

By Senator Haridopolos

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1 A bill to be entitled

2 An act relating to motor vehicle dealers; amending s.
3 320.64, F.S.; prohibiting licensees from certain actions
4 intended to coerce a dealer to improve its facilities
5 after the licensee has approved those facilities; allowing
6 licensees to offer certain loan or grant programs to
7 induce the dealer to relocate or improve the existing
8 facilities, if such inducement is not discriminatory or
9 designed to force the dealer to do so; prohibiting certain
10 adverse actions against a dealer who does not participate
11 in such programs; declaring certain inducement programs
12 void; authorizing a licensee to set reasonable standards
13 for dealer sales and facilities; prohibiting licensees
14 from altering allocations or supplies of new vehicles to
15 achieve goals that are prohibited in this state by
16 statute; clarifying a provision relating to a prohibition
17 against a dealer selling a motor vehicle to a customer who
18 exported or resold the vehicle; requiring the licensee to
19 prove the dealer had actual knowledge of the customer's
20 intent to export or resell the vehicle; creating a
21 conclusive presumption that the dealer had no actual
22 knowledge if the vehicle was titled or registered in this
23 country; authorizing licensees to audit dealers to
24 determine the validity of paid claims if the licensee
25 complies with applicable statutory requirements; creating
26 s. 320.6412, F.S.; providing a burden of proof in actions
27 to terminate a motor vehicle dealer franchise based on
28 fraud or misrepresentation; amending s. 320.696, F.S.;
29 substantially revising provisions relating to the

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30 licensee's responsibility to timely and reasonably
31 compensate a dealer who performs warranty or vehicle
32 preparation work; providing methods of determining the
33 cost for parts and labor to be paid to a dealer as
34 compensation for performing warranty repairs and vehicle
35 preparation for the licensee; prohibiting the licensee
36 from taking certain adverse actions against a dealer for
37 seeking to obtain compensation for such work; prohibiting
38 certain acts by a licensee to reduce the amount of
39 compensation to be paid to a dealer or to offset or
40 recover from the dealer compensation previously received;
41 providing severability; providing an effective date.

42
43 Be It Enacted by the Legislature of the State of Florida:

44
45 Section 1. Subsections (10), (18), (22), (25), (26), and
46 (30) of section 320.64, Florida Statutes, are amended to read:

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

57 (10) (a) The applicant or licensee has attempted to enter,
58 or has entered, into a franchise agreement with a motor vehicle

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59 dealer who does not, at the time of the franchise agreement, have
60 proper facilities to provide the services to his or her
61 purchasers of new motor vehicles which are covered by the new
62 motor vehicle warranty issued by the applicant or licensee.
63 Notwithstanding any provision of a franchise agreement, after a
64 licensee has approved the sales and service facilities of a motor
65 vehicle dealer, the licensee shall not require, by agreement,
66 policy, or standard, the dealer to relocate, expand, improve,
67 remodel, renovate, or alter any part of those facilities.

68 (b) A licensee may, however, provide a loan or grant of
69 money to a motor vehicle dealer as an inducement to relocate,
70 expand, improve, remodel, or renovate its facilities if the
71 licensee delivers an assurance to the dealer that it will supply
72 a sufficient quantity of new motor vehicles, consistent with its
73 allocation obligations at law and its allocation obligations to
74 its other same line-make motor vehicle dealers, to the dealer
75 which will economically justify such relocation, expansion,
76 improvement, remodeling, or renovation, in light of reasonably
77 current and reasonably projected market and economic conditions.
78 The provisions of the loan or grant and assurance, and the bases
79 for them, must be in a written agreement voluntarily entered into
80 by the dealer and the loan or grant must be made available, on
81 equal terms, to the licensee's other dealers in this state.

82 (c) A licensee shall not withhold a benefit that is
83 available to its other franchised dealers in this state from, or
84 take or threaten to take any action that is unfair or adverse to,
85 a dealer who does not enter into an agreement with the licensee
86 pursuant to paragraph (b).

87 (d) A licensee shall not refuse to offer a program for a

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88 bonus, incentive, or other benefit, in whole or in part, to a
89 dealer in this state which it offers to its other dealers
90 nationally or in the licensee's zone or region in which this
91 state is included.

92 (e) Any portion of a licensee-offered program for a bonus,
93 incentive, or other benefit that, in whole or in part, is based
94 upon or aimed at inducing a dealer's relocation, expansion,
95 improvement, remodeling, renovation, or alteration, is void for
96 each of the licensee's dealers in this state who nevertheless are
97 eligible for the entire amount of the bonus, incentive, or
98 benefit offered in the program upon compliance with the other
99 bases or eligibility provisions in the program.

100 (f) A licensee may set and uniformly apply reasonable
101 standards for a motor vehicle dealer's sales and service
102 facilities which are related to upkeep, repair, and cleanliness.

103 (18) The applicant or licensee has established a system of
104 motor vehicle allocation or distribution or has implemented a
105 system of allocation or distribution of motor vehicles to one or
106 more of its franchised motor vehicle dealers which reduces or
107 alters allocations or supplies of new motor vehicles to the
108 dealer to achieve, directly or indirectly, a purpose that is
109 prohibited by ss. 320.60-320.70, or which otherwise is unfair,
110 inequitable, unreasonably discriminatory, or not supportable by
111 reason and good cause after considering the equities of the
112 affected motor vehicles dealer or dealers. An applicant or
113 licensee shall maintain for 3 years records that describe its
114 methods or formula of allocation and distribution of its motor
115 vehicles and records of its actual allocation and distribution of
116 motor vehicles to its motor vehicle dealers in this state. As

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117 used in this subsection, "unfair" includes, without limitation,
118 the refusal or failure to offer to any dealer an equitable supply
119 of new vehicles under its franchise, by model, mix, or colors as
120 the licensee offers or allocates to its other same line-make
121 dealers in the state.

122 (22) The applicant or licensee has refused to deliver, in
123 reasonable quantities and within a reasonable time, to any duly
124 licensed motor vehicle dealer who has an agreement with such
125 applicant or licensee for the retail sale of new motor vehicles
126 and parts for motor vehicles sold or distributed by the applicant
127 or licensee, any such motor vehicles or parts as are covered by
128 such agreement. Such refusal includes the failure to offer to its
129 same line-make franchised motor vehicle dealers all models
130 manufactured for that line-make, or requiring a dealer to pay any
131 extra fee, require a dealer to execute a separate franchise
132 agreement, purchase unreasonable advertising displays or other
133 materials, or relocate, expand, improve, remodel, renovate, ~~or~~
134 recondition, or alter the dealer's existing facilities, or
135 provide exclusive facilities as a prerequisite to receiving a
136 model or series of vehicles. However, the failure to deliver any
137 motor vehicle or part will not be considered a violation of this
138 section if the failure is due to an act of God, work stoppage, or
139 delay due to a strike or labor difficulty, a freight embargo,
140 product shortage, or other cause over which the applicant or
141 licensee has no control. An applicant or licensee may impose
142 reasonable requirements on the motor vehicle dealer, other than
143 the items listed above, including, but not limited to, the
144 purchase of special tools required to properly service a motor

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145 vehicle and the undertaking of sales person or service person
146 training related to the motor vehicle.

147 (25) The applicant or licensee has undertaken an audit of
148 warranty payments or incentive payments ~~payment~~ previously paid
149 to a motor vehicle dealer in violation of this section or has
150 failed to comply with any of its obligations under s. 320.696. An
151 applicant or licensee may reasonably and periodically audit a
152 motor vehicle dealer to determine the validity of paid claims as
153 provided in s. 320.696. Audit of warranty payments shall only be
154 for the 1-year period immediately following the date the claim
155 was paid. Audit of incentive payments shall only be for an 18-
156 month period immediately following the date the incentive was
157 paid. An applicant or licensee shall not deny a claim or charge a
158 motor vehicle dealer back subsequent to the payment of the claim
159 unless the applicant or licensee can show that the claim was
160 false or fraudulent or that the motor vehicle dealer failed to
161 substantially comply with the reasonable written and uniformly
162 applied procedures of the applicant or licensee for such repairs
163 or incentives. An applicant or licensee may not charge a motor
164 vehicle dealer back subsequent to the payment of a claim unless a
165 representative of the applicant or licensee first meets in
166 person, by telephone, or by video teleconference with an officer
167 or employee of the dealer designated by the motor vehicle dealer.
168 At such meeting the applicant or licensee must provide a detailed
169 explanation, with supporting documentation, as to the basis for
170 each of the claims for which the applicant or licensee proposed a
171 charge-back to the dealer and a written statement containing the
172 basis upon which the motor vehicle dealer was selected for audit
173 or review. Thereafter, the applicant or licensee must provide the

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174 motor vehicle dealer's representative a reasonable period after
175 the meeting within which to respond to the proposed charge-backs,
176 with such period to be commensurate with the volume of claims
177 under consideration, but in no case less than 45 days after the
178 meeting. The applicant or licensee is prohibited from changing or
179 altering the basis for each of the proposed charge-backs as
180 presented to the motor vehicle dealer's representative following
181 the conclusion of the audit unless the applicant or licensee
182 receives new information affecting the basis for one or more
183 charge-backs. If the applicant or licensee claims the existence
184 of new information, the dealer must be given the same right to a
185 meeting and right to respond as when the charge-back was
186 originally presented.

187 (26) Notwithstanding the terms of any franchise agreement,
188 including any licensee's program, policy, or procedure, the
189 applicant or licensee has refused to allocate, sell, or deliver
190 motor vehicles; charged back or withheld payments or other things
191 of value for which the dealer is otherwise eligible under a sales
192 promotion, program, or contest; ~~or prevented a~~ the motor vehicle
193 dealer from participating in any promotion, program, or contest;
194 or has taken or threatened to take any adverse action against a
195 dealer, including terminating or threatening to terminate a
196 franchise because the dealer sold or leased a motor vehicle to a
197 customer who exported the vehicle to a foreign country or who
198 resold the vehicle, unless the licensee proves that the dealer
199 had actual knowledge that the customer intended to export or
200 resell the motor vehicle. There is a conclusive presumption that
201 the dealer had no actual knowledge if the vehicle is titled or
202 registered in any state in this country ~~for selling a motor~~

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203 ~~vehicle to a customer who was present at the dealership and the~~
204 ~~motor vehicle dealer did not know or should not have reasonably~~
205 ~~known that the vehicle would be shipped to a foreign country.~~
206 ~~There will be a rebuttable presumption that the dealer did not~~
207 ~~know or should not have reasonably known that the vehicle would~~
208 ~~be shipped to a foreign country if the vehicle is titled in one~~
209 ~~of the 50 United States.~~

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

220
221 A motor vehicle dealer who can demonstrate that a violation of,
222 or failure to comply with, any of the preceding provisions by an
223 applicant or licensee will or can adversely and pecuniarily
224 affect the complaining dealer, shall be entitled to pursue all of
225 the remedies, procedures, and rights of recovery available under
226 ss. 320.695 and 320.697.

227 Section 2. Section 320.6412, Florida Statutes, is created
228 to read:

229 320.6412 Franchise termination based on fraud; standard of
230 proof.--Notwithstanding the provisions of any franchise
231 agreement, a franchise agreement of a motor vehicle dealer shall

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232 not be terminated, canceled, discontinued, or not renewed by a
233 licensee on the basis of misrepresentation, fraud, or filing
234 false or fraudulent statements or claims unless the licensee
235 proves by clear and convincing evidence at a hearing that the
236 majority owner, or if there is no majority owner, the person
237 designated as dealer-operator or dealer-principal in the
238 franchise agreement, had actual knowledge of such acts at the
239 time the conduct was allegedly perpetrated on a customer or a
240 licensee, and did not, within a reasonable time after being so
241 advised, take actions reasonably calculated to prevent such acts
242 from continuing or reoccurring.

243 Section 3. Section 320.696, Florida Statutes, is amended to
244 read:

245 (Substantial rewording of section. See
246 s. 320.696, F.S., for present text.)
247 320.696 Warranty responsibility.--

248 (1) (a) A licensee shall timely compensate a motor vehicle
249 dealer who performs work to maintain or repair a licensee's
250 product under a warranty or maintenance plan, extended warranty,
251 certified pre-owned warranty, or service contract issued by the
252 licensee or its common entity; to fulfill a licensee's delivery
253 or preparation procedures; or to repair a motor vehicle as a
254 result of a licensee's or common entity's recall, directive, or
255 bulletin.

256 (b) As used in this section, the terms "compensate" and
257 "compensation" shall include all labor and parts included in the
258 work as provided in this section. The term "labor" shall include
259 time spent by employees for diagnosis and repair of a vehicle.
260 The term "parts" shall include replacement parts and accessories.

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261 The term "retail customer repair" means work, including parts and
262 labor, performed by a dealer which does not come within the
263 provisions of a licensee's or its common entity's warranty,
264 extended warranty, service contract, or maintenance plan, and
265 excludes parts and labor described in paragraphs (3) (b) and
266 (4) (c).

267 (c) Compensation not paid to a motor vehicle dealer within
268 30 days after receipt of a claim is not timely. A licensee shall
269 not establish or implement a term, policy, or procedure different
270 from those described in this section for any motor vehicle dealer
271 to obtain compensation under this section, and shall not pay a
272 motor vehicle dealer less than amounts due pursuant to this
273 section.

274 (2) A licensee shall not take or threaten to take adverse
275 action against a motor vehicle dealer who seeks to obtain
276 compensation pursuant to this section. As used in this
277 subsection, the term "adverse action" includes, without
278 limitation, acting or failing to act, other than in good faith;
279 creating or implementing an obstacle or process that is
280 inconsistent with the licensee's obligations to the dealer under
281 this section; hindering, delaying, or rejecting the proper and
282 timely payment of compensation due under this section to a
283 dealer; establishing, implementing, enforcing, or applying any
284 policy, standard, rule, program, or incentive regarding
285 compensation due under this section other than in a uniform and
286 nondisparate manner among the licensee's dealers in this state;
287 conducting or threatening to conduct any warranty, retail
288 customer repair, or other service-related audit more frequently
289 than once each calendar year; or denying, reducing, or charging

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290 back a warranty claim because of a dealer's failure to comply
291 with all of the licensee's requirements for describing or
292 processing a claim.

293 (3) (a) A licensee shall compensate a motor vehicle dealer
294 for parts used in any work described in subsection (1). The
295 compensation shall be an agreed percentage markup over the
296 licensee's dealer cost, but if an agreement is not reached within
297 30 days after a dealer's written request, compensation for the
298 parts is the greater of:

299 1. The dealer's arithmetical mean percentage markup over
300 dealer cost for all parts charged by the dealer in 25 consecutive
301 retail customer repair orders made and selected by the dealer
302 within in the 3-month period before the written request, or all
303 retail customer repair orders over the previous 3 months if there
304 are fewer than 25 retail customer repair orders in that period. A
305 repair order shall not be excluded from the computation because
306 it contains both warranty or maintenance work and retail customer
307 repairs. However, only the retail customer repair portion of the
308 repair order shall be included in the computation and the parts
309 described in paragraph (b) shall be excluded from the
310 computation;

311 2. The licensee's highest suggested retail or list price
312 for the parts; or

313 3. An amount equal to the dealer's markup over dealer cost
314 that results in the same gross profit percentage for parts used
315 in work done under subsection (1) as the dealer receives for
316 parts used in the customer retail repairs, as evidenced by the
317 dealer's financial statement for the month preceding the dealer's
318 request.

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319 If a licensee reduces the suggested retail or list price for any
320 replacement part or accessory, it also shall reduce, by at least
321 the same percentage, the cost to the dealer for the part or
322 accessory. The dealer's markup or gross profit percentage shall
323 be uniformly applied to all of the licensee's parts used by the
324 dealer in performing work covered by subsection (1).

325 (b) In calculating the compensation to be paid for parts by
326 the arithmetic mean percentage markup over dealer cost method in
327 paragraph (a), parts discounted by a dealer for repairs made in
328 group, fleet, insurance, or other third-party payer service work;
329 parts used in repairs of government agencies' repairs for which
330 volume discounts have been negotiated; parts used in special
331 event, specials, or promotional discounts for retail customer
332 repairs; parts sold at wholesale; parts used for internal
333 repairs; engine assemblies and transmission assemblies; nuts,
334 bolts, fasteners, and similar items that do not have an
335 individual part number; and tires shall be excluded in
336 determining the percentage markup over dealer cost.

337 (c) If a licensee furnishes a part or component to a motor
338 vehicle dealer at no cost to use in performing repairs under a
339 recall, service action, or warranty repair, the licensee shall
340 compensate the dealer for the part or component in the same
341 manner as warranty parts compensation under this subsection, less
342 the dealer cost for the part or component as listed in the
343 licensee's price schedule.

344 (d) A licensee shall not establish or implement a special
345 part or component number for parts used in predelivery, dealer
346 preparation, warranty, or maintenance-only applications if that
347 results in lower compensation to the dealer than as calculated in

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348 | this subsection.

349 | (4) (a) A licensee shall compensate a motor vehicle dealer
350 | for labor performed in connection with work described in
351 | subsection (1) as calculated in this subsection.

352 | (b) Compensation paid by a licensee to a motor vehicle
353 | dealer may be an agreed hourly labor rate. If, however, an
354 | agreement is not reached within 30 days after the dealer's
355 | written request, the dealer may choose to be paid the greater of:

356 | 1. The dealer's hourly labor rate for retail customer
357 | repairs, determined by dividing the amount of the dealer's total
358 | labor sales for retail customer repairs by the number of total
359 | labor hours that generated those sales for the month preceding
360 | the request, excluding the work in paragraph (c); or

361 | 2. An amount equal to the dealer's markup over dealer cost
362 | that results in the same gross profit percentage for labor hours
363 | in work covered by subsection (1) as the dealer receives for
364 | labor used in its customer retail repairs, evidenced by the
365 | dealer's financial statement provided to the licensee for the
366 | month preceding the dealer's written request, if the dealer
367 | provides in the written request the arithmetical mean of the
368 | hourly wage paid to all of its technicians during that preceding
369 | month. The arithmetical mean shall be the dealer cost used in
370 | that calculation.

371 |

372 | After an hourly labor rate is agreed or determined, the licensee
373 | shall uniformly apply and pay that hourly labor rate for all
374 | labor used by the dealer in performing work under subsection (1).
375 | However, a licensee shall not pay an hourly labor rate less than
376 | the hourly rate it was paying to the dealer for work done under

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377 subsection (1) on January 1, 2008. A licensee shall not eliminate
378 flat-rate times from, or establish an unreasonable flat-rate time
379 in its warranty repair manual, warranty time guide, or any other
380 similarly named document. A licensee shall establish reasonable
381 flat-rate labor times in its warranty repair manuals and warranty
382 time guides for newly introduced model motor vehicles which are
383 at least consistent with its existing documents. A dealer who
384 disputes as unreasonable a flat-rate time established by the
385 licensee or its common entity may bring an action for relief
386 against the licensee or common entity in the circuit court for
387 the county in which the dealer's principal place of business is
388 located. As used in this subsection, the terms "retail customer
389 repair" and "similar work" are not limited to a repair to the
390 same model vehicle or model year, but include prior repairs that
391 resemble but are not identical to the repair for which the dealer
392 is making a claim for compensation.

393 (c) In determining the hourly labor rate calculated under
394 subparagraph (b)1., a dealer's labor charges for internal vehicle
395 repairs; vehicle reconditioning; repairs performed for group,
396 fleet, insurance, or other third party payers; discounted repairs
397 of motor vehicles for government agencies; labor used in special
398 events, specials, express service; and promotional discounts
399 shall not be included as retail customer repairs and shall be
400 excluded from such calculations.

401 (5) A licensee shall not review, change, or fail to pay a
402 motor vehicle dealer for parts or labor determined under this
403 section unless the dealer has requested a change, or the action
404 is pursuant to the licensee's written, predetermined schedule for
405 increasing parts or labor compensation. A dealer may make written

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406 requests for changes in compensation for parts or labor performed
407 under this section not more than semiannually. The dealer shall
408 attach supporting documentation to each written request. The
409 request for changes in parts or labor compensation shall be
410 deemed accepted unless the licensee, within 30 days after receipt
411 of the request, in writing, disputes with specificity the
412 supporting documentation in the request. A dealer whose request
413 for increased compensation is disputed may bring an action
414 against the licensee in a court of competent jurisdiction in the
415 county in which the dealer's principal place of business is
416 located for a declaratory judgment to approve its change request,
417 for an injunction precluding the licensee from refusing to
418 compensate it, and for damages. In calculating compensatory
419 damages, any increase in parts or labor determined to be owed to
420 the dealer shall be ordered paid retroactively to the date of the
421 licensee's receipt of the written request.

422 (6) A licensee shall not recover or attempt to recover,
423 directly or indirectly, any of its costs for compensating a motor
424 vehicle dealer under this section, including by decreasing or
425 eliminating solely in this state at any of its dealers, any bonus
426 or incentive that it has in effect nationally or regionally; by
427 reducing only in this state at any of its dealers, the dealer's
428 gross margin for any of the licensee's products or services or
429 limiting where the wholesale price charged to the dealer is
430 determined by the licensee and the reduction is not in effect
431 nationally or regionally; by imposing a separate charge or
432 surcharge to the wholesale price paid by a dealer in this state
433 for any product or service offered to or supplied by a licensee
434 under a franchise agreement with the dealer; or by passing on to

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435 the dealer any charge or surcharge of a common entity of the
436 licensee.

437 (7) A licensee shall not require, influence, or attempt to
438 influence a motor vehicle dealer to implement or change the
439 prices for which it sells parts or labor in retail customer
440 repairs. A licensee shall not implement or continue a policy,
441 procedure, or program to any of its dealers in this state for
442 compensation under this section which is less favorable to its
443 dealers in this state than is applicable to its dealers
444 nationally or regionally, or, if there is no such national or
445 regional policy, to its dealers in a majority of states.

446 (8) If a court determines with finality that any provision
447 of this section is void or unenforceable, the remaining
448 provisions shall not be affected but shall remain in effect.

449 Section 4. This act shall take effect upon becoming a law.