



529030

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2009	.	
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The Committee on Transportation (Haridopolos) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

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



12 location or locations within the state at which the applicant or
13 licensee engages or proposes to engage in business, upon proof
14 that the section was violated with sufficient frequency to
15 establish a pattern of wrongdoing, and a licensee or applicant
16 shall be liable for claims and remedies provided in ss. 320.695
17 and 320.697 for any violation of any of the following
18 provisions. A licensee is prohibited from committing the
19 following acts:

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

28 (10) (a) The applicant or licensee has attempted to enter,
29 or has entered, into a franchise agreement with a motor vehicle
30 dealer who does not, at the time of the franchise agreement,
31 have proper facilities to provide the services to his or her
32 purchasers of new motor vehicles which are covered by the new
33 motor vehicle warranty issued by the applicant or licensee.
34 Notwithstanding any provision of a franchise, a licensee may not
35 require a motor vehicle dealer, by franchise agreement, program,
36 policy, standard, or otherwise, to relocate, to make substantial
37 changes, alterations, or remodeling to, or to replace a motor
38 vehicle dealer's sales or service facilities unless the licensee
39 can demonstrate that the licensee's requirements are reasonable
40 and justifiable in light of the current and reasonably



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41 foreseeable projections of economic conditions, financial
42 expectations, and the motor vehicle dealer's market for the
43 licensee's motor vehicles.

44 (b) A licensee may, however, provide to a motor vehicle
45 dealer a written commitment to supply ~~allocate~~ additional
46 vehicles, consistent with the licensee's allocation obligations
47 at law and with the licensee's commitment to other same line-
48 make motor vehicle dealers, or to provide a lump sum, or a loan,
49 or a grant of money as an inducement for the motor vehicle
50 dealer to relocate, expand, improve, remodel, alter, or renovate
51 its facilities if the licensee delivers an assurance to the
52 dealer that it will offer to supply to the dealer a sufficient
53 quantity of new motor vehicles, consistent with its allocation
54 obligations at law and to its other same line-make motor vehicle
55 dealers, which will economically justify such relocation,
56 expansion, improvement, remodeling, renovation, or alteration,
57 in light of reasonably current and reasonably projected market
58 and economic conditions. the provisions of the commitment
59 increase in vehicle allocation, the loan or grant and the
60 assurance, and the economic and market reasons and basis for
61 them are ~~must be~~ contained in a written agreement voluntarily
62 entered into by the dealer and ~~must be~~ made available, on
63 substantially similar terms, to any of the licensee's other same
64 line-make dealers in this state who voluntarily agree to make a
65 substantially similar facility expansion, improvement,
66 remodeling, alteration, or renovation ~~with whom the licensee~~
67 offers to enter into such an agreement.

68 (c) 1. A licensee may ~~shall not withhold a bonus, incentive,~~
69 ~~or other benefit that is available to its other same line-make~~



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70 ~~franchised dealers in this state from, or~~ take or threaten to
71 take any action that is unfair, discriminatory, or adverse to a
72 dealer who does not enter into an agreement with the licensee
73 pursuant to paragraph (b).

74 2. This subsection does not require a licensee to provide
75 financial support for a relocation of a motor vehicle dealer
76 because such support was previously provided to other of the
77 licensee's same line-make dealers who relocated.

78 (d) Except for a program, bonus, incentive, or other
79 benefit offered by a licensee to its dealers in a market area
80 where the licensee's unrealized sales potential or other market
81 conditions, compared to its competitors' sales of motor
82 vehicles, justifies the licensee's offers, a licensee may not
83 refuse to offer a program, bonus, incentive, or other benefit,
84 ~~in whole or in part,~~ to a dealer in this state which it offers
85 generally to its other same line-make dealers nationally or in
86 the licensee's zone or region in which this state is included.
87 Neither may a licensee ~~it~~ discriminate against a dealer in this
88 state with respect to any program, bonus, incentive, or other
89 benefit. For purposes of this chapter, a licensee may not
90 establish this state alone as a zone, region, or territory by
91 any other designation.

92 (f) A licensee may offer any program for a bonus,
93 incentive, or other benefit to its motor vehicle dealers in this
94 state which contains rules, criteria, or eligibility
95 requirements relating to a motor vehicle dealer's facilities and
96 nonfacility-related eligibility provisions. However, if any
97 portion of a licensee-offered program for a bonus, incentive, or
98 other benefit contains any qualifying rule, criteria, or



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99 eligibility requirement that relates to a motor vehicle dealer's
100 that, in whole or in part, is based upon or aimed at inducing a
101 dealer's relocation, expansion, improvement, remodeling,
102 renovation, or alteration of the dealer's sales or service
103 facility, or both, each of the licensee's motor vehicle dealers
104 in this state, upon complying with all such qualifying
105 provisions, is entitled to obtain the entire bonus, incentive,
106 or other benefit offered. A motor vehicle dealer who does not
107 comply with the facility-related rules, criteria, or eligibility
108 requirements, but complies with the other program's rules,
109 criteria, or eligibility requirements, is entitled to receive a
110 reasonable licensee-predetermined percentage of the bonus,
111 incentive, or other benefit under the program which is unrelated
112 to the motor vehicle dealer's facilities. The licensee's
113 predetermined percentage unrelated to facilities is presumed
114 "reasonable" if it is not less than 75 percent of the total
115 bonus, incentive, or other benefit offered under is void as to
116 each of the licensee's motor vehicle dealers in this state who,
117 nevertheless, shall be eligible for the entire amount of the
118 bonuses, incentives, or benefits offered in the program upon
119 compliance with the other eligibility provisions in the program.

120 (h) A violation of paragraphs (b) through (g) is not a
121 violation of s. 320.70 and does not subject any licensee to any
122 criminal penalty under s. 320.70.

123 (25) The applicant or licensee has undertaken an audit of
124 warranty, maintenance, and other service-related payments or
125 incentive payments, including payments to a motor vehicle dealer
126 under any licensee-issued program, policy, or other benefit,
127 which previously have been paid to a motor vehicle dealer in



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128 violation of this section, or has failed to comply with any of
129 its obligations under s. 320.696. An applicant or licensee may
130 reasonably and periodically audit a motor vehicle dealer to
131 determine the validity of paid claims as provided in s. 320.696.
132 Audits ~~Audit~~ of warranty, maintenance, and other service-related
133 payments shall ~~only~~ be performed by an applicant or licensee
134 only during ~~for~~ the 1-year period immediately following the date
135 the claim was paid. ~~Audits ~~Audit~~ of incentive payments shall~~
136 ~~only~~ be performed by an applicant or licensee only during ~~for~~ an
137 18-month period immediately following the date the incentive was
138 paid. ~~After those time periods have elapsed, all warranty,~~
139 ~~maintenance, and other service-related payments and incentive~~
140 ~~payments shall be deemed final and incontrovertible for any~~
141 ~~reason recognized under any applicable law and the motor vehicle~~
142 ~~dealer is not subject to any charge-back or repayment. An~~
143 ~~applicant or licensee may deny a claim or, as a result of a~~
144 ~~timely conducted audit, impose a charge-back against a motor~~
145 ~~vehicle dealer for warranty, maintenance, or other service-~~
146 ~~related payments or incentive payments only if ~~An applicant or~~~~
147 ~~licensee shall not deny a claim or charge a motor vehicle dealer~~
148 ~~back subsequent to the payment of the claim unless the applicant~~
149 ~~or licensee can show that the warranty, maintenance, or other~~
150 ~~service-related claim or incentive claim was false or fraudulent~~
151 ~~or that the motor vehicle dealer failed to substantially comply~~
152 ~~with the reasonable written and uniformly applied procedures of~~
153 ~~the applicant or licensee for such repairs or incentives. An~~
154 ~~applicant or licensee may not charge a motor vehicle dealer back~~
155 ~~subsequent to the payment of a warranty, maintenance, or~~
156 ~~service-related claim or incentive claim unless, within 30 days~~



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157 after a timely conducted audit, a representative of the
158 applicant or licensee first meets in person, by telephone, or by
159 video teleconference with an officer or employee of the dealer
160 designated by the motor vehicle dealer. At such meeting the
161 applicant or licensee must provide a detailed explanation, with
162 supporting documentation, as to the basis for each of the claims
163 for which the applicant or licensee proposed a charge-back to
164 the dealer and a written statement containing the basis upon
165 which the motor vehicle dealer was selected for audit or review.
166 Thereafter, the applicant or licensee must provide the motor
167 vehicle dealer's representative a reasonable period after the
168 meeting within which to respond to the proposed charge-backs,
169 with such period to be commensurate with the volume of claims
170 under consideration, but in no case less than 45 days after the
171 meeting. The applicant or licensee is prohibited from changing
172 or altering the basis for each of the proposed charge-backs as
173 presented to the motor vehicle dealer's representative following
174 the conclusion of the audit unless the applicant or licensee
175 receives new information affecting the basis for one or more
176 charge-backs and that new information is received within 60 days
177 after the conclusion of the timely conducted audit. If the
178 applicant or licensee claims the existence of new information,
179 the dealer must be given the same right to a meeting within 30
180 days after the applicant's or licensee's receipt of the new
181 information and right to respond as when the charge-back was
182 originally presented.

183 (26) Notwithstanding the terms of any franchise agreement,
184 including any licensee's program, policy, or procedure, the
185 applicant or licensee has refused to allocate, sell, or deliver



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186 motor vehicles; charged back or withheld payments or other
187 things of value for which the dealer is otherwise eligible under
188 a sales promotion, program, or contest; prevented a motor
189 vehicle dealer from participating in any promotion, program, or
190 contest; or has taken or threatened to take any adverse action
191 against a dealer, including charge-backs, reducing vehicle
192 allocations, or terminating or threatening to terminate a
193 franchise because the dealer sold or leased a motor vehicle to a
194 customer who exported the vehicle to a foreign country or who
195 resold the vehicle, unless the licensee proves that the dealer
196 had actual knowledge that the customer intended to export or
197 resell the motor vehicle. ~~There is a conclusive presumption that~~
198 ~~the dealer had no actual knowledge if the vehicle is titled or~~
199 ~~registered in any state in this country.~~

200 (36) (a) Notwithstanding the terms of any franchise
201 agreement, in addition to any other statutory or contractual
202 rights of recovery after the voluntary or involuntary
203 termination of a franchise, failing to pay the motor vehicle
204 dealer, within 90 days after the effective date of the
205 termination, cancellation, or nonrenewal, the following amounts:

206 1. The net cost paid by the dealer for each new car or
207 truck in the dealer's inventory with mileage of 2,000 miles or
208 less, or a motorcycle with mileage of 100 miles or less,
209 exclusive of mileage placed on the vehicle before it was
210 delivered to the dealer.

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

213 a. Is in the current parts catalogue and is still in the
214 original, resalable merchandising package and in an unbroken



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215 lot, except that sheet metal may be in a comparable substitute
216 for the original package; and

217 b. Was purchased by the dealer directly from the
218 manufacturer or distributor or from an outgoing authorized
219 dealer as a part of the dealer's initial inventory.

220 3. The fair market value of each undamaged sign owned by
221 the dealer which bears a trademark or trade name used or claimed
222 by the applicant or licensee or its representative which was
223 purchased from or at the request of the applicant or licensee or
224 its representative.

225 4. The fair market value of all special tools, data
226 processing equipment, and automotive service equipment owned by
227 the dealer which:

228 a. Were recommended in writing by the applicant or licensee
229 or its representative and designated as special tools and
230 equipment;

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

233 c. Are in usable and good condition except for reasonable
234 wear and tear.

235 5. The cost of transporting, handling, packing, storing,
236 and loading any property subject to repurchase under this
237 section.

238 6. If the termination, cancellation, or nonrenewal of the
239 dealer's franchise is the result of the bankruptcy or
240 reorganization of a licensee or its common entity, or the
241 termination, elimination, or cessation of the line-make, in
242 addition to the above payments to the dealer, the licensee, or
243 if it is unable to do so, its common entity, is liable to the



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244 motor vehicle dealer for the following:

245 a. An amount at least equal to the fair market value of the
246 franchise for the line-make, which shall be the greater of the
247 value determined as of the day the licensee announces the action
248 that results in the termination, cancellation, or nonrenewal,
249 and the value determined on the day that is 12 months before
250 that date. In determining the fair market value of a franchise
251 for a line-make, if the line-make is not the only line-make for
252 which the dealer holds a franchise in its dealership facilities,
253 the dealer is also entitled to compensation for the contribution
254 of the line-make to payment of the rent or to covering the
255 dealer's obligation for the fair rental value of the dealership
256 facilities for the period described in sub-subparagraph b. Fair
257 market value of the franchise for the line-make includes only
258 the goodwill value of the dealer's franchise for that line-make
259 in the dealer's community or territory.

260 b. If the line-make is the only line-make for which the
261 dealer holds a franchise in the dealership facilities, the
262 licensee, or its common entity if the licensee is unable to pay,
263 also shall pay to the dealer with respect to the dealership
264 facilities leased or owned by the dealership or its principal
265 owner a sum equal to the rent for the unexpired term of the
266 lease or 3 years' rent, whichever is less, or, if the dealer or
267 its principal owner owns the dealership facilities, a sum equal
268 to the reasonable fair rental value of the dealership facilities
269 for a period of 3 years as if the franchise were still in
270 existence at the facilities, if the motor vehicle dealer uses
271 reasonable commercial efforts to mitigate this liability by
272 attempting, in good faith, to lease or sell the facilities



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273 within a reasonable time on terms that are consistent with local
274 zoning requirements to preserve the facilities' right to sell
275 and service motor vehicles.

276 (b) This subsection does not apply to a termination,
277 cancellation, or nonrenewal that is implemented as a result of
278 the sale of the assets or corporate stock or other ownership
279 interests of the dealer. The dealer shall return the property
280 listed in this subsection to the licensee at the dealer's place
281 of business on a date selected by the dealer in the absence of
282 an agreement with the licensee which is within 90 days after the
283 effective date of the termination, cancellation, or nonrenewal.
284 The licensee shall supply the dealer with reasonable
285 instructions regarding the packing for transport method by which
286 the dealer must return the property. The compensation for the
287 property shall be paid by the licensee upon and simultaneously
288 with ~~within 60 days after~~ the tender of inventory and other
289 items, except when if the dealer does not have ~~has~~ clear title
290 to the inventory and other items and is not in a position to
291 convey that title to the licensee ~~manufacturer or distributor~~.
292 ~~If the inventory or other items are subject to a security~~
293 ~~interest,~~ The licensee shall ~~may~~ make payment jointly to the
294 dealer and the holder of any ~~the~~ security interest.

295
296 A motor vehicle dealer who can demonstrate that a violation of,
297 or failure to comply with, any of the preceding provisions by an
298 applicant or licensee will or can adversely and pecuniarily
299 affect the complaining dealer, shall be entitled to pursue all
300 of the remedies, procedures, and rights of recovery available
301 under ss. 320.695 and 320.697.



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302 Section 2. Subsections (1), (2), (3), and (6) of section
303 320.642, Florida Statutes, are amended to read:

304 320.642 Dealer licenses in areas previously served;
305 procedure.—

306 (1) Any licensee who proposes to establish an additional
307 motor vehicle dealership or permit the relocation of an existing
308 dealer to a location within a community or territory where the
309 same line-make vehicle is presently represented by a franchised
310 motor vehicle dealer or dealers shall give written notice of its
311 intention to the department. The ~~Such~~ notice shall state:

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

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

317 (c) The identity of all motor vehicle dealers who are
318 franchised to sell the same line-make vehicle with licensed
319 locations in the county and ~~or~~ any contiguous county to the
320 county where the additional or relocated motor vehicle dealer is
321 proposed to be located.

322 (d) The names and addresses of the dealer-operator and
323 principal investors in the proposed additional or relocated
324 motor vehicle dealership.

325
326 Immediately upon receipt of the ~~such~~ notice the department shall
327 cause a notice to be published in the Florida Administrative
328 Weekly. The published notice shall state that a petition or
329 complaint by any dealer with standing to protest pursuant to
330 subsection (3) must be filed not more than 45 ~~30~~ days after ~~from~~



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331 the date of publication of the notice in the Florida
332 Administrative Weekly. The published notice shall describe and
333 identify the proposed dealership sought to be licensed, and the
334 department shall cause a copy of the notice to be mailed to
335 those dealers identified in the licensee's notice under
336 paragraph (c).

337 (2) (a) An application for a motor vehicle dealer license in
338 any community or territory must ~~shall~~ be denied when:

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

342 2. The licensee fails to show that the existing franchised
343 dealer or dealers who register new motor vehicle retail sales or
344 retail leases of the same line-make in the community or
345 territory of the proposed dealership are not providing adequate
346 representation, adequate competition, and convenient customer
347 service of such line-make motor vehicles in a manner beneficial
348 to the public interest in such community or territory. The
349 ultimate burden of proof in establishing inadequate
350 representation, inadequate competition, and inconvenient
351 customer service is ~~shall be~~ on the licensee. Any geographic
352 area used for comparison to evaluate the performance of the
353 line-make or of the existing motor vehicle dealer or dealers
354 within the community or territory must be reasonably similar in
355 demographic traits to the community or territory of the proposed
356 site, including such factors as age, income, education, vehicle
357 size, class, model preference, and product popularity, and the
358 comparison area must not be smaller than the largest entire
359 county in which any of the protesting dealers are located.



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360 Reasonably expected market sales or service penetration must be
361 measured with respect to the community or territory as a whole
362 and not with respect to any part thereof or any identifiable
363 plot therein.

364 (b) In determining whether the existing franchised motor
365 vehicle dealer or dealers are providing adequate representation,
366 adequate competition, and convenient customer service in the
367 community or territory for the line-make, the department may
368 consider evidence of any factor deemed material by the finder of
369 fact in the unique circumstances, which may include, but is not
370 limited to:

371 1. The market share and return-on-investment impact of the
372 establishment of the proposed or relocated dealer on the
373 consumers, public interest, existing dealers, and the licensee;
374 ~~provided,~~ however, ~~that~~ financial impact other than return on
375 investment may ~~only~~ be considered only with respect to the
376 protesting dealer or dealers.

377 2. The size and permanency of investment reasonably made
378 and reasonable obligations incurred by the existing dealer or
379 dealers to perform their obligations under the dealer agreement,
380 including requirements made by the licensee up to 5 years before
381 the date of the publication of the notice.

382 3. The reasonably expected market penetration of the line-
383 make motor vehicle for the community or territory involved,
384 after consideration of all factors which may affect such said
385 penetration, including, but not limited to, demographic factors
386 such as age, income, education, vehicle size, class, model
387 preference, line-make, product popularity, retail lease
388 transactions, reasonably foreseeable economic projections,



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389 financial expectations, availability of reasonable terms,
390 reasonable amounts of credit to prospective customers, or other
391 factors affecting sales to consumers of the community or
392 territory.

393 4. Any actions by the licensee ~~licensees~~ in denying its
394 existing dealer or dealers of the same line-make the opportunity
395 for reasonable growth, market expansion, or relocation,
396 including the availability of line-make vehicles by model, in
397 keeping with the reasonable expectations of the licensee in
398 providing an adequate number of dealers in the community or
399 territory, and any actions by the licensee or its common entity
400 in making credit available to the existing dealers in reasonable
401 amounts and on reasonable terms or the existence of credit
402 otherwise available to the dealers in reasonable amounts and on
403 reasonable terms.

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

407 6. Distance, travel time, traffic patterns, and
408 accessibility between the existing dealer or dealers of the same
409 line-make and the location of the proposed additional or
410 relocated dealer for prospective customers.

411 7. Whether there will likely be a material positive impact
412 and a material benefit ~~benefits~~ to consumers ~~will likely occur~~
413 from the establishment or relocation of the proposed dealership
414 which will not ~~cannot~~ be obtained by other geographic or
415 demographic changes or expected changes in the community or
416 territory or by a material increase in advertising by the
417 licensee.



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418 8. Whether the protesting dealer or dealers are in
419 substantial compliance with their dealer agreement.

420 9. Whether there is adequate interbrand and intrabrand
421 competition with respect to such ~~said~~ line-make in the community
422 or territory and adequately convenient consumer care for the
423 motor vehicles of the line-make, including the adequacy of sales
424 and service facilities.

425 10. Whether the establishment or relocation of the proposed
426 dealership is ~~appears to be~~ warranted and justified based on
427 economic and marketing conditions pertinent to dealers competing
428 in the community or territory, including anticipated future
429 changes.

430 11. The volume of registrations and service business
431 transacted by the existing dealer or dealers of the same line-
432 make in the relevant community or territory of the proposed
433 dealership.

434 12. The past and reasonably foreseeable expected growth or
435 decline in population, density of population, and new motor
436 vehicle registrations in the community or territory of the
437 proposed dealership for competing motor vehicles, and whether
438 existing same line-make dealers will be unable to adjust their
439 dealership operations to adequately deal with such changes.

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

443 14. Whether the economic conditions reasonably forecasted
444 by the licensee for the foreseeable future will enable all
445 existing same line-make dealers and the proposed new or
446 relocated dealership the opportunity for a reasonable return on



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447 their investment, including supplying an adequate number of
448 every model of the licensee's new motor vehicles to them.

449 (3) An existing franchised motor vehicle dealer or dealers
450 has ~~shall have~~ standing to protest a proposed additional or
451 relocated motor vehicle dealer when ~~where~~ the existing motor
452 vehicle dealer or dealers have a franchise agreement for the
453 same line-make vehicle to be sold or serviced by the proposed
454 additional or relocated motor vehicle dealer and are physically
455 located so as to meet or satisfy any of the following
456 requirements or conditions:

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

462 1. The proposed additional or relocated motor vehicle
463 dealer is to be located in the area designated or described as
464 the area of responsibility, or such similarly designated area,
465 including the entire area designated as a multiple-point area,
466 in the franchise agreement or in any related document or
467 commitment with the existing motor vehicle dealer or dealers of
468 the same line-make as such agreement existed on or after the
469 effective date of this act ~~upon October 1, 1988;~~

470 2. The existing motor vehicle dealer or dealers of the same
471 line-make have a licensed franchise location within a radius of
472 20 miles of the location of the proposed additional or relocated
473 motor vehicle dealer; or

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



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476 36-month period preceding the filing of the licensee's
477 application for the proposed dealership, the ~~such~~ dealer or its
478 predecessor made 25 percent of its retail sales of new motor
479 vehicles to persons whose registered household addresses were
480 located within a radius of 20 miles of the location of the
481 proposed additional or relocated motor vehicle dealer; provided
482 the ~~such~~ existing dealer is located in the same county or any
483 county contiguous to the county where the additional or
484 relocated dealer is proposed to be located.

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

490 1. Any existing motor vehicle dealer or dealers of the same
491 line-make have a licensed franchise location within a radius of
492 15 ~~12.5~~ miles of the location of the proposed additional or
493 relocated motor vehicle dealer; or

494 2. Any existing motor vehicle dealer or dealers of the same
495 line-make can establish that during any 12-month period of the
496 36-month period preceding the filing of the licensee's
497 application for the proposed dealership, such dealer or its
498 predecessor made 20 ~~25~~ percent of its retail sales of new motor
499 vehicles to persons whose registered household addresses were
500 located within a radius of 15 ~~12.5~~ miles of the location of the
501 proposed additional or relocated motor vehicle dealer, or
502 performed repairs on the same line-make motor vehicles which
503 constituted 15 percent of its total service department sales to
504 persons whose registered addresses were located within a radius



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505 of 15 miles of the location of the proposed additional or
506 relocated dealer; provided such existing dealer is located in
507 the same county or any county contiguous to the county where the
508 additional or relocated dealer is proposed to be located.

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

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

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

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

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

527 3. The proposed location of the additional or relocated
528 service-only dealership is at least 10 7 miles from all existing
529 motor vehicle dealerships of the same line-make, other than
530 motor vehicle dealerships owned by the applicant.

531 (c) In determining whether existing franchised motor
532 vehicle dealers are providing adequate representation, adequate
533 competition, and convenient customer service ~~representations~~ in



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534 the community or territory for the line-make in question in a
535 protest of the proposed addition or relocation of a service-only
536 dealership, the department may consider the elements set forth
537 in paragraph (2) (b), provided:

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

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

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

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

545 (d) If an application for a service-only dealership is
546 granted, the department shall issue a license which permits only
547 service, as defined in s. 320.60(16), and does not permit the
548 selling or leasing of new motor vehicles, as defined in s.
549 320.60(15). If a service-only dealership subsequently seeks to
550 sell new motor vehicles at its location, the notice and protest
551 provisions of this section shall apply.

552 Section 3. Section 320.643, Florida Statutes, is amended to
553 read:

554 320.643 Transfer, assignment, or sale of franchise
555 agreements.—

556 (1) (a) Notwithstanding the terms of any franchise
557 agreement, a licensee shall not, by contract or otherwise, fail
558 or refuse to give effect to, prevent, prohibit, or penalize or
559 attempt to refuse to give effect to, prohibit, or penalize any
560 motor vehicle dealer from selling, assigning, transferring,
561 alienating, or otherwise disposing of its franchise agreement to
562 any other person or persons, including a corporation established



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563 or existing for the purpose of owning or holding a franchise
564 agreement, unless the licensee proves at a hearing pursuant to a
565 complaint filed by a motor vehicle dealer under this section
566 that the ~~such~~ sale, transfer, alienation, or other disposition
567 is to a person who is not, or whose controlling executive
568 management is not, of good moral character or does not meet the
569 written, reasonable, and uniformly applied standards or
570 qualifications of the licensee relating to financial
571 qualifications of the transferee and business experience of the
572 transferee or the transferee's executive management. A motor
573 vehicle dealer who desires to sell, assign, transfer, alienate,
574 or otherwise dispose of a franchise shall notify, or cause the
575 proposed transferee to notify, the licensee, in writing, setting
576 forth the prospective transferee's name, address, financial
577 qualifications, and business experience during the previous 5
578 years. A licensee who receives such notice may, within 60 days
579 following such receipt, notify the motor vehicle dealer, in
580 writing, that the proposed transferee is not a person qualified
581 to be a transferee under this section and setting forth the
582 material reasons for such rejection. Failure of the licensee to
583 notify the motor vehicle dealer within the 60-day period of such
584 rejection shall be deemed an approval of the transfer. A ~~No such~~
585 transfer, assign, or sale is not ~~shall be~~ valid unless the
586 transferee agrees in writing to comply with all requirements of
587 the franchise then in effect.

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



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592 section. The licensee has the burden of proof with respect to
593 all issues raised by the ~~such~~ complaint. The department shall
594 determine, and enter an order providing, that the proposed
595 transferee is either qualified or is not and cannot be qualified
596 for specified reasons, or the order may provide the conditions
597 under which a proposed transferee would be qualified. If the
598 licensee fails to file ~~such~~ a response to the motor vehicle
599 dealer's complaint within 30 days after receipt of the
600 complaint, unless the parties agree in writing to an extension,
601 or if the department, after a hearing, renders a decision other
602 than one disqualifying the proposed transferee, the franchise
603 agreement between the motor vehicle dealer and the licensee is
604 ~~shall be~~ deemed amended to incorporate such transfer or amended
605 in accordance with the determination and order rendered,
606 effective upon compliance by the proposed transferee with any
607 conditions set forth in the determination or order.

608 (2) (a) Notwithstanding the terms of any franchise
609 agreement, a licensee shall not, by contract or otherwise, fail
610 or refuse to give effect to, prevent, prohibit, or penalize, or
611 attempt to refuse to give effect to, prevent, prohibit, or
612 penalize, any motor vehicle dealer or any proprietor, partner,
613 stockholder, owner, or other person who holds or otherwise owns
614 an interest therein from selling, assigning, transferring,
615 alienating, or otherwise disposing of, in whole or in part, the
616 equity interest of any of them in such motor vehicle dealer to
617 any other person or persons, including a corporation established
618 or existing for the purpose of owning or holding the stock or
619 ownership interests of other entities, unless the licensee
620 proves at a hearing pursuant to a complaint filed by a motor



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621 vehicle dealer under this section that the ~~such~~ sale, transfer,
622 alienation, or other disposition is to a person who is not, or
623 whose controlling executive management is not, of good moral
624 character. A motor vehicle dealer, or any proprietor, partner,
625 stockholder, owner, or other person who holds or otherwise owns
626 an interest in the motor vehicle dealer, who desires to sell,
627 assign, transfer, alienate, or otherwise dispose of any interest
628 in such motor vehicle dealer shall notify, or cause the proposed
629 transferee to so notify, the licensee, in writing, of the
630 identity and address of the proposed transferee. A licensee who
631 receives such notice may, within 60 days following such receipt,
632 notify the motor vehicle dealer in writing that the proposed
633 transferee is not a person qualified to be a transferee under
634 this section and setting forth the material reasons for such
635 rejection. Failure of the licensee to notify the motor vehicle
636 dealer within the 60-day period of such rejection shall be
637 deemed an approval of the transfer. Any person whose proposed
638 sale of stock is rejected may file within 60 days of receipt of
639 such rejection a complaint with the department alleging that the
640 rejection was in violation of the law or the franchise
641 agreement. The licensee has the burden of proof with respect to
642 all issues raised by such complaint. The department shall
643 determine, and enter an order providing, that the proposed
644 transferee either is qualified or is not and cannot be qualified
645 for specified reasons; or the order may provide the conditions
646 under which a proposed transferee would be qualified. If the
647 licensee fails to file a response to the motor vehicle dealer's
648 complaint within 30 days of receipt of the complaint, unless the
649 parties agree in writing to an extension, or if the department,



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650 after a hearing, renders a decision on the complaint other than
651 one disqualifying the proposed transferee, the transfer shall be
652 deemed approved in accordance with the determination and order
653 rendered, effective upon compliance by the proposed transferee
654 with any conditions set forth in the determination or order.

655 (b) Notwithstanding paragraph (a), a licensee or the
656 department may not reject a proposed transfer of a legal,
657 equitable, or beneficial interest in a motor vehicle dealer to a
658 trust or other entity, or to any beneficiary thereof, which is
659 established by an owner of any interest in a motor vehicle
660 dealer for purposes of estate planning, if the controlling
661 person of the trust or entity thereof, or the beneficiary, is of
662 good moral character. A licensee or the department may not
663 condition any proposed transfer under this section upon a
664 relocation of, construction of any addition or modification to,
665 or any refurbishing or remodeling of any dealership structure,
666 facility, or building of the existing motor vehicle dealer, or
667 upon any modification of the existing franchise agreement.

668 (3) During the pendency of any such department or court
669 hearing, the franchise agreement of the motor vehicle dealer
670 shall continue in effect in accordance with its terms. The
671 department or any court shall use reasonable efforts to expedite
672 any determination requested under this section.

673 (4) Notwithstanding the terms of any franchise agreement,
674 the acceptance by the licensee of the proposed transferee shall
675 not be unreasonably withheld, delayed, or conditioned. For the
676 purposes of this section, the refusal by the licensee to accept,
677 in a timely manner, a proposed transferee who satisfies the
678 criteria set forth in subsection (1) or subsection (2) is



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679 presumed to be unreasonable.

680 (5) It shall be a violation of this section for the
681 licensee to reject, ~~or~~ withhold, delay, or condition approval of
682 a proposed transfer unless the licensee can prove in any court
683 of competent jurisdiction in defense of any claim brought
684 pursuant to s. 320.697 that, in fact, the rejection or
685 withholding of approval of the proposed transfer was not in
686 violation of or precluded by this section and was reasonable.

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

690 Alleging the permitted statutory grounds by the licensee in the
691 written rejection of the proposed transfer does ~~shall~~ not
692 constitute a defense of the licensee, or protect the licensee
693 from liability for violating this section.

694 Section 4. Paragraphs (a) and (b) of subsection (3) and
695 subsections (4) and (7) of section 320.696, Florida Statutes,
696 are amended to read:

697 320.696 Warranty responsibility.—

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

704 1. The dealer's arithmetical mean percentage markup over
705 dealer cost for all parts charged by the dealer in 75 ~~50~~
706 consecutive retail customer repairs made by the dealer within a
707 3-month period before the dealer's written request for a change



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708 in reimbursement pursuant to this section, or all of the retail
709 customer repair orders over that 3-month period if there are
710 fewer than 50 retail customer repair orders in that period. The
711 motor vehicle dealer shall give the licensee 10 days' written
712 notice that it intends to make a written request to the licensee
713 for a warranty parts reimbursement increase and permit the
714 licensee, within that 10-day period, to select the initial
715 retail customer repair for the consecutive repair orders that
716 will be attached to the written request used for the markup
717 computation, provided that if the licensee fails to provide a
718 timely selection, the dealer may make that selection. No repair
719 order shall be excluded from the markup computation because it
720 contains both warranty, extended warranty, certified pre-owned
721 warranty, maintenance, recall, campaign service, or authorized
722 goodwill work and a retail customer repair. However, only the
723 retail customer repair portion of the repair order shall be
724 included in the computation, and the parts described in
725 paragraph (b) shall be excluded from the computation; or

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

728 ~~3. An amount equal to the dealer's markup over dealer cost~~
729 ~~that results in the same gross profit percentage for parts used~~
730 ~~in work done under subsection (1) as the dealer receives for~~
731 ~~parts used in the customer retail repairs, as evidenced by the~~
732 ~~average of said dealer's gross profit percentage in the dealer's~~
733 ~~financial statements for the 2 months preceding the dealer's~~
734 ~~request.~~

735
736 If a licensee reduces the suggested retail or list price for any



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737 replacement part or accessory, it also shall reduce, by at least
738 the same percentage, the cost to the dealer for the part or
739 accessory. The dealer's markup or gross profit percentage shall
740 be uniformly applied to all of the licensee's parts used by the
741 dealer in performing work covered by subsection (1).

742 (b) In calculating the compensation to be paid for parts by
743 the arithmetical mean percentage markup over dealer cost method
744 in paragraph (a), parts discounted by a dealer for repairs made
745 in group, fleet, insurance, or other third-party payer service
746 work; parts used in repairs of government agencies' vehicle
747 repairs for which volume discounts have been negotiated; parts
748 used in bona fide special events, specials, or promotional
749 discounts for retail customer repairs; parts sold at wholesale;
750 parts used for internal repairs; engine assemblies and
751 transmission assemblies; parts used in retail customer repairs
752 for routine maintenance, such as fluids, filters and belts;
753 nuts, bolts, fasteners, and similar items that do not have an
754 individual part number; and tires shall be excluded in
755 determining the percentage markup over dealer cost.

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

759 (b) Compensation paid by a licensee to a motor vehicle
760 dealer may be an agreed hourly labor rate. If, however, an
761 agreement is not reached within 30 days after the dealer's
762 written request, the compensation shall ~~dealer may choose to be~~
763 ~~paid the greater of:~~

764 ~~1.~~ the dealer's hourly labor rate for retail customer
765 repairs, determined by dividing the amount of the dealer's total



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766 labor sales for retail customer repairs by the number of total
767 labor hours that generated those sales for the month preceding
768 the request, excluding the work in paragraph (c). ~~or~~

769 ~~2. An amount equal to the dealer's markup over dealer cost~~
770 ~~that results in the same gross profit percentage for labor hours~~
771 ~~performed in work covered by subsection (1) as the dealer~~
772 ~~receives for labor performed in its customer retail repairs, as~~
773 ~~evidenced by the average of said dealer's gross profit~~
774 ~~percentage in the dealer's financial statements provided to the~~
775 ~~licensee for the 2 months preceding the dealer's written~~
776 ~~request, if the dealer provides in the written request the~~
777 ~~arithmetical mean of the hourly wage paid to all of its~~
778 ~~technicians during that preceding month. The arithmetical mean~~
779 ~~shall be the dealer cost used in that calculation.~~

780
781 After an hourly labor rate is agreed or determined, the licensee
782 shall uniformly apply and pay that hourly labor rate for all
783 labor used by the dealer in performing work under subsection
784 (1). However, a licensee may ~~shall~~ not pay an hourly labor rate
785 less than the hourly rate it was paying to the dealer for work
786 done under subsection (1) on January 2, 2008. A licensee may
787 ~~shall~~ not eliminate or decrease flat-rate times from or
788 establish an unreasonable flat-rate time in its warranty repair
789 manual, warranty time guide, or any other similarly named
790 document, unless the licensee can prove that it has improved the
791 technology related to a particular repair and thereby has
792 lessened the average repair time. A licensee shall establish
793 reasonable flat-rate labor times in its warranty repair manuals
794 and warranty time guides for newly introduced model motor



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795 vehicles which are at least consistent with its existing
796 documents. As used in this subsection, the terms "retail
797 customer repair" and "similar work" are not limited to a repair
798 to the same model vehicle or model year, but include prior
799 repairs that resemble but are not identical to the repair for
800 which the dealer is making a claim for compensation.

801 (c) In determining the hourly labor rate calculated under
802 subparagraph (b)1., a dealer's labor charges for internal
803 vehicle repairs; vehicle reconditioning; repairs performed for
804 group, fleet, insurance, or other third-party payers; discounted
805 repairs of motor vehicles for government agencies; labor used in
806 bona fide special events, specials, or express service; and
807 promotional discounts shall not be included as retail customer
808 repairs and shall be excluded from such calculations.

809 (7) A licensee may ~~shall~~ not require, ~~influence, or attempt~~
810 ~~to influence~~ a motor vehicle dealer to implement or change the
811 prices for which it sells parts or labor in retail customer
812 repairs. A licensee shall not implement or continue a policy,
813 procedure, or program to any of its dealers in this state for
814 compensation under this section which is inconsistent with this
815 section.

816 Section 5. If any provision of this act or the application
817 thereof to any person or circumstance is held invalid, the
818 invalidity does not affect other provisions or applications of
819 the act which can be given effect without the invalid provision
820 or application, and to this end the provisions of this act are
821 declared severable.

822 Section 6. This act shall take effect upon becoming a law.
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===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to motor vehicle dealerships; amending
s. 320.64, F.S.; revising provisions prohibiting
certain acts by a motor vehicle manufacturer, factory
branch, distributor, or importer licensed under
specified provisions; revising conditions and
procedures for certain audits; removing a presumption
that a dealer had no actual knowledge that a customer
intended to export or resell a motor vehicle;
clarifying a dealer's eligibility requirements for
licensee-offered program bonuses, incentives, and
other benefits; requiring certain payments if a
termination, cancellation, or nonrenewal of a dealer's
franchise is the result of bankruptcy or
reorganization; amending s. 320.642, F.S.; revising
provisions for establishing an additional motor
vehicle dealership in or relocating an existing dealer
to a location within a community or territory where
the same line-make vehicle is presently represented by
a franchised motor vehicle dealer or dealers; revising
notice requirements; revising provisions for denial of
an application for a motor vehicle dealer license in
any community or territory; revising provisions for
evidence to be considered by the Department of Highway



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853 Safety and Motor Vehicles when evaluating the
854 application; revising provisions under which a dealer
855 has standing to protest a proposed additional or
856 relocated motor vehicle dealer; revising provisions
857 for a proposed addition or relocation concerning a
858 dealership that performs only service; amending s.
859 320.643, F.S.; revising provisions for a transfer,
860 assignment, or sale of franchise agreements;
861 prohibiting rejection of proposed transfer of interest
862 in a motor vehicle dealer entity to a trust or other
863 entity, or a beneficiary thereof, which is established
864 for estate-planning purposes; prohibiting placing
865 certain conditions on such transfer; revising
866 provisions for a hearing by the department or a court
867 relating to a proposed transfer; amending s. 320.696,
868 F.S.; eliminating one of the methods for determining
869 warranty labor and parts reimbursement and more
870 particularly describing exceptions to such
871 calculations; providing for severability; providing an
872 effective date.