

By the Committee on Regulated Industries; and 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, service
32 contract maintenance plan, or other vehicle preparation
33 work; providing methods of determining the cost for parts
34 and labor to be paid to a dealer as compensation for
35 performing warranty repairs and vehicle preparation for
36 the licensee; prohibiting the licensee from taking certain
37 adverse actions against a dealer for seeking to obtain
38 compensation for such work; prohibiting certain acts by a
39 licensee to reduce the amount of compensation to be paid
40 to a dealer or to offset or recover from the dealer
41 compensation previously received; providing for
42 severability; providing an effective date.

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

45
46 Section 1. Subsections (10), (18), (22), (25), (26), and
47 (30) of section 320.64, Florida Statutes, are amended to read:
48 320.64 Denial, suspension, or revocation of license;
49 grounds.--A license of a licensee under s. 320.61 may be denied,
50 suspended, or revoked within the entire state or at any specific
51 location or locations within the state at which the applicant or
52 licensee engages or proposes to engage in business, upon proof
53 that the section was violated with sufficient frequency to
54 establish a pattern of wrongdoing, and a licensee or applicant
55 shall be liable for claims and remedies provided in ss. 320.695
56 and 320.697 for any violation of any of the following provisions.
57 A licensee is prohibited from committing the following acts:
58 (10) (a) The applicant or licensee has attempted to enter,

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59 | or has entered, into a franchise agreement with a motor vehicle
60 | dealer who does not, at the time of the franchise agreement, have
61 | proper facilities to provide the services to his or her
62 | purchasers of new motor vehicles which are covered by the new
63 | motor vehicle warranty issued by the applicant or licensee.
64 | Notwithstanding any provision of a franchise, a licensee may not
65 | require a motor vehicle dealer, by agreement, program, policy,
66 | standard, or otherwise, to relocate, to make substantial changes,
67 | alterations, or remodeling to, or to replace a motor vehicle
68 | dealer's sales or service facilities unless the licensee's
69 | requirements are reasonable and justifiable in light of the
70 | current and reasonably foreseeable projections of economic
71 | conditions, financial expectations, and the motor vehicle
72 | dealer's market for the licensee's motor vehicles.

73 | (b) A licensee may, however, provide to a motor vehicle
74 | dealer a commitment to allocate additional vehicles or a loan or
75 | grant of money as an inducement for the motor vehicle dealer to
76 | relocate, expand, improve, remodel, alter, or renovate its
77 | facilities if the licensee delivers an assurance to the dealer
78 | that it will offer to supply to the dealer a sufficient quantity
79 | of new motor vehicles, consistent with its allocation obligations
80 | at law and to its other same line-make motor vehicle dealers,
81 | which will economically justify such relocation, expansion,
82 | improvement, remodeling, renovation, or alteration, in light of
83 | reasonably current and reasonably projected market and economic
84 | conditions. The provisions of the increase in vehicle allocation,
85 | the loan or grant and the assurance, and the basis for them must
86 | be contained in a written agreement voluntarily entered into by
87 | the dealer and must be made available, on substantially similar

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88 terms, to any of the licensee's other same line-make dealers in
89 this state with whom the licensee offers to enter into such an
90 agreement.

91 (c) A licensee shall not withhold a bonus, incentive, or
92 other benefit that is available to its other same line-make
93 franchised dealers in this state from, or take or threaten to
94 take any action that is unfair or adverse to a dealer who does
95 not enter into an agreement with the licensee pursuant to
96 paragraph (b).

97 (d) A licensee may not refuse to offer a program, bonus,
98 incentive, or other benefit, in whole or in part, to a dealer in
99 this state which it offers to its other same line-make dealers
100 nationally or in the licensee's zone or region in which this
101 state is included. Neither may it discriminate against a dealer
102 in this state with respect to any program, bonus, incentive, or
103 other benefit. For purposes of this chapter, a licensee may not
104 establish this state alone as a zone, region, or territory by any
105 other designation.

106 (e) Paragraphs (a) and (b) do not affect any contract
107 between a licensee and any of its dealers regarding relocation,
108 expansion, improvement, remodeling, renovation, or alteration
109 which exists on the effective date of this act.

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

113 (18) The applicant or licensee has established a system of
114 motor vehicle allocation or distribution or has implemented a
115 system of allocation or distribution of motor vehicles to one or
116 more of its franchised motor vehicle dealers which reduces or

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117 alters allocations or supplies of new motor vehicles to the
118 dealer to achieve, directly or indirectly, a purpose that is
119 prohibited by ss. 320.60-320.70, or which otherwise is unfair,
120 inequitable, unreasonably discriminatory, or not supportable by
121 reason and good cause after considering the equities of the
122 affected motor vehicles dealer or dealers. An applicant or
123 licensee shall maintain for 3 years records that describe its
124 methods or formula of allocation and distribution of its motor
125 vehicles and records of its actual allocation and distribution of
126 motor vehicles to its motor vehicle dealers in this state. As
127 used in this subsection, "unfair" includes, without limitation,
128 the refusal or failure to offer to any dealer an equitable supply
129 of new vehicles under its franchise, by model, mix, or colors as
130 the licensee offers or allocates to its other same line-make
131 dealers in the state.

132 (22) The applicant or licensee has refused to deliver, in
133 reasonable quantities and within a reasonable time, to any duly
134 licensed motor vehicle dealer who has an agreement with such
135 applicant or licensee for the retail sale of new motor vehicles
136 and parts for motor vehicles sold or distributed by the applicant
137 or licensee, any such motor vehicles or parts as are covered by
138 such agreement. Such refusal includes the failure to offer to its
139 same line-make franchised motor vehicle dealers all models
140 manufactured for that line-make, or requiring a dealer to pay any
141 extra fee, require a dealer to execute a separate franchise
142 agreement, purchase unreasonable advertising displays or other
143 materials, or relocate, expand, improve, remodel, renovate, ~~or~~
144 recondition, or alter the dealer's existing facilities, or
145 provide exclusive facilities as a prerequisite to receiving a

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146 | model or series of vehicles. However, the failure to deliver any
147 | motor vehicle or part will not be considered a violation of this
148 | section if the failure is due to an act of God, work stoppage, or
149 | delay due to a strike or labor difficulty, a freight embargo,
150 | product shortage, or other cause over which the applicant or
151 | licensee has no control. An applicant or licensee may impose
152 | reasonable requirements on the motor vehicle dealer, other than
153 | the items listed above, including, but not limited to, the
154 | purchase of special tools required to properly service a motor
155 | vehicle and the undertaking of sales person or service person
156 | training related to the motor vehicle.

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

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

197 (26) Notwithstanding the terms of any franchise agreement,
198 including any licensee's program, policy, or procedure, the
199 applicant or licensee has refused to allocate, sell, or deliver
200 motor vehicles; charged back or withheld payments or other things
201 of value for which the dealer is otherwise eligible under a sales
202 promotion, program, or contest; ~~or~~ prevented a ~~the~~ motor vehicle
203 dealer from participating in any promotion, program, or contest;

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204 or has taken or threatened to take any adverse action against a
205 dealer, including charge backs, reducing vehicle allocations, or
206 terminating or threatening to terminate a franchise because the
207 dealer sold or leased a motor vehicle to a customer who exported
208 the vehicle to a foreign country or who resold the vehicle,
209 unless the licensee proves that the dealer had actual knowledge
210 that the customer intended to export or resell the motor vehicle.

211 There is a conclusive presumption that the dealer had no actual
212 knowledge if the vehicle is titled or registered in any state in
213 this country ~~for selling a motor vehicle to a customer who was~~
214 ~~present at the dealership and the motor vehicle dealer did not~~
215 ~~know or should not have reasonably known that the vehicle would~~
216 ~~be shipped to a foreign country. There will be a rebuttable~~
217 ~~presumption that the dealer did not know or should not have~~
218 ~~reasonably known that the vehicle would be shipped to a foreign~~
219 ~~country if the vehicle is titled in one of the 50 United States.~~

220 (30) The applicant or licensee has conducted or threatened
221 to conduct any audit of a motor vehicle dealer in order to coerce
222 or attempt to coerce the dealer to forego any rights granted to
223 the dealer under ss. 320.60-320.70 or under the agreement between
224 the licensee and the motor vehicle dealer. Nothing in this
225 section shall prohibit an applicant or licensee from reasonably
226 and periodically auditing a dealer to determine the validity of
227 paid claims, as permitted under this chapter, if the licensee
228 complies with the provisions of ss. 320.60-320.70 applicable to
229 such audits.

230

231 A motor vehicle dealer who can demonstrate that a violation of,
232 or failure to comply with, any of the preceding provisions by an

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233 applicant or licensee will or can adversely and pecuniarily
234 affect the complaining dealer, shall be entitled to pursue all of
235 the remedies, procedures, and rights of recovery available under
236 ss. 320.695 and 320.697.

237 Section 2. Section 320.6412, Florida Statutes, is created
238 to read:

239 320.6412 Franchise termination based on fraud; standard of
240 proof.--Notwithstanding the provisions of any franchise
241 agreement, a franchise agreement of a motor vehicle dealer may
242 not be terminated, canceled, discontinued, or not renewed by a
243 licensee on the basis of misrepresentation or fraud, or the
244 filing of any false or fraudulent statements or claims with the
245 licensee, unless the licensee proves by a preponderance of the
246 evidence before a trier of fact either that the majority owner,
247 or if there is no majority owner, the person designated as the
248 dealer-principal in the franchise agreement, knew of such acts at
249 the time they allegedly were committed, or that the licensee
250 provided written notice detailing such alleged acts to the
251 majority owner or dealer-principal who, within a reasonable time
252 after receipt of such written notice, failed to take actions
253 reasonably calculated to prevent such acts from continuing or
254 recurring.

255 Section 3. Section 320.696, Florida Statutes, is amended to
256 read:

257 (Substantial rewording of section. See
258 s. 320.696, F.S., for present text.)

259 320.696 Warranty responsibility.--

260 (1)(a) A licensee shall timely compensate a motor vehicle
261 dealer who performs work to maintain or repair a licensee's

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262 product under a warranty or maintenance plan, extended warranty,
263 certified pre-owned warranty, or a service contract, issued by
264 the licensee or its common entity, unless issued by an entity
265 that is not under common ownership or control of the maker of the
266 motor vehicle; to fulfill a licensee's delivery or preparation
267 procedures; or to repair a motor vehicle as a result of a
268 licensee's or common entity's recall, campaign service,
269 authorized goodwill, directive, or bulletin.

270 (b) As used in this section, the terms "compensate" and
271 "compensation" shall include all labor and parts included in the
272 work as provided in this section. The term "labor" shall include
273 time spent by employees for diagnosis and repair of a vehicle.
274 The term "parts" shall include replacement parts and accessories.
275 The term "retail customer repair" means work, including parts and
276 labor, performed by a dealer which does not come within the
277 provisions of a licensee's or its common entity's warranty,
278 extended warranty, certified pre-owned warranty, service
279 contract, or maintenance plan, and excludes parts and labor
280 described in paragraphs (3) (b) and (4) (c).

281 (c) Compensation not paid to a motor vehicle dealer within
282 30 days after receipt of a claim is not timely. A licensee shall
283 not establish or implement a term, policy, or procedure different
284 from those described in this section for any motor vehicle dealer
285 to obtain compensation under this section, and shall not pay a
286 motor vehicle dealer less than amounts due pursuant to this
287 section.

288 (2) A licensee shall not take or threaten to take adverse
289 action against a motor vehicle dealer who seeks to obtain
290 compensation pursuant to this section. As used in this

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291 subsection, the term "adverse action" includes, without
292 limitation, acting or failing to act, other than in good faith;
293 creating or implementing an obstacle or process that is
294 inconsistent with the licensee's obligations to the dealer under
295 this section; hindering, delaying, or rejecting the proper and
296 timely payment of compensation due under this section to a
297 dealer; establishing, implementing, enforcing, or applying any
298 policy, standard, rule, program, or incentive regarding
299 compensation due under this section other than in a uniform and
300 nondisparate manner among the licensee's dealers in this state;
301 conducting or threatening to conduct any warranty, retail
302 customer repair, or other service-related audit more frequently
303 than once each calendar year; or denying, reducing, or charging
304 back a warranty claim because of a dealer's failure to comply
305 with all of the licensee's requirements for describing or
306 processing a claim.

307 (3) (a) A licensee shall compensate a motor vehicle dealer
308 for parts used in any work described in subsection (1). The
309 compensation may be an agreed percentage markup over the
310 licensee's dealer cost, but if an agreement is not reached within
311 30 days after a dealer's written request, compensation for the
312 parts is the greater of:

313 1. The dealer's arithmetical mean percentage markup over
314 dealer cost for all parts charged by the dealer in 50 consecutive
315 retail customer repairs made by the dealer within a 3-month
316 period before the dealer's written request for a change in
317 reimbursement pursuant to this section, or all of the retail
318 customer repair orders over that 3-month period if there are
319 fewer than 50 retail customer repair orders in that period. The

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320 motor vehicle dealer shall give the licensee 10 days' written
321 notice that it intends to make a written request to the licensee
322 for a warranty parts reimbursement increase and permit the
323 licensee, within that 10-day period, to select the initial retail
324 customer repair for the consecutive repair orders that will be
325 attached to the written request used for the markup computation,
326 provided that if the licensee fails to provide a timely
327 selection, the dealer may make that selection. No repair order
328 shall be excluded from the markup computation because it contains
329 both warranty, extended warranty, certified pre-owned warranty,
330 maintenance, recall, campaign service, or authorized goodwill
331 work and a retail customer repair. However, only the retail
332 customer repair portion of the repair order shall be included in
333 the computation and the parts described in paragraph (b) shall be
334 excluded from the computation;

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

337 3. An amount equal to the dealer's markup over dealer cost
338 that results in the same gross profit percentage for parts used
339 in work done under subsection (1) as the dealer receives for
340 parts used in the customer retail repairs, as evidenced by the
341 average of said dealer's gross profit percentage in the dealer's
342 financial statements for the 2 months preceding the dealer's
343 request.

344
345 If a licensee reduces the suggested retail or list price for any
346 replacement part or accessory, it also shall reduce, by at least
347 the same percentage, the cost to the dealer for the part or
348 accessory. The dealer's markup or gross profit percentage shall

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349 be uniformly applied to all of the licensee's parts used by the
350 dealer in performing work covered by subsection (1).

351 (b) In calculating the compensation to be paid for parts by
352 the arithmetic mean percentage markup over dealer cost method in
353 paragraph (a), parts discounted by a dealer for repairs made in
354 group, fleet, insurance, or other third-party payer service work;
355 parts used in repairs of government agencies' repairs for which
356 volume discounts have been negotiated; parts used in special
357 event, specials, or promotional discounts for retail customer
358 repairs; parts sold at wholesale; parts used for internal
359 repairs; engine assemblies and transmission assemblies; parts
360 used in retail customer repairs for routine maintenance, such as
361 fluids, filters and belts; nuts, bolts, fasteners, and similar
362 items that do not have an individual part number; and tires shall
363 be excluded in determining the percentage markup over dealer
364 cost.

365 (c) If a licensee furnishes a part or component to a motor
366 vehicle dealer at no cost to use in performing repairs under a
367 recall, campaign service action, or warranty repair, the licensee
368 shall compensate the dealer for the part or component in the same
369 manner as warranty parts compensation under this subsection, less
370 the dealer cost for the part or component as listed in the
371 licensee's price schedule.

372 (d) A licensee shall not establish or implement a special
373 part or component number for parts used in predelivery, dealer
374 preparation, warranty, extended warranty, certified pre-owned
375 warranty, recall, campaign service, authorized goodwill, or
376 maintenance-only applications if that results in lower
377 compensation to the dealer than as calculated in this subsection.

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378 (4) (a) A licensee shall compensate a motor vehicle dealer
379 for labor performed in connection with work described in
380 subsection (1) as calculated in this subsection.

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

385 1. The dealer's hourly labor rate for retail customer
386 repairs, determined by dividing the amount of the dealer's total
387 labor sales for retail customer repairs by the number of total
388 labor hours that generated those sales for the month preceding
389 the request, excluding the work in paragraph (c); or

390 2. An amount equal to the dealer's markup over dealer cost
391 that results in the same gross profit percentage for labor hours
392 performed in work covered by subsection (1) as the dealer
393 receives for labor performed in its customer retail repairs, as
394 evidenced by the average of said dealer's gross profit percentage
395 in the dealer's financial statements provided to the licensee for
396 the 2 months preceding the dealer's written request, if the
397 dealer provides in the written request the arithmetical mean of
398 the hourly wage paid to all of its technicians during that
399 preceding month. The arithmetical mean shall be the dealer cost
400 used in that calculation.

401
402 After an hourly labor rate is agreed or determined, the licensee
403 shall uniformly apply and pay that hourly labor rate for all
404 labor used by the dealer in performing work under subsection (1).
405 However, a licensee shall not pay an hourly labor rate less than
406 the hourly rate it was paying to the dealer for work done under

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407 subsection (1) on January 2, 2008. A licensee shall not eliminate
408 flat-rate times from, or establish an unreasonable flat-rate time
409 in its warranty repair manual, warranty time guide, or any other
410 similarly named document. A licensee shall establish reasonable
411 flat-rate labor times in its warranty repair manuals and warranty
412 time guides for newly introduced model motor vehicles which are
413 at least consistent with its existing documents. As used in this
414 subsection, the terms "retail customer repair" and "similar work"
415 are not limited to a repair to the same model vehicle or model
416 year, but include prior repairs that resemble but are not
417 identical to the repair for which the dealer is making a claim
418 for compensation.

419 (c) In determining the hourly labor rate calculated under
420 subparagraph (b)1., a dealer's labor charges for internal vehicle
421 repairs; vehicle reconditioning; repairs performed for group,
422 fleet, insurance, or other third-party payers; discounted repairs
423 of motor vehicles for government agencies; labor used in special
424 events, specials, or express service; and promotional discounts
425 shall not be included as retail customer repairs and shall be
426 excluded from such calculations.

427 (5) A licensee shall not review, change, or fail to pay a
428 motor vehicle dealer for parts or labor determined under this
429 section unless the dealer has requested a change, or the action
430 is pursuant to the licensee's written, predetermined schedule for
431 increasing parts or labor compensation that is not contrary to
432 any provision of this section. A dealer may make written requests
433 for changes in compensation for parts or labor performed under
434 this section not more than semiannually. The dealer shall attach
435 supporting documentation to each written request. Any increase in

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436 parts or labor reimbursement determined thereafter to be owed to
437 the dealer shall be paid pursuant to this section retroactively
438 for all claims filed by a dealer 15 days after the date of the
439 licensee's receipt of the dealer's written request.

440 (6) A licensee shall not recover or attempt to recover,
441 directly or indirectly, any of its costs for compensating a motor
442 vehicle dealer under this section, including by decreasing or
443 eliminating solely in this state or as it relates to any of its
444 dealers, any bonuses or other incentive that the licensee has in
445 effect nationally, regionally, or in a territory by any other
446 designation; by reducing the dealer's gross margin for any of the
447 licensee's products or services where the wholesale price charged
448 to the dealer is determined by the licensee and the reduction is
449 not in effect nationally or regionally; by imposing a separate
450 charge or surcharge to the wholesale price paid by a dealer in
451 this state for any product or service offered to or supplied by a
452 licensee under a franchise agreement with the dealer; or by
453 passing on to the dealer any charge or surcharge of a common
454 entity of the licensee.

455 (7) A licensee shall not require, influence, or attempt to
456 influence a motor vehicle dealer to implement or change the
457 prices for which it sells parts or labor in retail customer
458 repairs. A licensee shall not implement or continue a policy,
459 procedure, or program to any of its dealers in this state for
460 compensation under this section which is inconsistent with this
461 section.

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

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