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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) Any portion of a licensee-offered program for a bonus,
111 incentive, or other benefit that, in whole or in part, is based
112 upon or aimed at inducing a dealer's relocation, expansion,
113 improvement, remodeling, renovation, or alteration of the
114 dealer's sales or service facility, or both, is void as to each
115 of the licensee's motor vehicle dealers in this state who,
116 nevertheless, shall be eligible for the entire amount of the

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117 bonuses, incentives, or benefits offered in the program upon
118 compliance with the other eligibility provisions in the program.

119 (g) A licensee may set and uniformly apply reasonable
120 standards for a motor vehicle dealer's sales and service
121 facilities which are related to upkeep, repair, and cleanliness.

122 (18) The applicant or licensee has established a system of
123 motor vehicle allocation or distribution or has implemented a
124 system of allocation or distribution of motor vehicles to one or
125 more of its franchised motor vehicle dealers which reduces or
126 alters allocations or supplies of new motor vehicles to the
127 dealer to achieve, directly or indirectly, a purpose that is
128 prohibited by ss. 320.60-320.70, or which otherwise is unfair,
129 inequitable, unreasonably discriminatory, or not supportable by
130 reason and good cause after considering the equities of the
131 affected motor vehicles dealer or dealers. An applicant or
132 licensee shall maintain for 3 years records that describe its
133 methods or formula of allocation and distribution of its motor
134 vehicles and records of its actual allocation and distribution of
135 motor vehicles to its motor vehicle dealers in this state. As
136 used in this subsection, "unfair" includes, without limitation,
137 the refusal or failure to offer to any dealer an equitable supply
138 of new vehicles under its franchise, by model, mix, or colors as
139 the licensee offers or allocates to its other same line-make
140 dealers in the state.

141 (22) The applicant or licensee has refused to deliver, in
142 reasonable quantities and within a reasonable time, to any duly
143 licensed motor vehicle dealer who has an agreement with such
144 applicant or licensee for the retail sale of new motor vehicles
145 and parts for motor vehicles sold or distributed by the applicant

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146 or licensee, any such motor vehicles or parts as are covered by
147 such agreement. Such refusal includes the failure to offer to its
148 same line-make franchised motor vehicle dealers all models
149 manufactured for that line-make, or requiring a dealer to pay any
150 extra fee, require a dealer to execute a separate franchise
151 agreement, purchase unreasonable advertising displays or other
152 materials, or relocate, expand, improve, remodel, renovate, ~~or~~
153 recondition, or alter the dealer's existing facilities, or
154 provide exclusive facilities as a prerequisite to receiving a
155 model or series of vehicles. However, the failure to deliver any
156 motor vehicle or part will not be considered a violation of this
157 section if the failure is due to an act of God, work stoppage, or
158 delay due to a strike or labor difficulty, a freight embargo,
159 product shortage, or other cause over which the applicant or
160 licensee has no control. An applicant or licensee may impose
161 reasonable requirements on the motor vehicle dealer, other than
162 the items listed above, including, but not limited to, the
163 purchase of special tools required to properly service a motor
164 vehicle and the undertaking of sales person or service person
165 training related to the motor vehicle.

166 (25) The applicant or licensee has undertaken an audit of
167 warranty payments or incentive payments ~~payment~~ previously paid
168 to a motor vehicle dealer in violation of this section or has
169 failed to comply with any of its obligations under s. 320.696. An
170 applicant or licensee may reasonably and periodically audit a
171 motor vehicle dealer to determine the validity of paid claims as
172 provided in s. 320.696. Audit of warranty payments shall only be
173 for the 1-year period immediately following the date the claim
174 was paid. Audit of incentive payments shall only be for an 18-

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175 month period immediately following the date the incentive was
176 paid. An applicant or licensee shall not deny a claim or charge a
177 motor vehicle dealer back subsequent to the payment of the claim
178 unless the applicant or licensee can show that the claim was
179 false or fraudulent or that the motor vehicle dealer failed to
180 substantially comply with the reasonable written and uniformly
181 applied procedures of the applicant or licensee for such repairs
182 or incentives. An applicant or licensee may not charge a motor
183 vehicle dealer back subsequent to the payment of a claim unless a
184 representative of the applicant or licensee first meets in
185 person, by telephone, or by video teleconference with an officer
186 or employee of the dealer designated by the motor vehicle dealer.
187 At such meeting the applicant or licensee must provide a detailed
188 explanation, with supporting documentation, as to the basis for
189 each of the claims for which the applicant or licensee proposed a
190 charge-back to the dealer and a written statement containing the
191 basis upon which the motor vehicle dealer was selected for audit
192 or review. Thereafter, the applicant or licensee must provide the
193 motor vehicle dealer's representative a reasonable period after
194 the meeting within which to respond to the proposed charge-backs,
195 with such period to be commensurate with the volume of claims
196 under consideration, but in no case less than 45 days after the
197 meeting. The applicant or licensee is prohibited from changing or
198 altering the basis for each of the proposed charge-backs as
199 presented to the motor vehicle dealer's representative following
200 the conclusion of the audit unless the applicant or licensee
201 receives new information affecting the basis for one or more
202 charge-backs. If the applicant or licensee claims the existence
203 of new information, the dealer must be given the same right to a

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204 meeting and right to respond as when the charge-back was
205 originally presented.

206 (26) Notwithstanding the terms of any franchise agreement,
207 including any licensee's program, policy, or procedure, the
208 applicant or licensee has refused to allocate, sell, or deliver
209 motor vehicles; charged back or withheld payments or other things
210 of value for which the dealer is otherwise eligible under a sales
211 promotion, program, or contest; ~~or~~ prevented a ~~the~~ motor vehicle
212 dealer from participating in any promotion, program, or contest;
213 or has taken or threatened to take any adverse action against a
214 dealer, including charge backs, reducing vehicle allocations, or
215 terminating or threatening to terminate a franchise because the
216 dealer sold or leased a motor vehicle to a customer who exported
217 the vehicle to a foreign country or who resold the vehicle,
218 unless the licensee proves that the dealer had actual knowledge
219 that the customer intended to export or resell the motor vehicle.
220 There is a conclusive presumption that the dealer had no actual
221 knowledge if the vehicle is titled or registered in any state in
222 this country for selling a motor vehicle to a customer who was
223 present at the dealership and the motor vehicle dealer did not
224 know or should not have reasonably known that the vehicle would
225 be shipped to a foreign country. There will be a rebuttable
226 presumption that the dealer did not know or should not have
227 reasonably known that the vehicle would be shipped to a foreign
228 country if the vehicle is titled in one of the 50 United States.
229 (30) The applicant or licensee has conducted or threatened
230 to conduct any audit of a motor vehicle dealer in order to coerce
231 or attempt to coerce the dealer to forego any rights granted to
232 the dealer under ss. 320.60-320.70 or under the agreement between

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233 the licensee and the motor vehicle dealer. Nothing in this
234 section shall prohibit an applicant or licensee from reasonably
235 and periodically auditing a dealer to determine the validity of
236 paid claims, as permitted under this chapter, if the licensee
237 complies with the provisions of ss. 320.60-320.70 applicable to
238 such audits.
239

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

246 Section 2. Section 320.6412, Florida Statutes, is created
247 to read:

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

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262 reasonably calculated to prevent such acts from continuing or
263 recurring.

264 Section 3. Section 320.696, Florida Statutes, is amended to
265 read:

266 (Substantial rewording of section. See
267 s. 320.696, F.S., for present text.)
268 320.696 Warranty responsibility.--

269 (1) (a) A licensee shall timely compensate a motor vehicle
270 dealer who performs work to maintain or repair a licensee's
271 product under a warranty or maintenance plan, extended warranty,
272 certified pre-owned warranty, or a service contract, issued by
273 the licensee or its common entity, unless issued by a common
274 entity that is not a manufacturer; to fulfill a licensee's
275 delivery or preparation procedures; or to repair a motor vehicle
276 as a result of a licensee's or common entity's recall, campaign
277 service, authorized goodwill, directive, or bulletin.

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

289 (c) Compensation not paid to a motor vehicle dealer within
290 30 days after receipt of a claim is not timely. A licensee shall

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291 not establish or implement a term, policy, or procedure different
292 from those described in this section for any motor vehicle dealer
293 to obtain compensation under this section, and shall not pay a
294 motor vehicle dealer less than amounts due pursuant to this
295 section.

296 (2) A licensee shall not take or threaten to take adverse
297 action against a motor vehicle dealer who seeks to obtain
298 compensation pursuant to this section. As used in this
299 subsection, the term "adverse action" includes, without
300 limitation, acting or failing to act, other than in good faith;
301 creating or implementing an obstacle or process that is
302 inconsistent with the licensee's obligations to the dealer under
303 this section; hindering, delaying, or rejecting the proper and
304 timely payment of compensation due under this section to a
305 dealer; establishing, implementing, enforcing, or applying any
306 policy, standard, rule, program, or incentive regarding
307 compensation due under this section other than in a uniform and
308 nondisparate manner among the licensee's dealers in this state;
309 conducting or threatening to conduct any warranty, retail
310 customer repair, or other service-related audit more frequently
311 than once each calendar year; or denying, reducing, or charging
312 back a warranty claim because of a dealer's failure to comply
313 with all of the licensee's requirements for describing or
314 processing a claim.

315 (3) (a) A licensee shall compensate a motor vehicle dealer
316 for parts used in any work described in subsection (1). The
317 compensation may be an agreed percentage markup over the
318 licensee's dealer cost, but if an agreement is not reached within
319 30 days after a dealer's written request, compensation for the

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320 parts is the greater of:

321 1. The dealer's arithmetical mean percentage markup over
322 dealer cost for all parts charged by the dealer in 50 consecutive
323 retail customer repairs made by the dealer within a 3-month
324 period before the dealer's written request for a change in
325 reimbursement pursuant to this section, or all of the retail
326 customer repair orders over that 3-month period if there are
327 fewer than 50 retail customer repair orders in that period. The
328 motor vehicle dealer shall give the licensee 10 days' written
329 notice that it intends to make a written request to the licensee
330 for a warranty parts reimbursement increase and permit the
331 licensee, within that 10-day period, to select the initial retail
332 customer repair for the consecutive repair orders that will be
333 attached to the written request used for the markup computation,
334 provided that if the licensee fails to provide a timely
335 selection, the dealer may make that selection. No repair order
336 shall be excluded from the markup computation because it contains
337 both warranty, extended warranty, certified pre-owned warranty,
338 maintenance, recall, campaign service, or authorized goodwill
339 work and a retail customer repair. However, only the retail
340 customer repair portion of the repair order shall be included in
341 the computation and the parts described in paragraph (b) shall be
342 excluded from the computation;

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

345 3. An amount equal to the dealer's markup over dealer cost
346 that results in the same gross profit percentage for parts used
347 in work done under subsection (1) as the dealer receives for
348 parts used in the customer retail repairs, as evidenced by the

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349 average of said dealer's gross profit percentage in the dealer's
350 financial statements for the 2 months preceding the dealer's
351 request.

352
353 If a licensee reduces the suggested retail or list price for any
354 replacement part or accessory, it also shall reduce, by at least
355 the same percentage, the cost to the dealer for the part or
356 accessory. The dealer's markup or gross profit percentage shall
357 be uniformly applied to all of the licensee's parts used by the
358 dealer in performing work covered by subsection (1).

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

373 (c) If a licensee furnishes a part or component to a motor
374 vehicle dealer at no cost to use in performing repairs under a
375 recall, campaign service action, or warranty repair, the licensee
376 shall compensate the dealer for the part or component in the same
377 manner as warranty parts compensation under this subsection, less

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378 the dealer cost for the part or component as listed in the
379 licensee's price schedule.

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

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

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

393 1. The dealer's hourly labor rate for retail customer
394 repairs, determined by dividing the amount of the dealer's total
395 labor sales for retail customer repairs by the number of total
396 labor hours that generated those sales for the month preceding
397 the request, excluding the work in paragraph (c); or

398 2. An amount equal to the dealer's markup over dealer cost
399 that results in the same gross profit percentage for labor hours
400 performed in work covered by subsection (1) as the dealer
401 receives for labor performed in its customer retail repairs, as
402 evidenced by the average of said dealer's gross profit percentage
403 in the dealer's financial statements provided to the licensee for
404 the 2 months preceding the dealer's written request, if the
405 dealer provides in the written request the arithmetical mean of
406 the hourly wage paid to all of its technicians during that

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407 preceding month. The arithmetical mean shall be the dealer cost
408 used in that calculation.

409
410 After an hourly labor rate is agreed or determined, the licensee
411 shall uniformly apply and pay that hourly labor rate for all
412 labor used by the dealer in performing work under subsection (1).
413 However, a licensee shall not pay an hourly labor rate less than
414 the hourly rate it was paying to the dealer for work done under
415 subsection (1) on January 2, 2008. A licensee shall not eliminate
416 flat-rate times from, or establish an unreasonable flat-rate time
417 in its warranty repair manual, warranty time guide, or any other
418 similarly named document. A licensee shall establish reasonable
419 flat-rate labor times in its warranty repair manuals and warranty
420 time guides for newly introduced model motor vehicles which are
421 at least consistent with its existing documents. As used in this
422 subsection, the terms "retail customer repair" and "similar work"
423 are not limited to a repair to the same model vehicle or model
424 year, but include prior repairs that resemble but are not
425 identical to the repair for which the dealer is making a claim
426 for compensation.

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

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435 (5) A licensee shall not review, change, or fail to pay a
436 motor vehicle dealer for parts or labor determined under this
437 section unless the dealer has requested a change, or the action
438 is pursuant to the licensee's written, predetermined schedule for
439 increasing parts or labor compensation that is not contrary to
440 any provision of this section. A dealer may make written requests
441 for changes in compensation for parts or labor performed under
442 this section not more than semiannually. The dealer shall attach
443 supporting documentation to each written request. Any increase in
444 parts or labor reimbursement determined thereafter to be owed to
445 the dealer shall be paid pursuant to this section retroactively
446 for all claims filed by a dealer 15 days after the date of the
447 licensee's receipt of the dealer's written request.

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

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463 (7) A licensee shall not require, influence, or attempt to
464 influence a motor vehicle dealer to implement or change the
465 prices for which it sells parts or labor in retail customer
466 repairs. A licensee shall not implement or continue a policy,
467 procedure, or program to any of its dealers in this state for
468 compensation under this section which is inconsistent with this
469 section.

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

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