

1 A bill to be entitled
2 An act relating to motor vehicle dealerships; amending s.
3 320.64, F.S.; revising provisions prohibiting certain acts
4 by a motor vehicle manufacturer, factory branch,
5 distributor, or importer who is a licensee or an applicant
6 for a license under specified provisions; revising the
7 prohibition against requiring a dealer to relocate,
8 substantially change, alter, remodel, or replace the
9 dealer's sales or service facilities; revising
10 requirements for licensee-offered program bonuses,
11 incentives, and other benefits; providing that criminal
12 penalties do not apply to certain violations; revising
13 conditions and procedures for certain audits and dispute
14 resolution; providing that the applicant or licensee has
15 the burden of proof that its audit and the resulting
16 charge-back are in compliance with specified provisions;
17 revising provisions prohibiting the applicant or licensee
18 taking or threatening to take adverse action against a
19 dealer because the dealer sold or leased a motor vehicle
20 to a customer who exported the vehicle to a foreign
21 country or who resold the vehicle; providing a rebuttable
22 presumption that the dealer neither knew nor reasonably
23 should have known of its customer's intent to export or
24 resell the vehicle; providing procedures under which such
25 adverse actions may be taken; requiring certain payments
26 if a termination, cancellation, or nonrenewal of a
27 dealer's franchise is the result of certain circumstances;
28 prohibiting the applicant or licensee from not offering a

29 benefit program to a dealer in this state which it offers
30 to all of its other same line-make dealers; amending s.
31 320.642, F.S.; revising provisions for establishing an
32 additional motor vehicle dealership in or relocating an
33 existing dealer to a location within a community or
34 territory where the same line-make vehicle is presently
35 represented by a franchised motor vehicle dealer or
36 dealers; revising notice requirements; revising
37 requirements for protests; revising provisions for denial
38 of an application for a motor vehicle dealer license in
39 any community or territory; revising provisions under
40 which a dealer has standing to protest a proposed
41 additional or relocated motor vehicle dealer; amending s.
42 320.643, F.S.; revising provisions for a transfer,
43 assignment, or sale of franchise agreements; prohibiting
44 the rejection of a proposed transfer of interest in a
45 motor vehicle dealer entity to a trust or other entity, or
46 a beneficiary thereof, which is established for estate-
47 planning purposes; prohibiting placing certain conditions
48 on such transfer; revising provisions for a hearing by the
49 department or a court relating to a proposed transfer;
50 amending s. 320.696, F.S.; revising warranty
51 responsibility provisions; providing for severability;
52 providing an effective date.

53
54 Be It Enacted by the Legislature of the State of Florida:

55
56 Section 1. Subsections (10), (25), (26), and (36) of

57 | section 320.64, Florida Statutes, are amended, and subsection
58 | (38) is added to that section, to read:

59 | 320.64 Denial, suspension, or revocation of license;
60 | grounds.--A license of a licensee under s. 320.61 may be denied,
61 | suspended, or revoked within the entire state or at any specific
62 | location or locations within the state at which the applicant or
63 | licensee engages or proposes to engage in business, upon proof
64 | that the section was violated with sufficient frequency to
65 | establish a pattern of wrongdoing, and a licensee or applicant
66 | shall be liable for claims and remedies provided in ss. 320.695
67 | and 320.697 for any violation of any of the following
68 | provisions. A licensee is prohibited from committing the
69 | following acts:

70 | (10) (a) The applicant or licensee has attempted to enter,
71 | or has entered, into a franchise agreement with a motor vehicle
72 | dealer who does not, at the time of the franchise agreement,
73 | have proper facilities to provide the services to his or her
74 | purchasers of new motor vehicles which are covered by the new
75 | motor vehicle warranty issued by the applicant or licensee.

76 | (b) Notwithstanding any provision of a franchise, a
77 | licensee may not require a motor vehicle dealer, by agreement,
78 | program, policy, standard, or otherwise, ~~to relocate,~~ to make
79 | substantial changes, alterations, or remodeling to, or to
80 | replace a motor vehicle dealer's sales or service facilities
81 | unless the licensee's requirements are reasonable and
82 | justifiable in light of the current and reasonably foreseeable
83 | projections of economic conditions, financial expectations, and
84 | the motor vehicle dealer's market for the licensee's motor

85 vehicles.

86 (c)~~(b)~~ A licensee may, however, consistent with the
 87 licensee's allocation obligations at law and to its other same
 88 line-make motor vehicle dealers, provide to a motor vehicle
 89 dealer a commitment to supply ~~allocate~~ additional vehicles or
 90 provide a loan or grant of money as an inducement for the motor
 91 vehicle dealer to ~~relocate,~~ expand, improve, remodel, alter, or
 92 renovate its facilities if ~~the licensee delivers an assurance to~~
 93 ~~the dealer that it will offer to supply to the dealer a~~
 94 ~~sufficient quantity of new motor vehicles, consistent with its~~
 95 ~~allocation obligations at law and to its other same line-make~~
 96 ~~motor vehicle dealers, which will economically justify such~~
 97 ~~relocation, expansion, improvement, remodeling, renovation, or~~
 98 ~~alteration, in light of reasonably current and reasonably~~
 99 ~~projected market and economic conditions. the provisions of the~~
 100 commitment are ~~increase in vehicle allocation, the loan or grant~~
 101 ~~and the assurance, and the basis for them must be contained in a~~
 102 writing ~~written agreement voluntarily agreed to entered into~~ by
 103 the dealer and are ~~must be~~ made available, on substantially
 104 similar terms, to any of the licensee's other same line-make
 105 dealers in this state who voluntarily agree to make a
 106 substantially similar facility expansion, improvement,
 107 remodeling, alteration, or renovation ~~with whom the licensee~~
 108 ~~offers to enter into such an agreement.~~

109 (d) Except as provided in paragraph (c), subsection (36),
 110 or as otherwise provided by law, this subsection does not
 111 require a licensee to provide financial support for, or
 112 contribution to, the purchase or sale of the assets of or equity

113 in a motor vehicle dealer or a relocation of a motor vehicle
114 dealer because such support has been provided to other
115 purchases, sales, or relocations.

116 (e)~~(e)~~ A licensee or its common entity may ~~shall~~ not
117 withhold a bonus, incentive, or other benefit that is available
118 to its other same line make franchised dealers in this state
119 from, or take or threaten to take any action that is unfair or
120 adverse to a dealer who does not enter into an agreement with
121 the licensee pursuant to paragraph (c) ~~(b)~~.

122 ~~(d)~~ A licensee may not refuse to offer a program, bonus,
123 incentive, or other benefit, in whole or in part, to a dealer in
124 this state which it offers to its other same line make dealers
125 nationally or in the licensee's zone or region in which this
126 state is included. Neither may it discriminate against a dealer
127 in this state with respect to any program, bonus, incentive, or
128 other benefit. For purposes of this chapter, a licensee may not
129 establish this state alone as a zone, region, or territory by
130 any other designation.

131 (f)~~(e)~~ This subsection does Paragraphs ~~(a)~~ and ~~(b)~~ do not
132 affect any contract between a licensee and any of its dealers
133 regarding relocation, expansion, improvement, remodeling,
134 renovation, or alteration which exists on the effective date of
135 this act.

136 ~~(f)~~ Any portion of a licensee offered program for a bonus,
137 incentive, or other benefit that, in whole or in part, is based
138 upon or aimed at inducing a dealer's relocation, expansion,
139 improvement, remodeling, renovation, or alteration of the
140 dealer's sales or service facility, or both, is void as to each

141 ~~of the licensee's motor vehicle dealers in this state who,~~
 142 ~~nevertheless, shall be eligible for the entire amount of the~~
 143 ~~bonuses, incentives, or benefits offered in the program upon~~
 144 ~~compliance with the other eligibility provisions in the program.~~

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

148 (h) A violation of paragraphs (b)-(g) is not a violation
 149 of s. 320.70 and does not subject any licensee to any criminal
 150 penalty under s. 320.70.

151 (25) The applicant or licensee has undertaken an audit of
 152 warranty, maintenance, and other service-related payments or
 153 incentive payments, including payments to a motor vehicle dealer
 154 under any licensee-issued program, policy, or other benefit,
 155 which previously have been paid to a motor vehicle dealer in
 156 violation of this section or has failed to comply with any of
 157 its obligations under s. 320.696. An applicant or licensee may
 158 reasonably and periodically audit a motor vehicle dealer to
 159 determine the validity of paid claims as provided in s. 320.696.
 160 Audits ~~Audit~~ of warranty, maintenance, and other service-related
 161 payments shall ~~only~~ be performed by an applicant or licensee
 162 only during ~~for~~ the 1-year period immediately following the date
 163 the claim was paid. Audit of incentive payments shall only be
 164 for an 18-month period immediately following the date the
 165 incentive was paid. After such time periods have elapsed, all
 166 warranty, maintenance, and other service-related payments and
 167 incentive payments shall be deemed final and incontrovertible
 168 for any reason notwithstanding any otherwise applicable law, and

169 the motor vehicle dealer shall not be subject to any charge-back
170 or repayment. An applicant or licensee may deny a claim or, as a
171 result of a timely conducted audit, impose a charge-back against
172 a motor vehicle dealer for warranty, maintenance, or other
173 service-related payments or incentive payments only if ~~An~~
174 ~~applicant or licensee shall not deny a claim or charge a motor~~
175 ~~vehicle dealer back subsequent to the payment of the claim~~
176 ~~unless~~ the applicant or licensee can show that the warranty,
177 maintenance, or other service-related claim or incentive claim
178 was false or fraudulent or that the motor vehicle dealer failed
179 to substantially comply with the reasonable written and
180 uniformly applied procedures of the applicant or licensee for
181 such repairs or incentives. An applicant or licensee may not
182 charge a motor vehicle dealer back subsequent to the payment of
183 a warranty, maintenance, or service-related claim or incentive
184 claim unless, within 30 days after a timely conducted audit, a
185 representative of the applicant or licensee first meets in
186 person, by telephone, or by video teleconference with an officer
187 or employee of the dealer designated by the motor vehicle
188 dealer. At such meeting the applicant or licensee must provide a
189 detailed explanation, with supporting documentation, as to the
190 basis for each of the claims for which the applicant or licensee
191 proposed a charge-back to the dealer and a written statement
192 containing the basis upon which the motor vehicle dealer was
193 selected for audit or review. Thereafter, the applicant or
194 licensee must provide the motor vehicle dealer's representative
195 a reasonable period after the meeting within which to respond to
196 the proposed charge-backs, with such period to be commensurate

197 with the volume of claims under consideration, but in no case
198 less than 45 days after the meeting. The applicant or licensee
199 is prohibited from changing or altering the basis for each of
200 the proposed charge-backs as presented to the motor vehicle
201 dealer's representative following the conclusion of the audit
202 unless the applicant or licensee receives new information
203 affecting the basis for one or more charge-backs and that new
204 information is received within 30 days after the conclusion of
205 the timely conducted audit. If the applicant or licensee claims
206 the existence of new information, the dealer must be given the
207 same right to a meeting and right to respond as when the charge-
208 back was originally presented. After all internal dispute
209 resolution processes provided through the applicant or licensee
210 have been completed, the applicant or licensee shall give
211 written notice to the motor vehicle dealer of the final amount
212 of its proposed charge-back. If the dealer disputes that amount,
213 the dealer may file a protest with the department within 30 days
214 after receipt of the notice. If a protest is timely filed, the
215 department shall notify the applicant or licensee of the filing
216 of the protest and the applicant or licensee may not take any
217 action to recover the amount of the proposed charge-back until
218 the department renders a final determination, not subject to
219 further appeal, that the charge-back is in compliance with the
220 provisions of this section. In any hearing pursuant to this
221 subsection, the applicant or licensee shall have the burden of
222 proof its audit and the resulting charge-back are in compliance
223 with this subsection.

224 (26) Notwithstanding the terms of any franchise agreement,

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225 including any licensee's program, policy, or procedure, the
226 applicant or licensee has refused to allocate, sell, or deliver
227 motor vehicles; charged back or withheld payments or other
228 things of value for which the dealer is otherwise eligible under
229 a sales promotion, program, or contest; prevented a motor
230 vehicle dealer from participating in any promotion, program, or
231 contest; or has taken or threatened to take any adverse action
232 against a dealer, including charge-backs, reducing vehicle
233 allocations, or terminating or threatening to terminate a
234 franchise because the dealer sold or leased a motor vehicle to a
235 customer who exported the vehicle to a foreign country or who
236 resold the vehicle, unless the licensee proves that the dealer
237 knew or reasonably should have known ~~had actual knowledge~~ that
238 the customer intended to export or resell the motor vehicle.
239 There is a rebuttable ~~conclusive~~ presumption that the dealer
240 neither knew nor reasonably should have known of its customer's
241 intent to export or resell the vehicle ~~had no actual knowledge~~
242 if the vehicle is titled or registered in any state in this
243 country. A licensee may not take any action against a motor
244 vehicle dealer, including reducing its allocations or supply of
245 motor vehicles to the dealer or charging back a dealer for an
246 incentive payment previously paid, unless the licensee first
247 meets in person, by telephone, or video conference with an
248 officer or other designated employee of the dealer. At such
249 meeting, the licensee must provide a detailed explanation, with
250 supporting documentation, as to the basis for its claim that the
251 dealer knew or reasonably should have known of the customer's
252 intent to export or resell the motor vehicle. Thereafter, the

253 motor vehicle dealer shall have a reasonable period,
 254 commensurate with the number of motor vehicles at issue, but not
 255 less than 15 days, to respond to the licensee's claims. If,
 256 following the dealer's response and completion of all internal
 257 dispute resolution processes provided through the applicant or
 258 licensee, the dispute remains unresolved, the dealer may file a
 259 protest with the department within 30 days after receipt of a
 260 written notice from the licensee that it still intends to take
 261 adverse action against the dealer with respect to the motor
 262 vehicles still at issue. If a protest is timely filed, the
 263 department shall notify the applicant or licensee of the filing
 264 of the protest and the applicant or licensee may not take any
 265 action adverse to the dealer until the department renders a
 266 final determination, not subject to further appeal, that the
 267 licensee's proposed action is in compliance with the provisions
 268 of this subsection. In any hearing pursuant to this subsection,
 269 the applicant or licensee shall have the burden of proof on all
 270 issues raised by this subsection.

271 (36) (a) Notwithstanding the terms of any franchise
 272 agreement, in addition to any other statutory or contractual
 273 rights of recovery after the voluntary or involuntary
 274 termination, cancellation, or nonrenewal of a franchise, failing
 275 to pay the motor vehicle dealer, as provided in paragraph (d)
 276 ~~within 90 days after the effective date of the termination,~~
 277 ~~cancellation, or nonrenewal,~~ the following amounts:

- 278 1. The net cost paid by the dealer for each new car or
- 279 truck in the dealer's inventory with mileage of 2,000 miles or
- 280 less, or a motorcycle with mileage of 100 miles or less,

281 exclusive of mileage placed on the vehicle before it was
 282 delivered to the dealer.

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

285 a. Is in the current parts catalogue and is still in the
 286 original, resalable merchandising package and in an unbroken
 287 lot, except that sheet metal may be in a comparable substitute
 288 for the original package; and

289 b. Was purchased by the dealer directly from the
 290 manufacturer or distributor or from an outgoing authorized
 291 dealer as a part of the dealer's initial inventory.

292 3. The fair market value of each undamaged sign owned by
 293 the dealer which bears a trademark or trade name used or claimed
 294 by the applicant or licensee or its representative which was
 295 purchased from or at the request of the applicant or licensee or
 296 its representative.

297 4. The fair market value of all special tools, data
 298 processing equipment, and automotive service equipment owned by
 299 the dealer which:

300 a. Were recommended in writing by the applicant or
 301 licensee or its representative and designated as special tools
 302 and equipment;

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

305 c. Are in usable and good condition except for reasonable
 306 wear and tear.

307 5. The cost of transporting, handling, packing, storing,
 308 and loading any property subject to repurchase under this

309 section.

310 (b) If the termination, cancellation, or nonrenewal of the
311 dealer's franchise is the result of the bankruptcy or
312 reorganization of a licensee or its common entity, or the result
313 of a licensee's plan, scheme, or policy, whether or not publicly
314 declared, that is intended to or has the effect of decreasing
315 the number of, or eliminating, the licensee's franchised motor
316 vehicle dealers of a line-make in this state, or the result of a
317 termination, elimination, or cessation of manufacture or
318 distribution of a line-make, in addition to the above payments
319 to the dealer, the licensee or its common entity, shall be
320 liable to and shall pay the motor vehicle dealer for an amount
321 at least equal to the fair market value of the franchise for the
322 line-make, which shall be the greater of the value determined as
323 of the day the licensee announces the action that results in the
324 termination, cancellation, or nonrenewal, or the value
325 determined on the day that is 12 months before that date. Fair
326 market value of the franchise for the line-make includes only
327 the goodwill value of the dealer's franchise for that line-make
328 in the dealer's community or territory.

329 (c) ~~(b)~~ This subsection does not apply to a termination,
330 cancellation, or nonrenewal that is implemented as a result of
331 the sale of the assets or corporate stock or other ownership
332 interests of the dealer.

333 (d) The dealer shall return the property listed in this
334 subsection to the licensee within 90 days after the effective
335 date of the termination, cancellation, or nonrenewal. The
336 licensee shall supply the dealer with reasonable instructions

337 regarding the method by which the dealer must return the
338 property. Absent shipping instructions and prepayment of
339 shipping costs, from the licensee or its common entity, the
340 dealer shall tender the inventory and other items to be returned
341 at the dealer's facility. The compensation for the property
342 shall be paid by the licensee or its common entity
343 simultaneously with ~~within 60 days after~~ the tender of inventory
344 and other items, provided that, if the dealer does not have ~~has~~
345 clear title to the inventory and other items and is not in a
346 position to convey that title to the licensee, ~~manufacturer or~~
347 ~~distributor.~~ If the inventory or other items are subject to a
348 security interest, ~~the licensee may make payment for the~~
349 property being returned may be made jointly to the dealer and
350 the holder of any ~~the~~ security interest.

351 (38) The applicant or licensee has failed or refused to
352 offer a bonus, incentive, rebate, or other benefit program, in
353 whole or in part, to a dealer or dealers in this state which it
354 offers to all of its other same line-make dealers nationally or
355 to all of its other same line-make dealers in the licensee's
356 designated zone, region, or other licensee-designated area of
357 which this state is a part, unless the failure or refusal to
358 offer the program in this state is reasonably supported by
359 substantially different economic or marketing considerations
360 than are applicable to the licensee's same line-make dealers in
361 this state. For purposes of this chapter, a licensee may not
362 establish this state alone as a designated zone, region, or area
363 or any other designation for a specified territory. A licensee
364 may offer a bonus, incentive, rebate, or other benefit program

365 to its dealers in this state that is calculated or paid on a
 366 per-vehicle basis and is related in part to a dealer's facility
 367 or the expansion, improvement, remodeling, alteration, or
 368 renovation of a dealer's facility. Any dealer who does not
 369 comply with the facility criteria or eligibility requirements of
 370 such program shall be entitled to receive a reasonable
 371 percentage of the bonus, incentive, rebate, or other benefit
 372 offered by the licensee under that program by complying with the
 373 criteria or eligibility requirements unrelated to the dealer's
 374 facility under that program. For purposes of this subsection,
 375 the percentage unrelated to the facility criteria or
 376 requirements is presumed to be "reasonable" if it is not less
 377 than 80 percent of the total of the per vehicle bonus,
 378 incentive, rebate, or other benefit offered under the program.

379
 380 A motor vehicle dealer who can demonstrate that a violation of,
 381 or failure to comply with, any of the preceding provisions by an
 382 applicant or licensee will or can adversely and pecuniarily
 383 affect the complaining dealer, shall be entitled to pursue all
 384 of the remedies, procedures, and rights of recovery available
 385 under ss. 320.695 and 320.697.

386 Section 2. Subsection (1), paragraph (a) of subsection
 387 (2), and subsection (3) of section 320.642, Florida Statutes,
 388 are amended to read:

389 320.642 Dealer licenses in areas previously served;
 390 procedure.--

391 (1) Any licensee who proposes to establish an additional
 392 motor vehicle dealership or permit the relocation of an existing

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393 dealer to a location within a community or territory where the
394 same line-make vehicle is presently represented by a franchised
395 motor vehicle dealer or dealers shall give written notice of its
396 intention to the department. The ~~Such~~ notice shall state:

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

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

402 (c) The identity of all motor vehicle dealers who are
403 franchised to sell the same line-make vehicle with licensed
404 locations in the county and ~~or~~ any contiguous county to the
405 county where the additional or relocated motor vehicle dealer is
406 proposed to be located.

407 (d) The names and addresses of the dealer-operator and
408 principal investors in the proposed additional or relocated
409 motor vehicle dealership.

410
411 Immediately upon receipt of the ~~such~~ notice the department shall
412 cause a notice to be published in the Florida Administrative
413 Weekly. The published notice shall state that a petition or
414 complaint by any dealer with standing to protest pursuant to
415 subsection (3) must be filed not more than 30 days from the date
416 of publication of the notice in the Florida Administrative
417 Weekly. The published notice shall describe and identify the
418 proposed dealership sought to be licensed, and the department
419 shall cause a copy of the notice to be mailed to those dealers
420 identified in the licensee's notice under paragraph (c).

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

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

426 2. The licensee fails to show that the existing franchised
 427 dealer or dealers who register new motor vehicle retail sales or
 428 retail leases of the same line-make in the community or
 429 territory of the proposed dealership are not providing adequate
 430 representation of such line-make motor vehicles in such
 431 community or territory. Adequacy of representation must be
 432 measured with respect to the community or territory as a whole
 433 and not with respect to any part thereof or any identifiable
 434 plot therein. The burden of proof in establishing inadequate
 435 representation shall be on the licensee.

436 (3) An existing franchised motor vehicle dealer or dealers
 437 shall have standing to protest a proposed additional or
 438 relocated motor vehicle dealer when ~~where~~ the existing motor
 439 vehicle dealer or dealers have a franchise agreement for the
 440 same line-make vehicle to be sold or serviced by the proposed
 441 additional or relocated motor vehicle dealer and are physically
 442 located so as to meet or satisfy any of the following
 443 requirements or conditions:

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

449 1. The proposed additional or relocated motor vehicle
450 dealer is to be located in the area designated or described as
451 the area of responsibility, or such similarly designated area,
452 including the entire area designated as a multiple-point area,
453 in the franchise agreement or in any related document or
454 commitment with the existing motor vehicle dealer or dealers of
455 the same line-make as such agreement existed upon October 1,
456 1988;

457 2. The existing motor vehicle dealer or dealers of the
458 same line-make have a licensed franchise location within a
459 radius of 20 miles of the location of the proposed additional or
460 relocated motor vehicle dealer; or

461 3. Any existing motor vehicle dealer or dealers of the
462 same line-make can establish that during any 12-month period of
463 the 36-month period preceding the filing of the licensee's
464 application for the proposed dealership, the ~~such~~ dealer or its
465 predecessor made 25 percent of its retail sales of new motor
466 vehicles to persons whose registered household addresses were
467 located within a radius of 20 miles of the location of the
468 proposed additional or relocated motor vehicle dealer; provided
469 the ~~such~~ existing dealer is located in the same county or any
470 county contiguous to the county where the additional or
471 relocated dealer is proposed to be located.

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

477 1. Any existing motor vehicle dealer or dealers of the
 478 same line-make have a licensed franchise location within a
 479 radius of 12.5 miles of the location of the proposed additional
 480 or relocated motor vehicle dealer; or

481 2. Any existing motor vehicle dealer or dealers of the
 482 same line-make can establish that during any 12-month period of
 483 the 36-month period preceding the filing of the licensee's
 484 application for the proposed dealership, such dealer or its
 485 predecessor made 25 percent of its retail sales of new motor
 486 vehicles to persons whose registered household addresses were
 487 located within a radius of 12.5 miles of the location of the
 488 proposed additional or relocated motor vehicle dealer; provided
 489 such existing dealer is located in the same county or any county
 490 contiguous to the county where the additional or relocated
 491 dealer is proposed to be located.

492 Section 3. Section 320.643, Florida Statutes, is amended
 493 to read:

494 320.643 Transfer, assignment, or sale of franchise
 495 agreements.--

496 (1) (a) Notwithstanding the terms of any franchise
 497 agreement, a licensee shall not, by contract or otherwise, fail
 498 or refuse to give effect to, prevent, prohibit, or penalize or
 499 attempt to refuse to give effect to, prohibit, or penalize any
 500 motor vehicle dealer from selling, assigning, transferring,
 501 alienating, or otherwise disposing of its franchise agreement to
 502 any other person or persons, including a corporation established
 503 or existing for the purpose of owning or holding a franchise
 504 agreement, unless the licensee proves at a hearing pursuant to a

505 | complaint filed by a motor vehicle dealer under this section
506 | that the ~~such~~ sale, transfer, alienation, or other disposition
507 | is to a person who is not, or whose controlling executive
508 | management is not, of good moral character or does not meet the
509 | written, reasonable, and uniformly applied standards or
510 | qualifications of the licensee relating to financial
511 | qualifications of the transferee and business experience of the
512 | transferee or the transferee's executive management. A motor
513 | vehicle dealer who desires to sell, assign, transfer, alienate,
514 | or otherwise dispose of a franchise shall notify, or cause the
515 | proposed transferee to notify, the licensee, in writing, setting
516 | forth the prospective transferee's name, address, financial
517 | qualifications, and business experience during the previous 5
518 | years. A licensee who receives such notice may, within 60 days
519 | following such receipt, notify the motor vehicle dealer, in
520 | writing, that the proposed transferee is not a person qualified
521 | to be a transferee under this section and setting forth the
522 | material reasons for such rejection. Failure of the licensee to
523 | notify the motor vehicle dealer within the 60-day period of such
524 | rejection shall be deemed an approval of the transfer. No such
525 | transfer, assignment ~~assign~~, or sale shall be valid unless the
526 | transferee agrees in writing to comply with all requirements of
527 | the franchise then in effect, but with the ownership changed to
528 | the transferee.

529 | (b) A motor vehicle dealer whose proposed sale is rejected
530 | may, within 60 days following such receipt of such rejection,
531 | file with the department a complaint for a determination that
532 | the proposed transferee has been rejected in violation of this

533 section. The licensee has the burden of proof with respect to
534 all issues raised by the ~~such~~ complaint. The department shall
535 determine, and enter an order providing, that the proposed
536 transferee is either qualified or is not and cannot be qualified
537 for specified reasons, or the order may provide the conditions
538 under which a proposed transferee would be qualified. If the
539 licensee fails to file such a response to the motor vehicle
540 dealer's complaint within 30 days after receipt of the
541 complaint, unless the parties agree in writing to an extension,
542 or if the department, after a hearing, renders a decision other
543 than one disqualifying the proposed transferee, the franchise
544 agreement between the motor vehicle dealer and the licensee is
545 ~~shall be~~ deemed amended to incorporate such transfer or amended
546 in accordance with the determination and order rendered,
547 effective upon compliance by the proposed transferee with any
548 conditions set forth in the determination or order.

549 (2) (a) Notwithstanding the terms of any franchise
550 agreement, a licensee shall not, by contract or otherwise, fail
551 or refuse to give effect to, prevent, prohibit, or penalize, or
552 attempt to refuse to give effect to, prevent, prohibit, or
553 penalize, any motor vehicle dealer or any proprietor, partner,
554 stockholder, owner, or other person who holds or otherwise owns
555 an interest therein from selling, assigning, transferring,
556 alienating, or otherwise disposing of, in whole or in part, the
557 equity interest of any of them in such motor vehicle dealer to
558 any other person or persons, including a corporation established
559 or existing for the purpose of owning or holding the stock or
560 ownership interests of other entities, unless the licensee

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561 | proves at a hearing pursuant to a complaint filed by a motor
562 | vehicle dealer under this section that the ~~such~~ sale, transfer,
563 | alienation, or other disposition is to a person who is not, or
564 | whose controlling executive management is not, of good moral
565 | character. A motor vehicle dealer, or any proprietor, partner,
566 | stockholder, owner, or other person who holds or otherwise owns
567 | an interest in the motor vehicle dealer, who desires to sell,
568 | assign, transfer, alienate, or otherwise dispose of any interest
569 | in such motor vehicle dealer shall notify, or cause the proposed
570 | transferee to so notify, the licensee, in writing, of the
571 | identity and address of the proposed transferee. A licensee who
572 | receives such notice may, within 60 days following such receipt,
573 | notify the motor vehicle dealer in writing that the proposed
574 | transferee is not a person qualified to be a transferee under
575 | this section and setting forth the material reasons for such
576 | rejection. Failure of the licensee to notify the motor vehicle
577 | dealer within the 60-day period of such rejection shall be
578 | deemed an approval of the transfer. Any person whose proposed
579 | sale of stock is rejected may file within 60 days of receipt of
580 | such rejection a complaint with the department alleging that the
581 | rejection was in violation of the law or the franchise
582 | agreement. The licensee has the burden of proof with respect to
583 | all issues raised by such complaint. The department shall
584 | determine, and enter an order providing, that the proposed
585 | transferee either is qualified or is not and cannot be qualified
586 | for specified reasons; or the order may provide the conditions
587 | under which a proposed transferee would be qualified. If the
588 | licensee fails to file a response to the motor vehicle dealer's

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589 | complaint within 30 days of receipt of the complaint, unless the
590 | parties agree in writing to an extension, or if the department,
591 | after a hearing, renders a decision on the complaint other than
592 | one disqualifying the proposed transferee, the transfer shall be
593 | deemed approved in accordance with the determination and order
594 | rendered, effective upon compliance by the proposed transferee
595 | with any conditions set forth in the determination or order.

596 | (b) Notwithstanding paragraph (a), a licensee may not
597 | reject a proposed transfer of a legal, equitable, or beneficial
598 | interest in a motor vehicle dealer to a trust or other entity,
599 | or to any beneficiary thereof, which is established by an owner
600 | of any interest in a motor vehicle dealer for purposes of estate
601 | planning if the controlling person of the trust or entity, or
602 | the beneficiary, is of good moral character.

603 | (3) A licensee may not condition any proposed transfer
604 | under this section upon a relocation of a dealer, construction
605 | of any addition or modification to, or any refurbishing or
606 | remodeling of any dealership structure, facility, or building of
607 | the existing motor vehicle dealer, or upon any modification of
608 | the existing franchise agreement, except for the change of
609 | ownership.

610 | (4)~~(3)~~ During the pendency of any such hearing, the
611 | franchise agreement of the motor vehicle dealer shall continue
612 | in effect in accordance with its terms. The department shall
613 | expedite any determination requested under this section.

614 | (5)~~(4)~~ Notwithstanding the terms of any franchise
615 | agreement, the acceptance by the licensee of the proposed
616 | transferee shall not be unreasonably withheld. For the purposes

617 of this section, the refusal by the licensee to accept, in a
 618 timely manner, a proposed transferee who satisfies the criteria
 619 set forth in subsection (1) or subsection (2) is presumed to be
 620 unreasonable.

621 (6)(5) It shall be a violation of this section for the
 622 licensee to reject or withhold approval of a proposed transfer
 623 unless the licensee can prove in any court of competent
 624 jurisdiction in defense of any claim brought pursuant to s.
 625 320.697 that, in fact, the rejection or withholding of approval
 626 of the proposed transfer was not in violation of or precluded by
 627 this section and was reasonable. The determination of whether
 628 such rejection or withholding was not in violation of or
 629 precluded by this section and was reasonable shall be based on
 630 an objective standard. Alleging the permitted statutory grounds
 631 by the licensee in the written rejection of the proposed
 632 transfer shall not protect the licensee from liability for
 633 violating this section.

634 Section 4. Subsection (6) of section 320.696, Florida
 635 Statutes, is amended to read:

636 320.696 Warranty responsibility.--

637 (6) A licensee shall not recover or attempt to recover,
 638 directly or indirectly, any of its costs for compensating a
 639 motor vehicle dealer under this section, ~~including by decreasing~~
 640 ~~or eliminating solely in this state or as it relates to any of~~
 641 ~~its dealers, any bonuses or other incentive that the licensee~~
 642 ~~has in effect nationally, regionally, or in a territory by any~~
 643 ~~other designation; by reducing the dealer's gross margin for any~~
 644 ~~of the licensee's products or services where the wholesale price~~

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645 ~~charged to the dealer is determined by the licensee and the~~
646 ~~reduction is not in effect nationally or regionally; by imposing~~
647 ~~a separate charge or surcharge to the wholesale price paid by a~~
648 ~~dealer in this state for any product or service offered to or~~
649 ~~supplied by a licensee under a franchise agreement with the~~
650 ~~dealer; or by passing on to the dealer any charge or surcharge~~
651 ~~of a common entity of the licensee.~~

652 Section 5. If any provision of this act or the application
653 thereof to any person or circumstance is held invalid, the
654 invalidity does not affect other provisions or applications of
655 the act which can be given effect without the invalid provision
656 or application, and to this end the provisions of this act are
657 declared severable.

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