended, and
 37 subsection (38) is added to that section, to read:

38 320.64 Denial, suspension, or revocation of license;
 39 grounds.--A license of a licensee under s. 320.61 may be denied,
 40 suspended, or revoked within the entire state or at any specific
 41 location or locations within the state at which the applicant or
 42 licensee engages or proposes to engage in business, upon proof
 43 that the section was violated with sufficient frequency to
 44 establish a pattern of wrongdoing, and a licensee or applicant
 45 shall be liable for claims and remedies provided in ss. 320.695
 46 and 320.697 for any violation of any of the following
 47 provisions. A licensee is prohibited from committing the
 48 following acts:

49 (10) (a) The applicant or licensee has attempted to enter,
 50 or has entered, into a franchise agreement with a motor vehicle
 51 dealer who does not, at the time of the franchise agreement,
 52 have proper facilities to provide the services to his or her
 53 purchasers of new motor vehicles which are covered by the new
 54 motor vehicle warranty issued by the applicant or licensee.
 55 Notwithstanding any provision of a franchise agreement, once a
 56 licensee has approved the sales and service facilities of a

57 motor vehicle dealer, the licensee shall not thereafter require,
58 by agreement, policy, or standard, any of its motor vehicle
59 dealers to relocate, expand, improve, remodel, renovate, or
60 alter any part of those facilities.

61 (b) Notwithstanding paragraph (a), a licensee may provide
62 a loan or grant of money to a motor vehicle dealer as an
63 inducement for relocation, expansion, improvement, remodeling,
64 or renovation of any of its facilities, provided:

65 1. The licensee delivers an assurance to the motor vehicle
66 dealer that it will supply a sufficient quantity of new motor
67 vehicles, consistent with its allocation obligations under the
68 law and to its other same line-make motor vehicle dealers, to
69 the motor vehicle dealer that will economically justify such
70 relocation, expansion, improvement, remodeling, or renovation in
71 light of reasonably current and reasonably projected market and
72 economic conditions;

73 2. The provisions of the loan or grant and assurance, and
74 the basis therefor, are contained in a written agreement
75 voluntarily entered into by the motor vehicle dealer; and

76 3. The loan or grant is made available on equal terms to
77 the licensee's other franchised motor vehicle dealers in this
78 state.

79 (c) A licensee may not withhold a benefit that is
80 available to its other franchised dealers in this state from, or
81 take or threaten to take an action that is unfair or adverse to,
82 a motor vehicle dealer that elects not to enter into an
83 agreement with the licensee as provided in paragraph (b).

HB 1269

2008

84 (d) A licensee shall not fail or refuse to offer any
85 program for a bonus, incentive, or other benefit, in whole or in
86 part, to any of its franchised motor vehicle dealers in this
87 state that it offers to its other authorized dealers nationally
88 or in the licensee's zone or region in which this state is
89 included.

90 (e) Any portion of any program offered by a licensee for a
91 bonus, incentive, or other benefit that, in whole or in part, is
92 based upon, or is aimed at, inducing a motor vehicle dealer's
93 relocation, expansion, improvement, remodeling, renovation, or
94 alteration shall be deemed void as to each of the licensee's
95 franchised motor vehicle dealers in this state. However, such
96 dealers shall be eligible for the entire amount of such bonus,
97 incentive, or other benefit offered in the program upon
98 compliance with the other basis or eligibility provisions
99 contained in such program.

100 (f) Notwithstanding any provision contained in this
101 subsection, a licensee may set reasonable standards for a motor
102 vehicle dealer's sales and service facilities related to upkeep,
103 repair, and cleanliness.

104 (18) The applicant or licensee has established a system of
105 motor vehicle allocation or distribution or has implemented a
106 system of allocation or distribution of motor vehicles to one or
107 more of its franchised motor vehicle dealers which reduces or
108 alters allocations or supplies of new motor vehicles to a motor
109 vehicle dealer in order to achieve, directly or indirectly, a
110 purpose that is prohibited by ss. 320.60-320.70 or which
111 otherwise is unfair, inequitable, unreasonably discriminatory,

HB 1269

2008

112 or not supportable by reason and good cause after considering
113 the equities of the affected motor vehicles dealer or dealers.
114 An applicant or licensee shall maintain for 3 years records that
115 describe its methods or formula of allocation and distribution
116 of its motor vehicles and records of its actual allocation and
117 distribution of motor vehicles to its motor vehicle dealers in
118 this state. As used in this subsection, the term "unfair"
119 includes, but is not limited to, refusal or failure to offer any
120 franchised motor vehicle dealer an equitable supply of new motor
121 vehicles covered by its franchise agreement, by model, mix, or
122 colors, as the licensee offers or makes available to its other
123 same line-make motor vehicle dealers in this state.

124 (22) The applicant or licensee has refused to deliver, in
125 reasonable quantities and within a reasonable time, to any duly
126 licensed motor vehicle dealer who has an agreement with such
127 applicant or licensee for the retail sale of new motor vehicles
128 and parts for motor vehicles sold or distributed by the
129 applicant or licensee, any such motor vehicles or parts as are
130 covered by such agreement. Such refusal includes the failure to
131 offer to its same line-make franchised motor vehicle dealers all
132 models manufactured for that line-make, or requiring a dealer to
133 pay any extra fee, require a dealer to execute a separate
134 franchise agreement, purchase unreasonable advertising displays
135 or other materials, or relocate, expand, improve, remodel,
136 renovate, ~~or~~ recondition, or alter the dealer's existing
137 facilities, or provide exclusive facilities as a prerequisite to
138 receiving a model or series of vehicles. However, the failure to
139 deliver any motor vehicle or part will not be considered a

140 violation of this section if the failure is due to an act of
 141 God, work stoppage, or delay due to a strike or labor
 142 difficulty, a freight embargo, product shortage, or other cause
 143 over which the applicant or licensee has no control. An
 144 applicant or licensee may impose reasonable requirements on the
 145 motor vehicle dealer, other than the items listed above,
 146 including, but not limited to, the purchase of special tools
 147 required to properly service a motor vehicle and the undertaking
 148 of sales person or service person training related to the motor
 149 vehicle.

150 (25) The applicant or licensee has undertaken an audit of
 151 warranty payments or incentive payment previously paid to a
 152 motor vehicle dealer in violation of this section or has failed
 153 to comply with any of its obligations under s. 320.696. An
 154 applicant or licensee may reasonably and periodically audit a
 155 motor vehicle dealer to determine the validity of paid claims as
 156 provided in s. 320.696. Audit of warranty payments shall only be
 157 for the 1-year period immediately following the date the claim
 158 was paid. Audit of incentive payments shall only be for an 18-
 159 month period immediately following the date the incentive was
 160 paid. An applicant or licensee shall not deny a claim or charge
 161 a motor vehicle dealer back subsequent to the payment of the
 162 claim unless the applicant or licensee can show that the claim
 163 was false or fraudulent or that the motor vehicle dealer failed
 164 to substantially comply with the reasonable written and
 165 uniformly applied procedures of the applicant or licensee for
 166 such repairs or incentives. An applicant or licensee may not
 167 charge a motor vehicle dealer back subsequent to the payment of

HB 1269

2008

168 a claim unless a representative of the applicant or licensee
169 first meets in person, by telephone, or by video teleconference
170 with an officer or employee of the dealer designated by the
171 motor vehicle dealer. At such meeting the applicant or licensee
172 must provide a detailed explanation, with supporting
173 documentation, as to the basis for each of the claims for which
174 the applicant or licensee proposed a charge-back to the dealer
175 and a written statement containing the basis upon which the
176 motor vehicle dealer was selected for audit or review.
177 Thereafter, the applicant or licensee must provide the motor
178 vehicle dealer's representative a reasonable period after the
179 meeting within which to respond to the proposed charge-backs,
180 with such period to be commensurate with the volume of claims
181 under consideration, but in no case less than 45 days after the
182 meeting. The applicant or licensee is prohibited from changing
183 or altering the basis for each of the proposed charge-backs as
184 presented to the motor vehicle dealer's representative following
185 the conclusion of the audit unless the applicant or licensee
186 receives new information affecting the basis for one or more
187 charge-backs. If the applicant or licensee claims the existence
188 of new information, the dealer must be given the same right to a
189 meeting and right to respond as when the charge-back was
190 originally presented.

191 (26) Notwithstanding the terms of any franchise agreement,
192 including any licensee's program, policy, or procedure, the
193 applicant or licensee has refused to allocate, sell, or deliver
194 motor vehicles; charged back or withheld payments or other
195 things of value for which the dealer is otherwise eligible under

196 a sales promotion, program, or contest; ~~or~~ prevented the motor
 197 vehicle dealer from participating in any promotion, program, or
 198 contest; or taken any adverse action against a motor vehicle
 199 dealer, including, but not limited to, terminating or
 200 threatening to terminate a franchise because the dealer sold or
 201 leased a motor vehicle to a customer who exported the vehicle to
 202 a foreign country or who resold the vehicle, unless the licensee
 203 proves that the motor vehicle dealer had actual knowledge that
 204 the customer's intent was to export or resell the motor vehicle.
 205 There will be a conclusive presumption that the motor vehicle
 206 dealer had no such actual knowledge ~~for selling a motor vehicle~~
 207 ~~to a customer who was present at the dealership and the motor~~
 208 ~~vehicle dealer did not know or should not have reasonably known~~
 209 ~~that the vehicle would be shipped to a foreign country. There~~
 210 ~~will be a rebuttable presumption that the dealer did not know or~~
 211 ~~should not have reasonably known that the vehicle would be~~
 212 ~~shipped to a foreign country if the vehicle is titled in one of~~
 213 the 50 United States.

214 (30) The applicant or licensee has conducted or threatened
 215 to conduct any audit of a motor vehicle dealer in order to
 216 coerce or attempt to coerce the dealer to forego any right or
 217 remedy ~~rights~~ granted to the dealer under ss. 320.60-320.70 or
 218 under the agreement between the licensee and the motor vehicle
 219 dealer. Nothing in this section shall prohibit an applicant or
 220 licensee from reasonably and periodically auditing a dealer to
 221 determine the validity of paid claims as permitted in this
 222 chapter, provided the licensee complies with all provisions of
 223 ss. 320.60-320.70 applicable to such audits.

HB 1269

2008

224 (38) The licensee has discriminated or threatened to
225 discriminate against any of its franchised motor vehicle dealers
226 in this state in favor of another dealer or other dealers of the
227 same line-make in this state by:

228 (a) Selling or offering to sell a new motor vehicle to any
229 motor vehicle dealer at a lower actual price, including the
230 price for vehicle transportation, than the actual price at which
231 the same model similarly equipped is offered to or is available
232 to another dealer in this state during a similar time period; or

233 (b) Offering or using a promotional program or device, or
234 an incentive, bonus, payment, or other benefit, whether paid at
235 the time of the sale of the new motor vehicle to the dealer or
236 later, that results in the sale or offer to sell a new motor
237 vehicle to a motor vehicle dealer at a lower price, including
238 the price for vehicle transportation, than the price at which
239 the same model similarly equipped is offered or is available to
240 another dealer in this state during a similar time period. This
241 subsection shall not prohibit a promotional, bonus, or incentive
242 program that is functionally available to competing dealers of
243 the same line-make in this state on substantially comparable
244 terms.

245
246 A motor vehicle dealer who can demonstrate that a violation of,
247 or failure to comply with, any of the preceding provisions by an
248 applicant or licensee will or can adversely and pecuniarily
249 affect the complaining dealer, shall be entitled to pursue all
250 of the remedies, procedures, and rights of recovery available
251 under ss. 320.695 and 320.697.

252 Section 2. Section 320.6412, Florida Statutes, is created
 253 to read:

254 320.6412 Termination based on misrepresentation; evidence
 255 required.--Notwithstanding s. 320.64, or any of the provisions
 256 of any franchise agreement, no franchise agreement of any motor
 257 vehicle dealer shall be terminated, canceled, discontinued, or
 258 not renewed by any licensee on the basis of misrepresentation,
 259 fraud, or filing false or fraudulent statements or claims,
 260 unless the licensee proves by clear and convincing evidence at a
 261 hearing that the majority owner or, if there is no majority
 262 owner, the person designated as dealer-operator or dealer-
 263 principal in the franchise agreement had actual knowledge of
 264 such misrepresentation or fraud or the filing of false
 265 statements or claims at the time any such conduct was allegedly
 266 perpetrated on a customer or a licensee and failed within a
 267 reasonable time after being so advised to take such actions
 268 reasonably calculated to prevent such misrepresentation, fraud,
 269 or filing of false or fraudulent statements or claims from
 270 continuing or reoccurring.

271 Section 3. Section 320.696, Florida Statutes, is amended
 272 to read:

273 320.696 Warranty responsibility.--

274 (1) (a) The licensee shall timely compensate any authorized
 275 motor vehicle dealer who performs work to:

- 276 1. Maintain or repair a licensee's product under a
 277 warranty or maintenance plan, extended warranty, certified
 278 preowned vehicle warranty, or service contract issued by the
 279 licensee or its common entity;

280 2. Fulfill a licensee's delivery or preparation
 281 procedures; or
 282 3. Make repairs to a motor vehicle as a result of a
 283 licensee's or common entity's recall or other directive or
 284 bulletin.
 285 (b) As used in this section, unless the context clearly
 286 requires otherwise, the term:
 287 1. "Compensate" and "compensation" include all labor and
 288 parts included in the work as provided in this section.
 289 2. "Labor" includes, without limitation, the time spent by
 290 employees of a motor vehicle dealer for diagnosis or repair of a
 291 vehicle.
 292 3. "Parts" includes all replacement parts and accessories.
 293 4. "Retail customer repair" refers to work, including
 294 parts and labor, performed by a motor vehicle dealer that does
 295 not come within the provisions of a licensee's or its common
 296 entity's warranty, extended warranty, service contract, or
 297 maintenance plan, but excludes parts and labor described in
 298 paragraphs (3) (b) and (4) (c).
 299 5. "Work" and "repair" include all items contained in
 300 paragraph (a), as the case may be.
 301 (c) Compensation not paid to a motor vehicle dealer within
 302 30 days after receipt of a claim therefor is deemed untimely. A
 303 licensee shall not establish or implement any term, policy, or
 304 procedure different from those described in this section for any
 305 of its motor vehicle dealers to obtain compensation due under
 306 this section or pay a motor vehicle dealer less than amounts due
 307 as described in this section.

HB 1269

2008

308 (2) No licensee shall take or threaten to take any adverse
309 action against any of its franchised motor vehicle dealers who
310 seek to obtain compensation described in this section. The term
311 "adverse action" includes, without limitation, taking or
312 omitting to take any action other than in good faith; creating
313 or implementing any obstacle or process that is inconsistent
314 with any of the licensee's obligations under this section;
315 hindering, delaying, or rejecting the proper and timely payment
316 of compensation due under this section to a motor vehicle
317 dealer; establishing, implementing, enforcing, or applying any
318 policy, standard, rule, program, or incentive regarding
319 compensation due under this section other than in a uniformly
320 and nondisparate manner among the licensee's franchised dealers
321 in this state; conducting or threatening to conduct any
322 warranty, retail customer repair, or other service-related audit
323 more frequently than once each calendar year; or denying,
324 reducing, or charging back any warranty claim because of a motor
325 vehicle dealer's failure to comply with all of the specific
326 requirements of a licensee for processing a claim. Inclusion of
327 the examples in this subsection shall not exclude other conduct
328 from the meaning of the term "adverse action."

329 (3) (a) 1. As provided in this subsection, a licensee shall
330 compensate a motor vehicle dealer for all parts used in
331 performing any of the work described in subsection (1). The
332 compensation may be an agreed percentage markup over the
333 licensee's dealer cost but, if no agreement is reached within 30
334 days after a motor vehicle dealer's written request therefor,
335 compensation for such parts shall be deemed to be the greater

HB 1269

2008

336 of:

337 a. The motor vehicle dealer's arithmetical mean percentage
338 markup over dealer cost for all parts charged by the motor
339 vehicle dealer in 25 consecutive retail customer repair orders
340 made and selected by the motor vehicle dealer within the 3-month
341 period prior to the written request, or all of such retail
342 customer repair orders over the previous 3 months if there are
343 fewer than 25 retail customer repair orders in that period,
344 provided no motor vehicle dealer's repair order shall be
345 excluded from this computation because it contains both warranty
346 or maintenance work and retail customer repairs. However, only
347 the retail customer repair portion of such repair order shall be
348 included in this computation, and those parts described in
349 paragraph (b) shall be excluded from this computation;

350 b. The licensee's highest suggested retail or list price
351 for such parts; or

352 c. An amount equal to the motor vehicle dealer's markup
353 over dealer cost that results in the same gross profit
354 percentage for parts used in work done under subsection (1) as
355 the motor vehicle dealer is receiving for parts used in the
356 dealer's customer retail repairs as evidenced by the motor
357 vehicle dealer's financial statement delivered to the licensee
358 for the month preceding the motor vehicle dealer's written
359 request.

360 2. If a licensee decreases its suggested retail or list
361 price for any replacement part or accessory, it shall also
362 decrease by at least the identical percentage the cost to the
363 motor vehicle dealer for such part or accessory. The markup or

HB 1269

2008

364 gross profit percentage described in this subsection shall be
365 uniformly applied to all of the licensee's parts used by the
366 motor vehicle dealer in performing work described under
367 subsection (1).

368 (b) For purposes of determining compensation to be paid
369 for parts under sub-subparagraph (a)1.a., parts discounted by a
370 motor vehicle dealer for repairs made in group, fleet,
371 insurance, or other third-party-payor service work; parts used
372 in repairs for government agencies for which volume discounts
373 have been negotiated; parts used in special events, or
374 "specials," or promotional discounts for retail customer
375 repairs; parts sold by the dealer at wholesale; parts used for a
376 dealer's internal repairs; engine assemblies and transmission
377 assemblies; nuts, bolts, fasteners, and similar items that do
378 not have an individual part number; and tires shall all be
379 excluded in determining a motor vehicle dealer's average
380 percentage markup over dealer cost.

381 (c) Notwithstanding the provisions of paragraph (a), if a
382 licensee furnishes a part or component to a motor vehicle dealer
383 at no cost for use in the motor vehicle dealer's performance of
384 repairs under a recall or service action or warranty, the
385 licensee shall compensate the motor vehicle dealer for such part
386 or component in the same manner as warranty parts compensation
387 under this subsection, less the dealer cost for such part or
388 component as listed in the licensee's then-current price
389 schedule.

390 (d) No licensee shall establish or implement any special
391 part or component number for parts used in predelivery, dealer

392 preparation, warranty, or maintenance-only applications if such
 393 number results in lower compensation to the motor vehicle dealer
 394 than such compensation as described in paragraphs (a), (b), and
 395 (c).

396 (4)(a) A licensee shall compensate a motor vehicle dealer
 397 for all labor performed in connection with work described in
 398 subsection (1) in amounts as described under paragraphs (b) and
 399 (c).

400 (b)1. Compensation paid by a licensee to a motor vehicle
 401 dealer may be an agreed hourly labor rate but, if no agreement
 402 is reached within 30 days after a motor vehicle dealer's written
 403 request therefor, labor compensation shall be, at the election
 404 of the motor vehicle dealer, the greater of:

405 a. The motor vehicle dealer's hourly labor rate for retail
 406 customer repairs, which shall be determined by dividing the
 407 amount of the motor vehicle dealer's total labor sales for
 408 retail customer repairs by the number of total labor hours which
 409 generated those total sales for the month preceding the written
 410 request, excluding the work described in paragraph (c); or

411 b. An amount equal to the motor vehicle dealer's markup
 412 over dealer cost that results in the same gross profit
 413 percentage for labor hours used in work done under subsection
 414 (1) as the motor vehicle dealer is receiving for labor used in
 415 the dealer's customer retail repairs as evidenced by the motor
 416 vehicle dealer's financial statement delivered to the licensee
 417 for the month preceding the motor vehicle dealer's written
 418 request, provided the motor vehicle dealer provides in the
 419 written request the arithmetical mean of the compensation for

420 all of its technicians during that preceding month and that
421 arithmetical mean shall be the "dealer cost" used in such
422 calculation.

423 2. Once an hourly labor rate is agreed or determined
424 pursuant to this subsection, the licensee shall uniformly apply
425 and pay that hourly labor rate for all labor used by the motor
426 vehicle dealer in performing work described in subsection (1),
427 provided no licensee shall pay an hourly labor rate less than
428 the hourly rate it was paying to the motor vehicle dealer for
429 work done under subsection (1) on January 1, 2008. No licensee
430 shall eliminate flat rate times from, or establish any
431 unreasonable flat rate time in, its warranty repair manual,
432 warranty time guide, or any other similarly named document. A
433 licensee shall establish reasonable flat-rate labor times in its
434 warranty repair manuals and warranty time guides for its newly
435 introduced model motor vehicles which are at least consistent
436 with its existing such documents. A motor vehicle dealer who
437 disputes as unreasonable any flat-rate time established by the
438 licensee or its common entity may bring an action against the
439 licensee or common entity in the circuit court for the county in
440 which the motor vehicle dealer's principal place of business is
441 located for such relief as is provided in this chapter. As used
442 in this subsection, the terms "retail customer repair" and
443 "similar work" are not limited to a repair to the same model
444 vehicle or model year but shall include a prior repair that
445 resembles but may not be identical to the repair for which the
446 motor vehicle dealer is making a claim for compensation under
447 this section.

HB 1269

2008

448 (c) In determining the hourly labor rate for compensation
449 to be paid by a licensee for all work under sub-subparagraph
450 (b)1.a., a motor vehicle dealer's labor charges for its internal
451 vehicle repairs; for vehicle reconditioning; for repairs
452 performed for group, fleet, insurance, or other third-party
453 payors; for discounted repairs of motor vehicles for government
454 agencies; and for labor used in special events, "specials,"
455 "express service," and promotional discounts shall not be
456 included as retail customer repairs and shall be excluded from
457 any calculation under sub-subparagraph (b)1.a.

458 (5) A licensee shall not review, change, or fail to pay a
459 motor vehicle dealer's parts or labor compensation as determined
460 under this section unless a motor vehicle dealer has requested a
461 change or pursuant to a licensee's written predetermined
462 schedule for increasing parts or labor compensation. A motor
463 vehicle dealer may make written requests for changes in
464 compensation for parts or labor for work performed under this
465 section not more often than semiannually. The motor vehicle
466 dealer shall attach supporting documentation as described in
467 this section to each written request. A motor vehicle dealer's
468 written request for changes in parts or labor compensation under
469 this section shall be deemed accepted unless the licensee,
470 within 30 days after receipt thereof, in writing, disputes with
471 specificity the supporting documentation contained in the motor
472 vehicle dealer's written request. Any motor vehicle dealer whose
473 request for increased compensation under this section has been
474 disputed shall have the right to bring an action against the
475 licensee in a court of competent jurisdiction in the county in

476 which the motor vehicle dealer's principal place of business is
 477 located for a declaratory judgment for approval of its change
 478 request under this section, for an injunction precluding the
 479 licensee from refusing to compensate the motor vehicle dealer as
 480 provided in this section, or for damages, all as provided in
 481 this chapter. In calculating damages, any increase in parts or
 482 labor determined in such litigation to be due to the motor
 483 vehicle dealer under this section shall be ordered paid to the
 484 motor vehicle dealer for all work performed under this
 485 subsection retroactively to the date of the licensee's receipt
 486 of such written request.

487 (6) A licensee shall not recover, or seek or attempt to
 488 recover, directly or indirectly, any of its costs for
 489 compensating any of its motor vehicle dealers under this
 490 section, including, without limitation, by decreasing or
 491 eliminating solely in this state at one or more of its motor
 492 vehicle dealers any bonus or incentive that it placed in effect
 493 nationally or regionally; by reducing solely in this state at
 494 one or more of its motor vehicle dealers any of its dealer's
 495 gross margin for any of the licensee's products or services when
 496 the wholesale price charged to the motor vehicle dealer is
 497 determined by the licensee and which reduction is not in effect
 498 nationally or regionally; or by imposing any separate charge or
 499 surcharge to the wholesale price paid by a motor vehicle dealer
 500 in this state to the licensee for any product or service offered
 501 to or supplied by a licensee, either under its franchise
 502 agreement with the motor vehicle dealer or by passing on to the
 503 motor vehicle dealer any such charge or surcharge of a common

504 entity of such licensee.

505 (7) A licensee shall not require, influence, or attempt to
 506 influence a motor vehicle dealer to implement or change the
 507 prices or charges for which it sells parts or labor for retail
 508 customer repairs. A licensee shall not implement or continue a
 509 policy, procedure, or program with respect to one or more of its
 510 licensed motor vehicle dealers in this state for compensation
 511 under this section that is less favorable to its franchised
 512 motor vehicle dealers in this state than is applicable to its
 513 franchised dealers nationally or regionally or, if there is no
 514 such national or regional policy, to its franchised dealers in a
 515 majority of states.

516 (8) If a court of competent jurisdiction determines with
 517 finality that any provision or any part thereof contained in
 518 this section is void or unenforceable, the remaining provisions
 519 thereof shall not be affected by such determination but shall
 520 remain in full force and effect. The licensee shall reasonably
 521 and timely compensate any authorized motor vehicle dealer who
 522 performs work, including labor and parts, to rectify the
 523 licensee's product or warranty defects or fulfills delivery and
 524 preparation obligations. In the determination of what
 525 constitutes reasonable compensation under this section, the
 526 factors to be given consideration shall include, among others,
 527 the compensation being paid by other licensees to their dealers,
 528 the prevailing wage rate being paid by the dealers, and the
 529 prevailing labor rate being charged by the dealers, in the city
 530 or community in which the dealer is doing business. For the
 531 purpose of this section, reasonable compensation for work,

HB 1269

2008

532 ~~including labor and parts, by a motor vehicle dealer for~~
533 ~~warranty repairs or service, including labor and parts, on~~
534 ~~behalf of a licensee shall be determined to be equal to the~~
535 ~~amount charged by the dealer for like work to retail customers~~
536 ~~for nonwarranty repairs and service, including labor and parts,~~
537 ~~unless the licensee has demonstrated and established in a~~
538 ~~proceeding before the department that the dealer's retail~~
539 ~~charges for labor and parts are improper in light of all~~
540 ~~economic circumstances. Compensation not paid within 30 days~~
541 ~~after receipt or notice of billing is presumed untimely. A~~
542 ~~licensee may not otherwise recover, or seek to recover, any of~~
543 ~~its costs for compensating a motor vehicle dealer for warranty~~
544 ~~work, including labor and parts, by imposing on a motor vehicle~~
545 ~~dealer any charge or surcharge to the wholesale price paid by a~~
546 ~~motor vehicle dealer to the licensee for any product, including~~
547 ~~motor vehicles and parts.~~

548 Section 4. This act shall take effect July 1, 2008.