

1 A bill to be entitled
2 An act relating to motor vehicle dealerships; amending s.
3 320.64, F.S.; revising provisions for denial, suspension,
4 or revocation of the license of a motor vehicle
5 manufacturer, factory branch, distributor, or importer;
6 revising prohibitions against coercion, requiring a dealer
7 to relocate or make substantial changes to the dealer's
8 facilities, certain audits, and failing to pay the motor
9 vehicle dealer within a certain timeframe after a
10 termination or nonrenewal of a franchise; revising
11 requirements for licensee-offered program bonuses,
12 incentives, and other benefits; providing that criminal
13 penalties do not apply to certain violations; revising
14 conditions and procedures for certain audits; removing a
15 presumption that a dealer had no actual knowledge that a
16 customer intended to export or resell a motor vehicle;
17 providing for liability of the licensee to a dealer if
18 termination, cancellation, or nonrenewal of the dealer's
19 franchise is the result of the bankruptcy or
20 reorganization of a licensee or its common entity, or the
21 termination, elimination, or cessation of the line-make;
22 amending s. 320.642, F.S.; revising provisions for
23 establishing an additional motor vehicle dealership in or
24 relocating an existing dealer to a location within a
25 community or territory where the same line-make vehicle is
26 presently represented by a franchised motor vehicle dealer
27 or dealers; revising notice requirements; revising
28 provisions for denial of an application for a motor

29 | vehicle dealer license in any community or territory;
30 | revising provisions for evidence to be considered by the
31 | Department of Highway Safety and Motor Vehicles when
32 | evaluating the application; revising provisions under
33 | which a dealer has standing to protest a proposed
34 | additional or relocated motor vehicle dealer; revising
35 | provisions for a proposed addition or relocation
36 | concerning a dealership that performs only service;
37 | amending s. 320.643, F.S.; revising provisions for
38 | transfer, assignment, or sale of franchise agreements;
39 | prohibiting rejection of proposed transfer of interest in
40 | a motor vehicle dealer entity to a trust or other entity,
41 | or a beneficiary thereof, that is established for estate
42 | planning purposes; prohibiting placing certain conditions
43 | on such transfer; revising provisions for a hearing by the
44 | department or a court relating to a proposed transfer;
45 | prohibiting a licensee from delaying or placing a
46 | condition for approval of a transfer; revising provisions
47 | for a determination that a rejection or withholding of a
48 | transfer was reasonable; requiring such determination to
49 | be based on a preponderance of the evidence; amending s.
50 | 320.696, F.S.; revising provisions for determining
51 | compensation paid by a licensee to a dealer for warranty
52 | labor and parts; eliminating certain methods for
53 | determining warranty labor and parts reimbursement;
54 | revising restrictions on licensees and dealers relating to
55 | such compensation; providing for severability; providing
56 | an effective date.

57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84

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

Section 1. Subsection (5), paragraphs (a), (b), (c), (d), and (f) of subsection (10), and subsections (25), (26), and (36) of section 320.64, Florida Statutes, are amended, and paragraph (h) is added to subsection (10) of that section, to read:

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

(5) The applicant or licensee has coerced or attempted to coerce any motor vehicle dealer into ordering or accepting delivery of any motor vehicle or vehicles or parts or accessories therefor or any other commodities which have not been ordered voluntarily by the dealer or are in excess of that number which the motor vehicle dealer considers as reasonably required to adequately represent the licensee's line-make in order to meet current and foreseeable market demand.

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

85 dealer who does not, at the time of the franchise agreement,
 86 have proper facilities to provide the services to his or her
 87 purchasers of new motor vehicles which are covered by the new
 88 motor vehicle warranty issued by the applicant or licensee.
 89 Notwithstanding any provision of a franchise, a licensee may not
 90 require a motor vehicle dealer, by franchise agreement, program,
 91 policy, standard, or otherwise, to relocate, to make substantial
 92 changes, alterations, or remodeling to, or to replace a motor
 93 vehicle dealer's sales or service facilities unless the licensee
 94 can demonstrate that its licensee's requirements are reasonable
 95 and justifiable in light of the current and reasonably
 96 foreseeable projections of economic conditions, financial
 97 expectations, and the motor vehicle dealer's market for the
 98 licensee's motor vehicles.

99 (b) A licensee may, however, provide to a motor vehicle
 100 dealer a written commitment to supply ~~allocate~~ additional
 101 vehicles consistent with its allocation obligations at law and
 102 to its other same line-make motor vehicle dealers or to provide
 103 a lump sum or a loan or grant of money as an inducement for the
 104 motor vehicle dealer to relocate, expand, improve, remodel,
 105 alter, or renovate its facilities, provided that ~~if the licensee~~
 106 ~~delivers an assurance to the dealer that it will offer to supply~~
 107 ~~to the dealer a sufficient quantity of new motor vehicles,~~
 108 ~~consistent with its allocation obligations at law and to its~~
 109 ~~other same line-make motor vehicle dealers, which will~~
 110 ~~economically justify such relocation, expansion, improvement,~~
 111 ~~remodeling, renovation, or alteration, in light of reasonably~~
 112 ~~current and reasonably projected market and economic conditions.~~

CS/HB 1525

2009

113 the provisions of the commitment ~~increase in vehicle allocation,~~
114 ~~the loan or grant and the assurance,~~ and the economic and market
115 reasons and basis for them must be contained in a writing that
116 ~~is written agreement~~ voluntarily entered into by the dealer and
117 must be made available, on substantially similar terms, to any
118 of the licensee's other same line-make dealers in this state who
119 voluntarily agree to make substantially similar facility
120 expansions, improvements, remodelings, alterations, or
121 renovations ~~with whom the licensee offers to enter into such an~~
122 ~~agreement.~~

123 (c) 1. A licensee ~~may shall~~ not ~~withhold a bonus,~~
124 ~~incentive, or other benefit that is available to its other same~~
125 ~~line-make franchised dealers in this state from, or take or~~
126 threaten to take any action that is unfair, discriminatory, or
127 adverse to a dealer who does not enter into an agreement with
128 the licensee pursuant to paragraph (b).

129 2. No provision of this subsection shall require a
130 licensee to provide financial support for a relocation of a
131 motor vehicle dealer because such support was previously
132 provided to another of the licensee's same line-make motor
133 vehicle dealers who relocated.

134 (d) Except for a program, bonus, incentive, or other
135 benefit offered by a licensee to its dealers in a market area
136 where the licensee's unrealized sales potential or other market
137 conditions, compared to its competitors' sales of motor
138 vehicles, justifies the licensee to target that market area with
139 such offer, a licensee may not refuse to offer a program, bonus,
140 incentive, or other benefit, ~~in whole or in part,~~ to a dealer in

141 | this state which it offers generally to its other same line-make
 142 | dealers nationally or in the licensee's zone or region in which
 143 | this state is included. Neither may a licensee ~~it~~ discriminate
 144 | against a dealer in this state with respect to any program,
 145 | bonus, incentive, or other benefit. For purposes of this
 146 | chapter, a licensee may not establish this state alone as a
 147 | zone, region, ~~or territory,~~ or by any other area designation.

148 | (f) A licensee may offer any program for a bonus,
 149 | incentive, or other benefit to its motor vehicle dealers in this
 150 | state that contains rules, criteria, or eligibility requirements
 151 | relating to a motor vehicle dealer's facilities and nonfacility-
 152 | related eligibility provisions. If, however, any portion of a
 153 | licensee-offered program for a bonus, incentive, or other
 154 | benefit contains any qualifying rule, criteria, or eligibility
 155 | requirement that relates to a motor vehicle ~~that, in whole or in~~
 156 | ~~part, is based upon or aimed at inducing a dealer's relocation,~~
 157 | expansion, improvement, remodeling, renovation, or alteration of
 158 | the dealer's sales or service facility, or both, each of the
 159 | licensee's motor vehicle dealers in this state, upon complying
 160 | with all such qualifying provisions shall be entitled to obtain
 161 | the entire bonus, incentive, or other benefit offered; however,
 162 | a motor vehicle dealer who does not comply with the facility-
 163 | related rule, criteria, or eligibility requirement, but complies
 164 | with the other program rules, criteria, or eligibility
 165 | requirements, shall be entitled to receive a reasonable,
 166 | licensee-predetermined percentage of such bonuses, incentives,
 167 | or other benefits under the program that are unrelated to the
 168 | motor vehicle dealer's facilities. For purposes of this

169 paragraph, the licensee's predetermined percentage unrelated to
 170 facilities is presumed reasonable if it is not less than 75
 171 percent of the total bonuses, incentives, or other benefits
 172 offered under such ~~is void as to each of the licensee's motor~~
 173 ~~vehicle dealers in this state who, nevertheless, shall be~~
 174 ~~eligible for the entire amount of the bonuses, incentives, or~~
 175 ~~benefits offered in the program upon compliance with the other~~
 176 ~~eligibility provisions in the program.~~

177 (h) A breach or violation of paragraphs (b)-(g) is not a
 178 violation of s. 320.70 and does not subject a licensee to any
 179 criminal penalty under s. 320.70.

180 (25) The applicant or licensee has undertaken an audit of
 181 warranty, maintenance, and other service-related payments or of
 182 incentive payments, including payments to a motor vehicle dealer
 183 under any licensee-issued program, policy, or other benefit that
 184 previously have been paid to a motor vehicle dealer in violation
 185 of this section or has failed to comply with any of its
 186 obligations under s. 320.696. An applicant or licensee may
 187 reasonably and periodically audit a motor vehicle dealer to
 188 determine the validity of paid claims as provided in s. 320.696.
 189 Audits ~~Audit~~ of warranty, maintenance, and other service-related
 190 payments shall only be performed by an applicant or licensee
 191 during ~~for~~ the 1-year period immediately following the date the
 192 claim was paid. Audits ~~Audit~~ of incentive payments shall only be
 193 performed by an applicant or licensee during the ~~for an~~ 18-month
 194 period immediately following the date the incentive was paid.
 195 After those time periods have elapsed, all warranty,
 196 maintenance, and other service-related payments and incentive

197 payments shall be deemed final and incontrovertible for any
 198 reason cognizant under any applicable law and the motor vehicle
 199 dealer shall not be subject to any charge back or repayment. An
 200 applicant or licensee may deny a claim or, as a result of a
 201 timely conducted audit, charge back a motor vehicle dealer for
 202 warranty, maintenance, or other service-related payments or
 203 incentive payments only if ~~An applicant or licensee shall not~~
 204 ~~deny a claim or charge a motor vehicle dealer back subsequent to~~
 205 ~~the payment of the claim unless~~ the applicant or licensee can
 206 show that the warranty, maintenance, or other service-related
 207 claim or incentive claim was false or fraudulent or that the
 208 motor vehicle dealer failed to substantially comply with the
 209 reasonable, written, and uniformly applied procedures of the
 210 applicant or licensee for such repairs or incentives. An
 211 applicant or licensee may not charge a motor vehicle dealer back
 212 subsequent to the payment of a warranty, maintenance, or
 213 service-related claim or incentive claim unless, within 30 days
 214 after a timely conducted audit, a representative of the
 215 applicant or licensee first meets in person, by telephone, or by
 216 video teleconference with an officer or employee of the dealer
 217 designated by the motor vehicle dealer. At such meeting the
 218 applicant or licensee must provide a detailed explanation, with
 219 supporting documentation, as to the basis for each of the claims
 220 for which the applicant or licensee proposed a charge-back to
 221 the dealer and a written statement containing the basis upon
 222 which the motor vehicle dealer was selected for audit or review.
 223 Thereafter, the applicant or licensee must provide the motor
 224 vehicle dealer's representative a reasonable period after the

225 meeting within which to respond to the proposed charge-backs,
226 with such period to be commensurate with the volume of claims
227 under consideration, but in no case less than 45 days after the
228 meeting. The applicant or licensee is prohibited from changing
229 or altering the basis for each of the proposed charge-backs as
230 presented to the motor vehicle dealer's representative following
231 the conclusion of the audit unless the applicant or licensee
232 receives new information affecting the basis for one or more
233 charge-backs and that new information is received within 60 days
234 after the conclusion of the timely conducted audit. If the
235 applicant or licensee claims the existence of new information,
236 the dealer must be given the same right to a meeting within 30
237 days after the applicant's or licensee's receipt of the new
238 information and right to respond as when the charge-back was
239 originally presented.

240 (26) Notwithstanding the terms of any franchise agreement,
241 including any licensee's program, policy, or procedure, the
242 applicant or licensee has refused to allocate, sell, or deliver
243 motor vehicles; charged back or withheld payments or other
244 things of value for which the dealer is otherwise eligible under
245 a sales promotion, program, or contest; prevented a motor
246 vehicle dealer from participating in any promotion, program, or
247 contest; or has taken or threatened to take any adverse action
248 against a dealer, including charge-backs, reducing vehicle
249 allocations, or terminating or threatening to terminate a
250 franchise because the dealer sold or leased a motor vehicle to a
251 customer who exported the vehicle to a foreign country or who
252 resold the vehicle, unless the licensee proves that the dealer

253 had actual knowledge that the customer intended to export or
 254 resell the motor vehicle. ~~There is a conclusive presumption that~~
 255 ~~the dealer had no actual knowledge if the vehicle is titled or~~
 256 ~~registered in any state in this country.~~

257 (36) (a) Notwithstanding the terms of any franchise
 258 agreement, in addition to any other statutory or contractual
 259 rights of recovery after the voluntary or involuntary
 260 termination of a franchise, failing to pay the motor vehicle
 261 dealer, within 90 days after the effective date of the
 262 termination, cancellation, or nonrenewal, the following amounts:

263 1. The net cost paid by the dealer for each new car or
 264 truck in the dealer's inventory with mileage of 2,000 miles or
 265 less, or a motorcycle with mileage of 100 miles or less,
 266 exclusive of mileage placed on the vehicle before it was
 267 delivered to the dealer.

268 2. The current price charged for each new, unused,
 269 undamaged, or unsold part or accessory that:

270 a. Is in the current parts catalogue and is still in the
 271 original, resalable merchandising package and in an unbroken
 272 lot, except that sheet metal may be in a comparable substitute
 273 for the original package; and

274 b. Was purchased by the dealer directly from the
 275 manufacturer or distributor or from an outgoing authorized
 276 dealer as a part of the dealer's initial inventory.

277 3. The fair market value of each undamaged sign owned by
 278 the dealer which bears a trademark or trade name used or claimed
 279 by the applicant or licensee or its representative which was
 280 purchased from or at the request of the applicant or licensee or

281 its representative.

282 4. The fair market value of all special tools, data
 283 processing equipment, and automotive service equipment owned by
 284 the dealer which:

285 a. Were recommended in writing by the applicant or
 286 licensee or its representative and designated as special tools
 287 and equipment;

288 b. Were purchased from or at the request of the applicant
 289 or licensee or its representative; and

290 c. Are in usable and good condition except for reasonable
 291 wear and tear.

292 5. The cost of transporting, handling, packing, storing,
 293 and loading any property subject to repurchase under this
 294 section.

295 6. If the termination, cancellation, or nonrenewal of the
 296 dealer's franchise is the result of the bankruptcy or
 297 reorganization of a licensee or its common entity, or the
 298 termination, elimination, or cessation of the line-make, in
 299 addition to the payments required under subparagraphs 1.-5. to
 300 the dealer, the licensee or, if the licensee is unable to do so,
 301 its common entity, shall be liable to the motor vehicle dealer
 302 for the following:

303 a. An amount at least equal to the fair market value of
 304 the franchise for the line-make, which shall be the greater of
 305 that value determined as of the day the licensee announces the
 306 action that results in the termination, cancellation, or
 307 nonrenewal and such action becomes general knowledge or the day
 308 that is 12 months prior to such date. In determining the fair

309 market value of a franchise for a line-make, if the line-make is
310 not the only line-make for which the dealer holds a franchise in
311 its dealership facilities, the dealer shall also be entitled to
312 compensation for the contribution of the line-make to the
313 payment of rent or to covering the dealer's obligation for the
314 fair rental value of the dealership facilities for the period
315 described in sub-subparagraph b. Fair market value of the
316 franchise for the line-make shall only include the goodwill
317 value of the dealer's franchise for that line-make in the
318 dealer's community or territory.

319 b. If the line-make is the only line-make for which the
320 dealer holds a franchise in the dealership facilities, the
321 licensee, or its common entity if the licensee is unable to pay,
322 shall also pay to the dealer assistance with respect to the
323 dealership facilities leased or owned by the dealership or its
324 principal owner a sum equal to the rent for the unexpired term
325 of the lease or 3 years' rent, whichever is less; or, if the
326 dealer or its principal owner owns the dealership facilities, a
327 sum equal to the reasonable fair rental value of the dealership
328 facilities for a period of 3 years as if the franchise were
329 still in existence at the facilities, provided that the motor
330 vehicle dealer uses reasonable commercial efforts to mitigate
331 this liability by attempting in good faith to lease or sell the
332 facilities within a reasonable time on terms that are consistent
333 with local zoning requirements to preserve the facilities' right
334 to sell and service motor vehicles.

335 (b) This subsection does not apply to a termination,
336 cancellation, or nonrenewal that is implemented as a result of

337 the sale of the assets or corporate stock or other ownership
 338 interests of the dealer. The dealer shall return the property
 339 listed in this subsection to the licensee at the dealer's place
 340 of business on a date selected by the dealer in the absence of
 341 an agreement with the licensee that is within 90 days after the
 342 effective date of the termination, cancellation, or nonrenewal.
 343 The licensee shall supply the dealer with reasonable
 344 instructions regarding the packing for transport method by which
 345 the dealer must return the property. The compensation for the
 346 property shall be paid by the licensee upon and simultaneously
 347 with ~~within 60 days after~~ the tender of inventory and other
 348 items provided that, if the dealer does not have ~~has~~ clear title
 349 to the inventory and other items and is not in a position to
 350 convey that title to the licensee ~~manufacturer or distributor~~.
 351 ~~If the inventory or other items are subject to a security~~
 352 ~~interest~~, the licensee shall ~~may~~ make payment jointly to the
 353 dealer and the holder of any ~~the~~ security interest.

354
 355 A motor vehicle dealer who can demonstrate that a violation of,
 356 or failure to comply with, any of the preceding provisions by an
 357 applicant or licensee will or can adversely and pecuniarily
 358 affect the complaining dealer, shall be entitled to pursue all
 359 of the remedies, procedures, and rights of recovery available
 360 under ss. 320.695 and 320.697.

361 Section 2. Subsections (1), (2), (3), and (6) of section
 362 320.642, Florida Statutes, are amended to read:

363 320.642 Dealer licenses in areas previously served;
 364 procedure.--

CS/HB 1525

2009

365 (1) Any licensee who proposes to establish an additional
366 motor vehicle dealership or permit the relocation of an existing
367 dealer to a location within a community or territory where the
368 same line-make vehicle is presently represented by a franchised
369 motor vehicle dealer or dealers shall give written notice of its
370 intention to the department. Such notice shall state:

371 (a) The specific location at which the additional or
372 relocated motor vehicle dealership will be established.

373 (b) The date on or after which the licensee intends to be
374 engaged in business with the additional or relocated motor
375 vehicle dealer at the proposed location.

376 (c) The identity of all motor vehicle dealers who are
377 franchised to sell the same line-make vehicle with licensed
378 locations in the county and ~~or~~ any contiguous county to the
379 county where the additional or relocated motor vehicle dealer is
380 proposed to be located.

381 (d) The names and addresses of the dealer-operator and
382 principal investors in the proposed additional or relocated
383 motor vehicle dealership.

384

385 Immediately upon receipt of such notice the department shall
386 cause a notice to be published in the Florida Administrative
387 Weekly. The published notice shall state that a petition or
388 complaint by any dealer with standing to protest pursuant to
389 subsection (3) must be filed not more than 45 ~~30~~ days after ~~from~~
390 the date of publication of the notice in the Florida
391 Administrative Weekly. The published notice shall describe and
392 identify the proposed dealership sought to be licensed, and the

393 department shall cause a copy of the notice to be mailed to
 394 those dealers identified in the licensee's notice under
 395 paragraph (c).

396 (2) (a) An application for a motor vehicle dealer license
 397 in any community or territory shall be denied when:

398 1. A timely protest is filed by a presently existing
 399 franchised motor vehicle dealer with standing to protest as
 400 defined in subsection (3); and

401 2. The licensee fails to show that the existing franchised
 402 dealer or dealers who register new motor vehicle retail sales or
 403 retail leases of the same line-make in the community or
 404 territory of the proposed dealership are not providing adequate
 405 representation, adequate competition, and convenient customer
 406 service of such line-make motor vehicles in a manner beneficial
 407 to the public interest in such community or territory. The
 408 ultimate burden of proof in establishing inadequate
 409 representation, inadequate competition, and inconvenient
 410 customer service shall be on the licensee. Any geographic
 411 comparison area used to evaluate the performance of the line-
 412 make or of the existing motor vehicle dealer or dealers within
 413 the community or territory must be reasonably similar in
 414 demographic traits to the community or territory of the proposed
 415 site, including such factors as age, income, education, and
 416 vehicle size, class, or model preference and product popularity
 417 and the comparison area must not be smaller than the largest
 418 entire county in which any of the protesting dealers are
 419 located. Reasonably expected market sales or service penetration
 420 must be measured with respect to the community or territory as a

421 whole and not with respect to any part thereof or any
422 identifiable plot therein.

423 (b) In determining whether the existing franchised motor
424 vehicle dealer or dealers are providing adequate representation,
425 adequate competition, and convenient customer service in the
426 community or territory for the line-make, the department may
427 consider evidence of any factor deemed material by the finder of
428 fact in the unique circumstances, which may include, but is not
429 limited to:

430 1. The market share and return on investment impact of the
431 establishment of the proposed or relocated dealer on the
432 consumers, public interest, existing dealers, and the licensee;
433 ~~provided,~~ however, ~~that~~ financial impact other than return on
434 investment may only be considered with respect to the protesting
435 dealer or dealers.

436 2. The size and permanency of investment reasonably made
437 and reasonable obligations incurred by the existing dealer or
438 dealers to perform their obligations under the dealer agreement,
439 including requirements made by the licensee up to 5 years prior
440 to the date of the publication of the notice.

441 3. The reasonably expected market penetration of the line-
442 make motor vehicle for the community or territory involved,
443 after consideration of all factors which may affect such ~~said~~
444 penetration, including, but not limited to, demographic factors
445 such as age, income, education, vehicle size, class, or model
446 preference, line-make, product popularity, retail lease
447 transactions, reasonably foreseeable economic projections,
448 financial expectations, availability of reasonable terms and

449 reasonable amounts of credit to prospective customers, or other
450 factors affecting sales to consumers of the community or
451 territory.

452 4. Any actions by the licensee ~~licensees~~ in denying its
453 existing dealer or dealers of the same line-make the opportunity
454 for reasonable growth, market expansion, or relocation,
455 including the availability of line-make vehicles by model, in
456 keeping with the reasonable expectations of the licensee in
457 providing an adequate number of dealers in the community or
458 territory, and the licensee, or its common entity, making or
459 there otherwise being credit available to the existing dealers
460 in reasonable amounts and on reasonable terms.

461 5. Any attempts by the licensee to coerce the existing
462 dealer or dealers into consenting to additional or relocated
463 franchises of the same line-make in the community or territory.

464 6. Distance, travel time, traffic patterns, and
465 accessibility, between the existing dealer or dealers of the
466 same line-make and the location of the proposed additional or
467 relocated dealer, for prospective customers.

468 7. Whether there will likely be a material positive impact
469 and a material benefit ~~benefits~~ to consumers ~~will likely occur~~
470 from the establishment or relocation of the proposed dealership
471 which will not ~~cannot~~ be obtained by other geographic or
472 demographic changes or expected changes in the community or
473 territory or by a material increase in advertising by the
474 licensee.

475 8. Whether the protesting dealer or dealers are in
476 substantial compliance with their dealer agreement.

477 9. Whether there is adequate interbrand and intrabrand
478 competition with respect to such ~~said~~ line-make in the community
479 or territory and adequately convenient consumer care for the
480 motor vehicles of the line-make, including the adequacy of sales
481 and service facilities.

482 10. Whether the establishment or relocation of the
483 proposed dealership is ~~appears to be~~ warranted and justified
484 based on economic and marketing conditions pertinent to dealers
485 competing in the community or territory, including anticipated
486 future changes.

487 11. The volume of registrations and service business
488 transacted by the existing dealer or dealers of the same line-
489 make in the relevant community or territory of the proposed
490 dealership.

491 12. The past and reasonably foreseeable expected growth or
492 decline in population, density of population, and new motor
493 vehicle registrations in the community or territory of the
494 proposed dealership for competing motor vehicles and whether
495 existing same line-make dealers will be unable to adjust their
496 dealership operations to adequately deal with such changes.

497 13. Whether the licensee has provided marketing and
498 advertising support of its line-make in the community or
499 territory on a basis comparable to its interbrand competitors.

500 14. Whether the economic conditions reasonably forecasted
501 by the licensee for the foreseeable future will provide all
502 existing same line-make dealers and the proposed new or
503 relocated dealership the opportunity for a reasonable return on
504 their investment, including supplying an adequate number of

505 every model of the licensee's new motor vehicles to them.

506 (3) An existing franchised motor vehicle dealer or dealers
 507 shall have standing to protest a proposed additional or
 508 relocated motor vehicle dealer where the existing motor vehicle
 509 dealer or dealers have a franchise agreement for the same line-
 510 make vehicle to be sold or serviced by the proposed additional
 511 or relocated motor vehicle dealer and are physically located so
 512 as to meet or satisfy any of the following requirements or
 513 conditions:

514 (a) If the proposed additional or relocated motor vehicle
 515 dealer is to be located in a county with a population of less
 516 than 300,000 according to the most recent data of the United
 517 States Census Bureau or the data of the Bureau of Economic and
 518 Business Research of the University of Florida:

519 1. The proposed additional or relocated motor vehicle
 520 dealer is to be located in the area designated or described as
 521 the area of responsibility, or such similarly designated area,
 522 including the entire area designated as a multiple-point area,
 523 in the franchise agreement or in any related document or
 524 commitment with the existing motor vehicle dealer or dealers of
 525 the same line-make as such agreement existed on or after the
 526 effective date of this act ~~upon October 1, 1988;~~

527 2. The existing motor vehicle dealer or dealers of the
 528 same line-make have a licensed franchise location within a
 529 radius of 20 miles of the location of the proposed additional or
 530 relocated motor vehicle dealer; or

531 3. Any existing motor vehicle dealer or dealers of the
 532 same line-make can establish that during any 12-month period of

CS/HB 1525

2009

533 the 36-month period preceding the filing of the licensee's
534 application for the proposed dealership, such dealer or its
535 predecessor made 25 percent of its retail sales of new motor
536 vehicles to persons whose registered household addresses were
537 located within a radius of 20 miles of the location of the
538 proposed additional or relocated motor vehicle dealer; provided
539 such existing dealer is located in the same county or any county
540 contiguous to the county where the additional or relocated
541 dealer is proposed to be located.

542 (b) If the proposed additional or relocated motor vehicle
543 dealer is to be located in a county with a population of more
544 than 300,000 according to the most recent data of the United
545 States Census Bureau or the data of the Bureau of Economic and
546 Business Research of the University of Florida:

547 1. Any existing motor vehicle dealer or dealers of the
548 same line-make have a licensed franchise location within a
549 radius of 15 ~~12.5~~ miles of the location of the proposed
550 additional or relocated motor vehicle dealer; or

551 2. Any existing motor vehicle dealer or dealers of the
552 same line-make can establish that during any 12-month period of
553 the 36-month period preceding the filing of the licensee's
554 application for the proposed dealership, such dealer or its
555 predecessor made 20 ~~25~~ percent of its retail sales of new motor
556 vehicles to persons whose registered household addresses were
557 located within a radius of 15 ~~12.5~~ miles of the location of the
558 proposed additional or relocated motor vehicle dealer, or
559 performed repairs on the same line-make motor vehicles that
560 constituted 15 percent of its total service department sales to

561 persons whose registered addresses were located within a radius
 562 of 15 miles of the location of the proposed additional or
 563 relocated dealer; provided such existing dealer is located in
 564 the same county or any county contiguous to the county where the
 565 additional or relocated dealer is proposed to be located.

566 (6) When a proposed addition or relocation concerns a
 567 dealership that performs or is to perform only service, as
 568 defined in s. 320.60(16), and will not or does not sell or lease
 569 new motor vehicles, as defined in s. 320.60(15), the proposal
 570 shall be subject to notice and protest pursuant to the
 571 provisions of this section.

572 (a) Standing to protest the addition or relocation of a
 573 service-only dealership shall be limited to those instances in
 574 which the applicable mileage requirement established in
 575 subparagraphs (3)(a)2. and (3)(b)1. or 2. is met.

576 (b) The addition or relocation of a service-only
 577 dealership shall not be subject to protest if:

578 1. The applicant for the service-only dealership location
 579 is an existing motor vehicle dealer of the same line-make as the
 580 proposed additional or relocated service-only dealership;

581 2. There is no existing dealer of the same line-make
 582 closer than the applicant to the proposed location of the
 583 additional or relocated service-only dealership; and

584 3. The proposed location of the additional or relocated
 585 service-only dealership is at least 10 ~~7~~ miles from all existing
 586 motor vehicle dealerships of the same line-make, other than
 587 motor vehicle dealerships owned by the applicant.

588 (c) In determining whether existing franchised motor

589 vehicle dealers are providing adequate representation, adequate
 590 competition, and convenient customer service ~~representations~~ in
 591 the community or territory for the line-make in question in a
 592 protest of the proposed addition or relocation of a service-only
 593 dealership, the department may consider the elements set forth
 594 in paragraph (2) (b), provided:

595 1. With respect to subparagraph (2) (b)1., only the impact
 596 as it relates to service may be considered;

597 2. Subparagraph (2) (b)3. shall not be considered;

598 3. With respect to subparagraph (2) (b)9., only service
 599 facilities shall be considered; and

600 4. With respect to subparagraph (2) (b)11., only the volume
 601 of service business transacted shall be considered.

602 (d) If an application for a service-only dealership is
 603 granted, the department shall issue a license which permits only
 604 service, as defined in s. 320.60(16), and does not permit the
 605 selling or leasing of new motor vehicles, as defined in s.
 606 320.60(15). If a service-only dealership subsequently seeks to
 607 sell new motor vehicles at its location, the notice and protest
 608 provisions of this section shall apply.

609 Section 3. Section 320.643, Florida Statutes, is amended
 610 to read:

611 320.643 Transfer, assignment, or sale of franchise
 612 agreements.--

613 (1) (a) Notwithstanding the terms of any franchise
 614 agreement, a licensee shall not, by contract or otherwise, fail
 615 or refuse to give effect to, prevent, prohibit, or penalize or
 616 attempt to refuse to give effect to, prohibit, or penalize any

CS/HB 1525

2009

617 | motor vehicle dealer from selling, assigning, transferring,
618 | alienating, or otherwise disposing of its franchise agreement to
619 | any other person or persons, including a corporation established
620 | or existing for the purpose of owning or holding a franchise
621 | agreement, unless the licensee proves at a hearing pursuant to a
622 | complaint filed by a motor vehicle dealer under this section
623 | that such sale, transfer, alienation, or other disposition is to
624 | a person who is not, or whose controlling executive management
625 | is not, of good moral character or does not meet the written,
626 | reasonable, and uniformly applied standards or qualifications of
627 | the licensee relating to financial qualifications of the
628 | transferee and business experience of the transferee or the
629 | transferee's executive management. A motor vehicle dealer who
630 | desires to sell, assign, transfer, alienate, or otherwise
631 | dispose of a franchise shall notify, or cause the proposed
632 | transferee to notify, the licensee, in writing, setting forth
633 | the prospective transferee's name, address, financial
634 | qualifications, and business experience during the previous 5
635 | years. A licensee who receives such notice may, within 60 days
636 | following such receipt, notify the motor vehicle dealer, in
637 | writing, that the proposed transferee is not a person qualified
638 | to be a transferee under this section and setting forth the
639 | material reasons for such rejection. Failure of the licensee to
640 | notify the motor vehicle dealer within the 60-day period of such
641 | rejection shall be deemed an approval of the transfer. No such
642 | transfer, assign, or sale shall be valid unless the transferee
643 | agrees in writing to comply with all requirements of the
644 | franchise then in effect.

CS/HB 1525

2009

645 (b) A motor vehicle dealer whose proposed sale is rejected
646 may, within 60 days following such receipt of such rejection,
647 file with the department a complaint for a determination that
648 the proposed transferee has been rejected in violation of this
649 section. The licensee has the burden of proof with respect to
650 all issues raised by such complaint. The department shall
651 determine, and enter an order providing, that the proposed
652 transferee is either qualified or is not and cannot be qualified
653 for specified reasons, or the order may provide the conditions
654 under which a proposed transferee would be qualified. If the
655 licensee fails to file such a response to the motor vehicle
656 dealer's complaint within 30 days after receipt of the
657 complaint, unless the parties agree in writing to an extension,
658 or if the department, after a hearing, renders a decision other
659 than one disqualifying the proposed transferee, the franchise
660 agreement between the motor vehicle dealer and the licensee
661 shall be deemed amended to incorporate such transfer or amended
662 in accordance with the determination and order rendered,
663 effective upon compliance by the proposed transferee with any
664 conditions set forth in the determination or order.

665 (2) (a) Notwithstanding the terms of any franchise
666 agreement, a licensee shall not, by contract or otherwise, fail
667 or refuse to give effect to, prevent, prohibit, or penalize, or
668 attempt to refuse to give effect to, prevent, prohibit, or
669 penalize, any motor vehicle dealer or any proprietor, partner,
670 stockholder, owner, or other person who holds or otherwise owns
671 an interest therein from selling, assigning, transferring,
672 alienating, or otherwise disposing of, in whole or in part, the

CS/HB 1525

2009

673 equity interest of any of them in such motor vehicle dealer to
674 any other person or persons, including a corporation established
675 or existing for the purpose of owning or holding the stock or
676 ownership interests of other entities, unless the licensee
677 proves at a hearing pursuant to a complaint filed by a motor
678 vehicle dealer under this section that such sale, transfer,
679 alienation, or other disposition is to a person who is not, or
680 whose controlling executive management is not, of good moral
681 character. A motor vehicle dealer, or any proprietor, partner,
682 stockholder, owner, or other person who holds or otherwise owns
683 an interest in the motor vehicle dealer, who desires to sell,
684 assign, transfer, alienate, or otherwise dispose of any interest
685 in such motor vehicle dealer shall notify, or cause the proposed
686 transferee to so notify, the licensee, in writing, of the
687 identity and address of the proposed transferee. A licensee who
688 receives such notice may, within 60 days following such receipt,
689 notify the motor vehicle dealer in writing that the proposed
690 transferee is not a person qualified to be a transferee under
691 this section and setting forth the material reasons for such
692 rejection. Failure of the licensee to notify the motor vehicle
693 dealer within the 60-day period of such rejection shall be
694 deemed an approval of the transfer. Any person whose proposed
695 sale of stock is rejected may file within 60 days of receipt of
696 such rejection a complaint with the department alleging that the
697 rejection was in violation of the law or the franchise
698 agreement. The licensee has the burden of proof with respect to
699 all issues raised by such complaint. The department shall
700 determine, and enter an order providing, that the proposed

CS/HB 1525

2009

701 transferee either is qualified or is not and cannot be qualified
702 for specified reasons; or the order may provide the conditions
703 under which a proposed transferee would be qualified. If the
704 licensee fails to file a response to the motor vehicle dealer's
705 complaint within 30 days of receipt of the complaint, unless the
706 parties agree in writing to an extension, or if the department,
707 after a hearing, renders a decision on the complaint other than
708 one disqualifying the proposed transferee, the transfer shall be
709 deemed approved in accordance with the determination and order
710 rendered, effective upon compliance by the proposed transferee
711 with any conditions set forth in the determination or order.

712 (b) Notwithstanding paragraph (a), neither a licensee nor
713 the department shall reject a proposed transfer of a legal,
714 equitable, or beneficial interest in a motor vehicle dealer to a
715 trust or other entity, or to any beneficiary thereof, that is
716 established by an owner of any interest in a motor vehicle
717 dealer for estate planning purposes, provided the controlling
718 person of the trust or entity thereof, or such beneficiary, is
719 of good moral character; nor shall a licensee or the department
720 condition any proposed transfer under this section upon a
721 relocation of, construction of any addition or modification to,
722 or any refurbishing or remodeling of any dealership structure,
723 facility, or building of the existing motor vehicle dealer or
724 upon any modification of the existing franchise agreement.

725 (3) During the pendency of any such department or court
726 hearing, the franchise agreement of the motor vehicle dealer
727 shall continue in effect in accordance with its terms. The
728 department or any court shall use reasonable efforts to expedite

729 any determination requested under this section.

730 (4) Notwithstanding the terms of any franchise agreement,
 731 the acceptance by the licensee of the proposed transferee shall
 732 not be unreasonably withheld, delayed, or conditioned. For the
 733 purposes of this section, the refusal by the licensee to accept,
 734 in a timely manner, a proposed transferee who satisfies the
 735 criteria set forth in subsection (1) or subsection (2) is
 736 presumed to be unreasonable.

737 (5) It shall be a violation of this section for the
 738 licensee to reject, ~~or withhold,~~ delay, or condition approval of
 739 a proposed transfer unless the licensee can prove in any court
 740 of competent jurisdiction in defense of any claim brought
 741 pursuant to s. 320.697 that, in fact, the rejection or
 742 withholding of approval of the proposed transfer was not in
 743 violation of or precluded by this section and was reasonable.

744 The determination of whether such rejection or withholding was
 745 reasonable shall be based on a preponderance of the evidence
 746 presented during the proceeding on an objective standard.

747 Alleging the permitted statutory grounds by the licensee in the
 748 written rejection of the proposed transfer shall not constitute
 749 a defense of the licensee or protect the licensee from liability
 750 for violating this section.

751 Section 4. Subsections (3), (4), (5), and (7) of section
 752 320.696, Florida Statutes, are amended to read:

753 320.696 Warranty responsibility.--

754 (3) (a) A licensee shall compensate a motor vehicle dealer
 755 for parts used in any work described in subsection (1). The
 756 compensation may be an agreed percentage markup over the

757 licensee's dealer cost, but if an agreement is not reached
 758 within 30 days after a dealer's written request, compensation
 759 for the parts shall be ~~is~~ the greater of:

760 1. The dealer's arithmetical mean percentage markup over
 761 dealer cost for all parts charged by the dealer in 75 ~~50~~
 762 consecutive retail customer repairs made by the dealer within a
 763 3-month period before the dealer's written request for a change
 764 in reimbursement pursuant to this section, or all of the retail
 765 customer repair orders over that 3-month period if there are
 766 fewer than 75 ~~50~~ retail customer repair orders in that period.
 767 The motor vehicle dealer shall give the licensee 10 days'
 768 written notice that it intends to make a written request to the
 769 licensee for a warranty parts reimbursement increase and permit
 770 the licensee, within that 10-day period, to select the initial
 771 retail customer repair for the consecutive repair orders that
 772 will be attached to the written request used for the markup
 773 computation, provided that if the licensee fails to provide a
 774 timely selection, the dealer may make that selection. No repair
 775 order shall be excluded from the markup computation because it
 776 contains both warranty, extended warranty, certified pre-owned
 777 warranty, maintenance, recall, campaign service, or authorized
 778 goodwill work and a retail customer repair. However, only the
 779 retail customer repair portion of the repair order shall be
 780 included in the computation, and the parts described in
 781 paragraph (b) shall be excluded from the computation; or

782 2. The licensee's highest suggested retail or list price
 783 for the parts. ~~;~~ ~~or~~

784 ~~3. An amount equal to the dealer's markup over dealer cost~~

785 ~~that results in the same gross profit percentage for parts used~~
786 ~~in work done under subsection (1) as the dealer receives for~~
787 ~~parts used in the customer retail repairs, as evidenced by the~~
788 ~~average of said dealer's gross profit percentage in the dealer's~~
789 ~~financial statements for the 2 months preceding the dealer's~~
790 ~~request.~~

791
792 If a licensee reduces the suggested retail or list price for any
793 replacement part or accessory, it also shall reduce, by at least
794 the same percentage, the cost to the dealer for the part or
795 accessory. The dealer's markup or gross profit percentage shall
796 be uniformly applied to all of the licensee's parts used by the
797 dealer in performing work covered by subsection (1).

798 (b) In calculating the compensation to be paid for parts
799 by the arithmetical mean percentage markup over dealer cost
800 method in paragraph (a), parts discounted by a dealer for
801 repairs made in group, fleet, insurance, or other third-party
802 payer service work; parts used in repairs of government
803 agencies' vehicles ~~repairs~~ for which volume discounts have been
804 negotiated; parts used in bona fide special events, specials, or
805 promotional discounts for retail customer repairs; parts sold at
806 wholesale; parts used for internal repairs; engine assemblies
807 and transmission assemblies; parts used in retail customer
808 repairs for routine maintenance, such as fluids, filters and
809 belts; nuts, bolts, fasteners, and similar items that do not
810 have an individual part number; and tires shall be excluded in
811 determining the percentage markup over dealer cost.

812 (c) If a licensee furnishes a part or component to a motor

813 vehicle dealer at no cost to use in performing repairs under a
 814 recall, campaign service action, or warranty repair, the
 815 licensee shall compensate the dealer for the part or component
 816 in the same manner as warranty parts compensation under this
 817 subsection, less the dealer cost for the part or component as
 818 listed in the licensee's price schedule.

819 (d) A licensee shall not establish or implement a special
 820 part or component number for parts used in predelivery, dealer
 821 preparation, warranty, extended warranty, certified pre-owned
 822 warranty, recall, campaign service, authorized goodwill, or
 823 maintenance-only applications if that results in lower
 824 compensation to the dealer than as calculated in this
 825 subsection.

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

829 (b) 1. Compensation paid by a licensee to a motor vehicle
 830 dealer may be an agreed hourly labor rate. If, however, an
 831 agreement is not reached within 30 days after the dealer's
 832 written request, the compensation shall be ~~dealer may choose to~~
 833 ~~be paid the greater of:~~

834 ~~1.~~ the dealer's hourly labor rate for retail customer
 835 repairs, determined by dividing the amount of the dealer's total
 836 labor sales for retail customer repairs by the number of total
 837 labor hours that generated those sales for the month preceding
 838 the request, excluding the work in paragraph (c) ~~;~~ ~~or~~

839 ~~2.~~ ~~An amount equal to the dealer's markup over dealer cost~~
 840 ~~that results in the same gross profit percentage for labor hours~~

841 ~~performed in work covered by subsection (1) as the dealer~~
842 ~~receives for labor performed in its customer retail repairs, as~~
843 ~~evidenced by the average of said dealer's gross profit~~
844 ~~percentage in the dealer's financial statements provided to the~~
845 ~~licensee for the 2 months preceding the dealer's written~~
846 ~~request, if the dealer provides in the written request the~~
847 ~~arithmetical mean of the hourly wage paid to all of its~~
848 ~~technicians during that preceding month. The arithmetical mean~~
849 ~~shall be the dealer cost used in that calculation.~~

850 2. After an hourly labor rate is agreed or determined, the
851 licensee shall uniformly apply and pay that hourly labor rate
852 for all labor used by the dealer in performing work under
853 subsection (1). However, a licensee shall not pay an hourly
854 labor rate less than the hourly rate it was paying to the dealer
855 for work done under subsection (1) on January 2, 2008. A
856 licensee shall not eliminate or decrease, unless the licensee
857 can prove that it has improved the technology related to a
858 particular repair and thereby has lessened the average repair
859 time, flat-rate times from or establish an unreasonable flat-
860 rate time in its warranty repair manual, warranty time guide, or
861 any other similarly named document. A licensee shall establish
862 reasonable flat-rate labor times in its warranty repair manuals
863 and warranty time guides for newly introduced model motor
864 vehicles which are at least consistent with its existing
865 documents. As used in this subsection, the terms "retail
866 customer repair" and "similar work" are not limited to a repair
867 to the same model vehicle or model year, but include prior
868 repairs that resemble but are not identical to the repair for

869 | which the dealer is making a claim for compensation.

870 | (c) In determining the hourly labor rate calculated under
 871 | subparagraph (b)1., a dealer's labor charges for internal
 872 | vehicle repairs; vehicle reconditioning; repairs performed for
 873 | group, fleet, insurance, or other third-party payers; discounted
 874 | repairs of motor vehicles for government agencies; labor used in
 875 | bona fide special events, specials, or express service; and
 876 | promotional discounts shall not be included as retail customer
 877 | repairs and shall be excluded from such calculations.

878 | (5) A licensee shall not review, change, or fail to pay a
 879 | motor vehicle dealer for parts or labor determined under this
 880 | section unless the dealer has requested a change, or the action
 881 | is pursuant to the licensee's written, predetermined schedule
 882 | for increasing parts or labor compensation that is not contrary
 883 | to any provision of this section. A dealer may make written
 884 | requests for changes in compensation for parts or labor
 885 | performed under this section not more than annually
 886 | ~~semiannually~~. The dealer shall attach supporting documentation
 887 | to each written request. Any increase in parts or labor
 888 | reimbursement determined thereafter to be owed to the dealer
 889 | shall be paid pursuant to this section retroactively for all
 890 | claims filed by a dealer 15 days after the date of the
 891 | licensee's receipt of the dealer's written request.

892 | (7) A licensee shall not require, ~~influence, or attempt to~~
 893 | ~~influence~~ a motor vehicle dealer to implement or change the
 894 | prices for which it sells parts or labor in retail customer
 895 | repairs. A licensee shall not implement or continue a policy,
 896 | procedure, or program to any of its dealers in this state for

CS/HB 1525

2009

897 compensation under this section which is inconsistent with this
898 section.

899 Section 5. If any provision of this act or the application
900 thereof to any person or circumstance is held invalid, the
901 invalidity shall not affect other provisions or applications of
902 the act which can be given effect without the invalid provision
903 or application, and to this end the provisions of this act are
904 declared severable.

905 Section 6. This act shall take effect upon becoming a law.