



798748

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2009	.	
	.	
	.	
	.	

The Committee on Judiciary (Haridopolos) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsections (10), (25), (26), and (36) of section 320.64, Florida Statutes, are amended, and subsection (38) is added to that section, to read:

320.64 Denial, suspension, or revocation of license; grounds.—A license of a licensee under s. 320.61 may be denied, suspended, or revoked within the entire state or at any specific location or locations within the state at which the applicant or



798748

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

19 (10) (a) The applicant or licensee has attempted to enter,
20 or has entered, into a franchise agreement with a motor vehicle
21 dealer who does not, at the time of the franchise agreement,
22 have proper facilities to provide the services to his or her
23 purchasers of new motor vehicles which are covered by the new
24 motor vehicle warranty issued by the applicant or licensee.

25 (b) Notwithstanding any provision of a franchise, a
26 licensee may not require a motor vehicle dealer, by agreement,
27 program, policy, standard, or otherwise, ~~to relocate,~~ to make
28 substantial changes, alterations, or remodeling to, or to
29 replace a motor vehicle dealer's sales or service facilities
30 unless the licensee's requirements are reasonable and
31 justifiable in light of the current and reasonably foreseeable
32 projections of economic conditions, financial expectations, and
33 the motor vehicle dealer's market for the licensee's motor
34 vehicles.

35 (c) ~~(b)~~ A licensee may, however, consistent with the
36 licensee's allocation obligations at law and to its other same
37 line-make motor vehicle dealers, provide to a motor vehicle
38 dealer a commitment to supply ~~allocate~~ additional vehicles or
39 provide a loan or grant of money as an inducement for the motor
40 vehicle dealer to ~~relocate,~~ expand, improve, remodel, alter, or



798748

41 ~~renovate its facilities if the licensee delivers an assurance to~~
42 ~~the dealer that it will offer to supply to the dealer a~~
43 ~~sufficient quantity of new motor vehicles, consistent with its~~
44 ~~allocation obligations at law and to its other same line-make~~
45 ~~motor vehicle dealers, which will economically justify such~~
46 ~~relocation, expansion, improvement, remodeling, renovation, or~~
47 ~~alteration, in light of reasonably current and reasonably~~
48 ~~projected market and economic conditions. the provisions of the~~
49 ~~commitment are increase in vehicle allocation, the loan or grant~~
50 ~~and the assurance, and the basis for them must be contained in a~~
51 ~~writing written agreement voluntarily agreed to entered into by~~
52 ~~the dealer and are must be made available, on substantially~~
53 ~~similar terms, to any of the licensee's other same line-make~~
54 ~~dealers in this state who voluntarily agree to make a~~
55 ~~substantially similar facility expansion, improvement,~~
56 ~~remodeling, alteration, or renovation with whom the licensee~~
57 ~~offers to enter into such an agreement.~~

58 (d) Except as provided in paragraph (c), subsection (36),
59 or as otherwise provided by law, this subsection does not
60 require a licensee to provide financial support for, or
61 contribution to, the purchase or sale of the assets of or equity
62 in a motor vehicle dealer or a relocation of a motor vehicle
63 dealer because such support has been provided to other
64 purchases, sales, or relocations.

65 (e)-(e) A licensee or its common entity may shall not
66 withhold a bonus, incentive, or other benefit that is available
67 to its other same line-make franchised dealers in this state
68 from, or take or threaten to take any action that is unfair or
69 adverse to a dealer who does not enter into an agreement with



798748

70 the licensee pursuant to paragraph (c) ~~(b)~~.

71 ~~(d) A licensee may not refuse to offer a program, bonus,~~
72 ~~incentive, or other benefit, in whole or in part, to a dealer in~~
73 ~~this state which it offers to its other same line make dealers~~
74 ~~nationally or in the licensee's zone or region in which this~~
75 ~~state is included. Neither may it discriminate against a dealer~~
76 ~~in this state with respect to any program, bonus, incentive, or~~
77 ~~other benefit. For purposes of this chapter, a licensee may not~~
78 ~~establish this state alone as a zone, region, or territory by~~
79 ~~any other designation.~~

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

85 ~~(f) Any portion of a licensee offered program for a bonus,~~
86 ~~incentive, or other benefit that, in whole or in part, is based~~
87 ~~upon or aimed at inducing a dealer's relocation, expansion,~~
88 ~~improvement, remodeling, renovation, or alteration of the~~
89 ~~dealer's sales or service facility, or both, is void as to each~~
90 ~~of the licensee's motor vehicle dealers in this state who,~~
91 ~~nevertheless, shall be eligible for the entire amount of the~~
92 ~~bonuses, incentives, or benefits offered in the program upon~~
93 ~~compliance with the other eligibility provisions in the program.~~

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

97 (h) A violation of paragraphs (b) through (g) is not a
98 violation of s. 320.70 and does not subject any licensee to any



798748

99 criminal penalty under s. 320.70.

100 (25) The applicant or licensee has undertaken an audit of
101 warranty, maintenance, and other service-related payments or
102 incentive payments, including payments to a motor vehicle dealer
103 under any licensee-issued program, policy, or other benefit,
104 which previously have been paid to a motor vehicle dealer in
105 violation of this section or has failed to comply with any of
106 its obligations under s. 320.696. An applicant or licensee may
107 reasonably and periodically audit a motor vehicle dealer to
108 determine the validity of paid claims as provided in s. 320.696.
109 Audits ~~Audit~~ of warranty, maintenance, and other service-related
110 payments shall only be performed by an applicant or licensee
111 only during for the 1-year period immediately following the date
112 the claim was paid. Audit of incentive payments shall only be
113 for an 18-month period immediately following the date the
114 incentive was paid. After such time periods have elapsed, all
115 warranty, maintenance, and other service-related payments and
116 incentive payments shall be deemed final and incontrovertible
117 for any reason notwithstanding any otherwise applicable law, and
118 the motor vehicle dealer shall not be subject to any charge-back
119 or repayment. An applicant or licensee may deny a claim or, as a
120 result of a timely conducted audit, impose a charge-back against
121 a motor vehicle dealer for warranty, maintenance, or other
122 service-related payments or incentive payments only if An
123 ~~applicant or licensee shall not deny a claim or charge a motor~~
124 ~~vehicle dealer back subsequent to the payment of the claim~~
125 ~~unless~~ the applicant or licensee can show that the warranty,
126 maintenance, or other service-related claim or incentive claim
127 was false or fraudulent or that the motor vehicle dealer failed



798748

128 to substantially comply with the reasonable written and
129 uniformly applied procedures of the applicant or licensee for
130 such repairs or incentives. An applicant or licensee may not
131 charge a motor vehicle dealer back subsequent to the payment of
132 a warranty, maintenance, or service-related claim or incentive
133 claim unless, within 30 days after a timely conducted audit, a
134 representative of the applicant or licensee first meets in
135 person, by telephone, or by video teleconference with an officer
136 or employee of the dealer designated by the motor vehicle
137 dealer. At such meeting the applicant or licensee must provide a
138 detailed explanation, with supporting documentation, as to the
139 basis for each of the claims for which the applicant or licensee
140 proposed a charge-back to the dealer and a written statement
141 containing the basis upon which the motor vehicle dealer was
142 selected for audit or review. Thereafter, the applicant or
143 licensee must provide the motor vehicle dealer's representative
144 a reasonable period after the meeting within which to respond to
145 the proposed charge-backs, with such period to be commensurate
146 with the volume of claims under consideration, but in no case
147 less than 45 days after the meeting. The applicant or licensee
148 is prohibited from changing or altering the basis for each of
149 the proposed charge-backs as presented to the motor vehicle
150 dealer's representative following the conclusion of the audit
151 unless the applicant or licensee receives new information
152 affecting the basis for one or more charge-backs and that new
153 information is received within 30 days after the conclusion of
154 the timely conducted audit. If the applicant or licensee claims
155 the existence of new information, the dealer must be given the
156 same right to a meeting and right to respond as when the charge-



798748

157 back was originally presented. After all internal dispute
158 resolution processes provided through the applicant or licensee
159 has been completed, the applicant or licensee shall give written
160 notice to the motor vehicle dealer of the final amount of its
161 proposed charge-back. If the dealer disputes that amount, the
162 dealer may file a protest with the department within 30 days
163 after receipt of the notice. If a protest is timely filed, the
164 department shall notify the applicant or licensee of the filing
165 of the protest and the applicant or licensee may not take any
166 action to recover the amount of the proposed charge back until
167 the department renders a final determination , not subject to
168 further appeal, that the charge back is in compliance with the
169 provisions of this section. In any hearing pursuant to this
170 subsection, the applicant or licensee shall have the burden of
171 proof its audit and resulting charge-back are in compliance with
172 this subsection.

173 (26) Notwithstanding the terms of any franchise agreement,
174 including any licensee's program, policy, or procedure, the
175 applicant or licensee has refused to allocate, sell, or deliver
176 motor vehicles; charged back or withheld payments or other
177 things of value for which the dealer is otherwise eligible under
178 a sales promotion, program, or contest; prevented a motor
179 vehicle dealer from participating in any promotion, program, or
180 contest; or has taken or threatened to take any adverse action
181 against a dealer, including charge-backs, reducing vehicle
182 allocations, or terminating or threatening to terminate a
183 franchise because the dealer sold or leased a motor vehicle to a
184 customer who exported the vehicle to a foreign country or who
185 resold the vehicle, unless the licensee proves that the dealer



798748

186 knew or reasonably should have known ~~had actual knowledge~~ that
187 the customer intended to export or resell the motor vehicle.
188 There is a rebuttable ~~conclusive~~ presumption that the dealer
189 neither knew nor reasonably should have known of its customer's
190 intent to export or resell the vehicle ~~had no actual knowledge~~
191 if the vehicle is titled or registered in any state in this
192 country. A licensee may not take any action against a motor
193 vehicle dealer, including reducing its allocations or supply of
194 motor vehicles to the dealer, or charging back a dealer for an
195 incentive payment previously paid, unless the licensee first
196 meets in person, by telephone, or video conference with an
197 officer or other designated employee of the dealer. At such
198 meeting, the licensee must provide a detailed explanation, with
199 supporting documentation, as to the basis for its claim that the
200 dealer knew or reasonably should have known of the customer's
201 intent to export or resell the motor vehicle. Thereafter, the
202 motor vehicle dealer shall have a reasonable period,
203 commensurate with the number of motor vehicles at issue, but not
204 less than 15 days, to respond to the licensee's claims. If,
205 following the dealer's response and completion of all internal
206 dispute resolution processes provided through the applicant or
207 licensee, the dispute remains unresolved, the dealer may file a
208 protest with the department within 30 days after receipt of a
209 written notice from the licensee that it still intends to take
210 adverse action against the dealer with respect to the motor
211 vehicles still at issue. If a protest is timely filed, the
212 department shall notify the applicant or licensee of the filing
213 of the protest and the applicant or licensee may not take any
214 action adverse to the dealer until the department renders a



798748

215 final determination, not subject to further appeal, that the
216 licensee's proposed action is in compliance with the provisions
217 of this subsection. In any hearing pursuant to this subsection,
218 the applicant or licensee shall have the burden of proof on all
219 issues raised by this subsection.

220 (36) (a) Notwithstanding the terms of any franchise
221 agreement, in addition to any other statutory or contractual
222 rights of recovery after the voluntary or involuntary
223 termination, cancellation, or nonrenewal of a franchise, failing
224 to pay the motor vehicle dealer, as provided in paragraph (d)
225 ~~within 90 days after the effective date of the termination,~~
226 ~~cancellation, or nonrenewal,~~ the following amounts:

227 1. The net cost paid by the dealer for each new car or
228 truck in the dealer's inventory with mileage of 2,000 miles or
229 less, or a motorcycle with mileage of 100 miles or less,
230 exclusive of mileage placed on the vehicle before it was
231 delivered to the dealer.

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

234 a. Is in the current parts catalogue and is still in the
235 original, resalable merchandising package and in an unbroken
236 lot, except that sheet metal may be in a comparable substitute
237 for the original package; and

238 b. Was purchased by the dealer directly from the
239 manufacturer or distributor or from an outgoing authorized
240 dealer as a part of the dealer's initial inventory.

241 3. The fair market value of each undamaged sign owned by
242 the dealer which bears a trademark or trade name used or claimed
243 by the applicant or licensee or its representative which was



244 purchased from or at the request of the applicant or licensee or
245 its representative.

246 4. The fair market value of all special tools, data
247 processing equipment, and automotive service equipment owned by
248 the dealer which:

249 a. Were recommended in writing by the applicant or licensee
250 or its representative and designated as special tools and
251 equipment;

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

254 c. Are in usable and good condition except for reasonable
255 wear and tear.

256 5. The cost of transporting, handling, packing, storing,
257 and loading any property subject to repurchase under this
258 section.

259 (b) If the termination, cancellation, or nonrenewal of the
260 dealer's franchise is the result of the bankruptcy or
261 reorganization of a licensee or its common entity, or the result
262 of a licensee's plan, scheme, or policy, whether or not publicly
263 declared, that is intended to or has the effect of decreasing
264 the number of, or eliminating, the licensee's franchised motor
265 vehicle dealers of a line-make in this state, or the result of a
266 termination, elimination, or cessation of manufacture or
267 reorganization of a licensee or its common entity, or the result
268 of a termination, elimination, or cessation of manufacture or
269 distribution of a line-make, in addition to the above payments
270 to the dealer, the licensee or its common entity, shall be
271 liable to and shall pay the motor vehicle dealer for an amount
272 at least equal to the fair market value of the franchise for the



798748

273 line-make, which shall be the greater of the value determined as
274 of the day the licensee announces the action that results in the
275 termination, cancellation, or nonrenewal, or the value
276 determined on the day that is 12 months before that date. Fair
277 market value of the franchise for the line-make includes only
278 the goodwill value of the dealer's franchise for that line-make
279 in the dealer's community or territory.

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

284 (d) The dealer shall return the property listed in this
285 subsection to the licensee within 90 days after the effective
286 date of the termination, cancellation, or nonrenewal. The
287 licensee shall supply the dealer with reasonable instructions
288 regarding the method by which the dealer must return the
289 property. Absent shipping instructions and prepayment of
290 shipping costs, from the licensee or its common entity, the
291 dealer shall tender the inventory and other items to be returned
292 at the dealer's facility. The compensation for the property
293 shall be paid by the licensee or its common entity
294 simultaneously with ~~within 60 days after~~ the tender of inventory
295 and other items, provided that, if the dealer does not have ~~has~~
296 clear title to the inventory and other items and is not in a
297 position to convey that title to the licensee, ~~manufacturer or~~
298 distributor. ~~If the inventory or other items are subject to a~~
299 ~~security interest, the licensee may make~~ Payment for the
300 property being returned may be made jointly to the dealer and
301 the holder of any ~~the~~ security interest.



798748

302 (38) The applicant or licensee has failed or refused to
303 offer a bonus, incentive, or other benefit program, in whole or
304 in part, to a dealer or dealers in this state which it offers to
305 all of its other same line-make dealers nationally or to all of
306 its other same line-make dealers in the licensee's designated
307 zone, region, or other licensee-designated area of which this
308 state is a part, unless the failure or refusal to offer the
309 program in this state is reasonably supported by substantially
310 different economic or marketing considerations than are
311 applicable to the licensee's same line-make dealers in this
312 state. For purposes of this chapter, a licensee may not
313 establish this state alone as a designated zone, region, or area
314 or any other designation for a specified territory. A licensee
315 may offer a bonus, rebate, incentive, or other benefit program
316 to its dealers in this state that is calculated or paid on a per
317 vehicle basis and is related in part to a dealer's facility or
318 the expansion, improvement, remodeling, alteration, or
319 renovation of a dealer's facility. Any dealer who does not
320 comply with the facility criteria or eligibility requirements of
321 such program shall be entitled to receive a reasonable
322 percentage of the bonus, incentive, rebate, or other benefit
323 offered by the licensee under that program by complying with the
324 criteria or eligibility requirements unrelated to the dealer's
325 facility under that program. For purposes of the previous
326 sentence, the percentage unrelated to the facility criteria or
327 requirements is presumed to be "reasonable" if it is not less
328 than 80 percent of the total of the per vehicle bonus,
329 incentive, rebate, or other benefits offered under the program.
330



798748

331 A motor vehicle dealer who can demonstrate that a violation of,
332 or failure to comply with, any of the preceding provisions by an
333 applicant or licensee will or can adversely and pecuniarily
334 affect the complaining dealer, shall be entitled to pursue all
335 of the remedies, procedures, and rights of recovery available
336 under ss. 320.695 and 320.697.

337 Section 2. Subsection (1), paragraph (a) of subsection (2),
338 and subsection (3) of section 320.642, Florida Statutes, are
339 amended to read:

340 320.642 Dealer licenses in areas previously served;
341 procedure.—

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

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

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

353 (c) The identity of all motor vehicle dealers who are
354 franchised to sell the same line-make vehicle with licensed
355 locations in the county and ~~or~~ any contiguous county to the
356 county where the additional or relocated motor vehicle dealer is
357 proposed to be located.

358 (d) The names and addresses of the dealer-operator and
359 principal investors in the proposed additional or relocated



798748

360 motor vehicle dealership.

361

362 Immediately upon receipt of the ~~such~~ notice the department shall
363 cause a notice to be published in the Florida Administrative
364 Weekly. The published notice shall state that a petition or
365 complaint by any dealer with standing to protest pursuant to
366 subsection (3) must be filed not more than 30 days from the date
367 of publication of the notice in the Florida Administrative
368 Weekly. The published notice shall describe and identify the
369 proposed dealership sought to be licensed, and the department
370 shall cause a copy of the notice to be mailed to those dealers
371 identified in the licensee's notice under paragraph (c).

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

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

377 2. The licensee fails to show that the existing franchised
378 dealer or dealers who register new motor vehicle retail sales or
379 retail leases of the same line-make in the community or
380 territory of the proposed dealership are not providing adequate
381 representation of such line-make motor vehicles in such
382 community or territory. Adequacy of representation must be
383 measured with respect to the community or territory as a whole
384 and not with respect to any part thereof or any identifiable
385 plot therein. The burden of proof in establishing inadequate
386 representation shall be on the licensee.

387 (3) An existing franchised motor vehicle dealer or dealers
388 shall have standing to protest a proposed additional or



798748

389 relocated motor vehicle dealer when ~~where~~ the existing motor
390 vehicle dealer or dealers have a franchise agreement for the
391 same line-make vehicle to be sold or serviced by the proposed
392 additional or relocated motor vehicle dealer and are physically
393 located so as to meet or satisfy any of the following
394 requirements or conditions:

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

400 1. The proposed additional or relocated motor vehicle
401 dealer is to be located in the area designated or described as
402 the area of responsibility, or such similarly designated area,
403 including the entire area designated as a multiple-point area,
404 in the franchise agreement or in any related document or
405 commitment with the existing motor vehicle dealer or dealers of
406 the same line-make as such agreement existed upon October 1,
407 1988;

408 2. The existing motor vehicle dealer or dealers of the same
409 line-make have a licensed franchise location within a radius of
410 20 miles of the location of the proposed additional or relocated
411 motor vehicle dealer; or

412 3. Any existing motor vehicle dealer or dealers of the same
413 line-make can establish that during any 12-month period of the
414 36-month period preceding the filing of the licensee's
415 application for the proposed dealership, the ~~such~~ dealer or its
416 predecessor made 25 percent of its retail sales of new motor
417 vehicles to persons whose registered household addresses were



798748

418 located within a radius of 20 miles of the location of the
419 proposed additional or relocated motor vehicle dealer; provided
420 the ~~such~~ existing dealer is located in the same county or any
421 county contiguous to the county where the additional or
422 relocated dealer is proposed to be located.

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

428 1. Any existing motor vehicle dealer or dealers of the same
429 line-make have a licensed franchise location within a radius of
430 12.5 miles of the location of the proposed additional or
431 relocated motor vehicle dealer; or

432 2. Any existing motor vehicle dealer or dealers of the same
433 line-make can establish that during any 12-month period of the
434 36-month period preceding the filing of the licensee's
435 application for the proposed dealership, such dealer or its
436 predecessor made 25 percent of its retail sales of new motor
437 vehicles to persons whose registered household addresses were
438 located within a radius of 12.5 miles of the location of the
439 proposed additional or relocated motor vehicle dealer; provided
440 such existing dealer is located in the same county or any county
441 contiguous to the county where the additional or relocated
442 dealer is proposed to be located.

443 Section 3. Section 320.643, Florida Statutes, is amended to
444 read:

445 320.643 Transfer, assignment, or sale of franchise
446 agreements.—



798748

447 (1) (a) Notwithstanding the terms of any franchise
448 agreement, a licensee shall not, by contract or otherwise, fail
449 or refuse to give effect to, prevent, prohibit, or penalize or
450 attempt to refuse to give effect to, prohibit, or penalize any
451 motor vehicle dealer from selling, assigning, transferring,
452 alienating, or otherwise disposing of its franchise agreement to
453 any other person or persons, including a corporation established
454 or existing for the purpose of owning or holding a franchise
455 agreement, unless the licensee proves at a hearing pursuant to a
456 complaint filed by a motor vehicle dealer under this section
457 that the ~~such~~ sale, transfer, alienation, or other disposition
458 is to a person who is not, or whose controlling executive
459 management is not, of good moral character or does not meet the
460 written, reasonable, and uniformly applied standards or
461 qualifications of the licensee relating to financial
462 qualifications of the transferee and business experience of the
463 transferee or the transferee's executive management. A motor
464 vehicle dealer who desires to sell, assign, transfer, alienate,
465 or otherwise dispose of a franchise shall notify, or cause the
466 proposed transferee to notify, the licensee, in writing, setting
467 forth the prospective transferee's name, address, financial
468 qualifications, and business experience during the previous 5
469 years. A licensee who receives such notice may, within 60 days
470 following such receipt, notify the motor vehicle dealer, in
471 writing, that the proposed transferee is not a person qualified
472 to be a transferee under this section and setting forth the
473 material reasons for such rejection. Failure of the licensee to
474 notify the motor vehicle dealer within the 60-day period of such
475 rejection shall be deemed an approval of the transfer. No such



798748

476 transfer, assignment ~~assign~~, or sale shall be valid unless the
477 transferee agrees in writing to comply with all requirements of
478 the franchise then in effect, but with the ownership changed to
479 the transferee.

480 (b) A motor vehicle dealer whose proposed sale is rejected
481 may, within 60 days following such receipt of such rejection,
482 file with the department a complaint for a determination that
483 the proposed transferee has been rejected in violation of this
484 section. The licensee has the burden of proof with respect to
485 all issues raised by the ~~such~~ complaint. The department shall
486 determine, and enter an order providing, that the proposed
487 transferee is either qualified or is not and cannot be qualified
488 for specified reasons, or the order may provide the conditions
489 under which a proposed transferee would be qualified. If the
490 licensee fails to file such a response to the motor vehicle
491 dealer's complaint within 30 days after receipt of the
492 complaint, unless the parties agree in writing to an extension,
493 or if the department, after a hearing, renders a decision other
494 than one disqualifying the proposed transferee, the franchise
495 agreement between the motor vehicle dealer and the licensee is
496 ~~shall be~~ deemed amended to incorporate such transfer or amended
497 in accordance with the determination and order rendered,
498 effective upon compliance by the proposed transferee with any
499 conditions set forth in the determination or order.

500 (2) (a) Notwithstanding the terms of any franchise
501 agreement, a licensee shall not, by contract or otherwise, fail
502 or refuse to give effect to, prevent, prohibit, or penalize, or
503 attempt to refuse to give effect to, prevent, prohibit, or
504 penalize, any motor vehicle dealer or any proprietor, partner,



798748

505 stockholder, owner, or other person who holds or otherwise owns
506 an interest therein from selling, assigning, transferring,
507 alienating, or otherwise disposing of, in whole or in part, the
508 equity interest of any of them in such motor vehicle dealer to
509 any other person or persons, including a corporation established
510 or existing for the purpose of owning or holding the stock or
511 ownership interests of other entities, unless the licensee
512 proves at a hearing pursuant to a complaint filed by a motor
513 vehicle dealer under this section that the ~~such~~ sale, transfer,
514 alienation, or other disposition is to a person who is not, or
515 whose controlling executive management is not, of good moral
516 character. A motor vehicle dealer, or any proprietor, partner,
517 stockholder, owner, or other person who holds or otherwise owns
518 an interest in the motor vehicle dealer, who desires to sell,
519 assign, transfer, alienate, or otherwise dispose of any interest
520 in such motor vehicle dealer shall notify, or cause the proposed
521 transferee to so notify, the licensee, in writing, of the
522 identity and address of the proposed transferee. A licensee who
523 receives such notice may, within 60 days following such receipt,
524 notify the motor vehicle dealer in writing that the proposed
525 transferee is not a person qualified to be a transferee under
526 this section and setting forth the material reasons for such
527 rejection. Failure of the licensee to notify the motor vehicle
528 dealer within the 60-day period of such rejection shall be
529 deemed an approval of the transfer. Any person whose proposed
530 sale of stock is rejected may file within 60 days of receipt of
531 such rejection a complaint with the department alleging that the
532 rejection was in violation of the law or the franchise
533 agreement. The licensee has the burden of proof with respect to



798748

534 all issues raised by such complaint. The department shall
535 determine, and enter an order providing, that the proposed
536 transferee either is 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 a response to the motor vehicle dealer's
540 complaint within 30 days of receipt of the complaint, unless the
541 parties agree in writing to an extension, or if the department,
542 after a hearing, renders a decision on the complaint other than
543 one disqualifying the proposed transferee, the transfer shall be
544 deemed approved in accordance with the determination and order
545 rendered, effective upon compliance by the proposed transferee
546 with any conditions set forth in the determination or order.

547 (b) Notwithstanding paragraph (a), a licensee may not
548 reject a proposed transfer of a legal, equitable, or beneficial
549 interest in a motor vehicle dealer to a trust or other entity,
550 or to any beneficiary thereof, which is established by an owner
551 of any interest in a motor vehicle dealer for purposes of estate
552 planning, if the controlling person of the trust or entity, or
553 the beneficiary, is of good moral character.

554 (3) A licensee may not condition any proposed transfer
555 under this section upon a relocation of a dealer, construction
556 of any addition or modification to, or any refurbishing or
557 remodeling of any dealership structure, facility, or building of
558 the existing motor vehicle dealer, or upon any modification of
559 the existing franchise agreement, except for the change of
560 ownership.

561 (4)~~(3)~~ During the pendency of any such hearing, the
562 franchise agreement of the motor vehicle dealer shall continue



798748

563 in effect in accordance with its terms. The department shall
564 expedite any determination requested under this section.

565 (5)~~(4)~~ Notwithstanding the terms of any franchise
566 agreement, the acceptance by the licensee of the proposed
567 transferee shall not be unreasonably withheld. For the purposes
568 of this section, the refusal by the licensee to accept, in a
569 timely manner, a proposed transferee who satisfies the criteria
570 set forth in subsection (1) or subsection (2) is presumed to be
571 unreasonable.

572 (6)~~(5)~~ It shall be a violation of this section for the
573 licensee to reject or withhold approval of a proposed transfer
574 unless the licensee can prove in any court of competent
575 jurisdiction in defense of any claim brought pursuant to s.
576 320.697 that, in fact, the rejection or withholding of approval
577 of the proposed transfer was not in violation of or precluded by
578 this section and was reasonable. The determination of whether
579 such rejection or withholding was not in violation of or
580 precluded by this section and was reasonable shall be based on
581 an objective standard. Alleging the permitted statutory grounds
582 by the licensee in the written rejection of the proposed
583 transfer shall not protect the licensee from liability for
584 violating this section.

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

587 320.696 Warranty responsibility.-

588 (6) A licensee shall not recover or attempt to recover,
589 directly or indirectly, any of its costs for compensating a
590 motor vehicle dealer under this section, ~~including by decreasing~~
591 ~~or eliminating solely in this state or as it relates to any of~~



592 ~~its dealers, any bonuses or other incentive that the licensee~~
593 ~~has in effect nationally, regionally, or in a territory by any~~
594 ~~other designation; by reducing the dealer's gross margin for any~~
595 ~~of the licensee's products or services where the wholesale price~~
596 ~~charged to the dealer is determined by the licensee and the~~
597 ~~reduction is not in effect nationally or regionally; by imposing~~
598 ~~a separate charge or surcharge to the wholesale price paid by a~~
599 ~~dealer in this state for any product or service offered to or~~
600 ~~supplied by a licensee under a franchise agreement with the~~
601 ~~dealer; or by passing on to the dealer any charge or surcharge~~
602 ~~of a common entity of the licensee.~~

603 Section 5. If any provision of this act or the application
604 thereof to any person or circumstance is held invalid, the
605 invalidity does not affect other provisions or applications of
606 the act which can be given effect without the invalid provision
607 or application, and to this end the provisions of this act are
608 declared severable.

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

610
611

612 ===== T I T L E A M E N D M E N T =====

613 And the title is amended as follows:

614 Delete everything before the enacting clause
615 and insert:

616 A bill to be entitled
617 An act relating to motor vehicle dealerships; amending
618 s. 320.64, F.S.; revising provisions prohibiting
619 certain acts by a motor vehicle manufacturer, factory
620 branch, distributor, or importer licensed under



798748

621 specified provisions; revising conditions and
622 procedures for certain audits; making rebuttable a
623 presumption that a dealer had no actual knowledge and
624 should not have known that a customer intended to
625 export or resell a motor vehicle; clarifying a
626 dealer's eligibility requirements for licensee-offered
627 program bonuses, incentives, and other benefits;
628 requiring certain payments if a termination,
629 cancellation, or non-renewal of a dealer's franchise
630 is the result of cessation of manufacture or
631 distribution of a line-make or a bankruptcy or
632 reorganization; amending s. 320.642, F.S.; revising
633 provisions for establishing an additional motor
634 vehicle dealership in or relocating an existing dealer
635 to a location within a community or territory where
636 the same line-make vehicle is presently represented by
637 a franchised motor vehicle dealer or dealers; revising
638 requirements for protests; revising provisions for
639 denial of an application for a motor vehicle dealer
640 license in any community or territory; revising
641 provisions for evidence to be considered by the
642 Department of Highway Safety and Motor Vehicles when
643 evaluating the application; revising provisions under
644 which a dealer has standing to protest a proposed
645 additional or relocated motor vehicle dealer; amending
646 s. 320.643, F.S.; revising provisions for a transfer,
647 assignment, or sale of franchise agreements;
648 prohibiting rejection of proposed transfer of interest
649 in a motor vehicle dealer entity to a trust or other



798748

650 entity, or a beneficiary thereof, which is established
651 for estate-planning purposes; prohibiting placing
652 certain conditions on such transfer; revising
653 provisions for a hearing by the department or a court
654 relating to a proposed transfer; amending s. 320.696,
655 F.S.; revising warranty responsibility provisions;
656 providing for severability; providing an effective
657 date.