

By Senator Haridopolos

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1                                   A bill to be entitled  
2           An act relating to motor vehicle dealerships; amending  
3           s. 320.642, F.S.; revising provisions for establishing  
4           an additional motor vehicle dealership in or  
5           relocating an existing dealer to a location within a  
6           community or territory where the same line-make  
7           vehicle is presently represented by a franchised motor  
8           vehicle dealer or dealers; revising notice  
9           requirements; revising provisions for denial of an  
10          application for a motor vehicle dealer license in any  
11          community or territory; revising provisions for  
12          evidence to be considered by the Department of Highway  
13          Safety and Motor Vehicles when evaluating the  
14          application; revising provisions under which a dealer  
15          has standing to protest a proposed additional or  
16          relocated motor vehicle dealer; revising time period  
17          within which the opening or reopening of the same or a  
18          successor dealer is not considered an additional motor  
19          vehicle dealer subject to protest; revising provisions  
20          for a proposed addition or relocation concerning a  
21          dealership that performs only service; amending s.  
22          320.643, F.S.; revising provisions for transfer,  
23          assignment, or sale of franchise agreements;  
24          prohibiting rejection of proposed transfer of interest  
25          in a motor vehicle dealer entity to a trust or other  
26          entity, or a beneficiary thereof, that is established  
27          for estate planning purposes; prohibiting placing  
28          certain conditions on such transfer; revising  
29          provisions for a hearing by the department or a court

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30 relating to a proposed transfer; providing for  
31 severability; providing an effective date.  
32

33 Be It Enacted by the Legislature of the State of Florida:  
34

35 Section 1. Section 320.642, Florida Statutes, is amended to  
36 read:

37 320.642 Dealer licenses in areas previously served;  
38 procedure.—

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

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

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

50 (c) The identity of all motor vehicle dealers who are  
51 franchised to sell the same line-make vehicle with licensed  
52 locations in the county and ~~or~~ any contiguous county to the  
53 county where the additional or relocated motor vehicle dealer is  
54 proposed to be located.

55 (d) The names and addresses of the dealer-operator and  
56 principal investors in the proposed additional or relocated  
57 motor vehicle dealership.  
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59 Immediately upon receipt of such notice the department shall  
60 cause a notice to be published in the Florida Administrative  
61 Weekly. The published notice shall state that a petition or  
62 complaint by any dealer with standing to protest pursuant to  
63 subsection (3) must be filed not more than 45 ~~30~~ days after ~~from~~  
64 the date of publication of the notice in the Florida  
65 Administrative Weekly. The published notice shall describe and  
66 identify the proposed dealership sought to be licensed, and the  
67 department shall cause a copy of the notice to be mailed to  
68 those dealers identified in the licensee's notice under  
69 paragraph (c).

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

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

75 2. The licensee fails to show that the existing franchised  
76 dealer or dealers who register new motor vehicle retail sales or  
77 retail leases of the same line-make in the community or  
78 territory of the proposed dealership are not providing adequate  
79 representation, adequate competition, and convenient customer  
80 service of such line-make motor vehicles in a manner beneficial  
81 to the public interest in such community or territory. The  
82 ultimate burden of proof in establishing inadequate  
83 representation, inadequate competition, and inconvenient  
84 customer service shall be on the licensee. Any geographic  
85 comparison area used to evaluate the performance of the line-  
86 make or of the existing motor vehicle dealer or dealers within  
87 the community or territory must be reasonably similar in

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88 demographic traits to the community or territory of the proposed  
89 site, including such factors as age, income, education, vehicle  
90 size, class, or model preference, and product popularity, and  
91 the comparison area must not be smaller than an entire county or  
92 counties in which each of the protesting dealers are located.  
93 Reasonably expected market sales or service penetration must be  
94 measured with respect to the community or territory as a whole  
95 and not with respect to any part thereof or any identifiable  
96 plot therein.

97 (b) In determining whether the existing franchised motor  
98 vehicle dealer or dealers are providing adequate representation,  
99 adequate competition, and convenient customer service in the  
100 community or territory for the line-make, the department may  
101 consider evidence of any factor deemed material by the finder of  
102 fact in the unique circumstances which may include, but is not  
103 limited to:

104 1. The market share and return on investment impact of the  
105 establishment of the proposed or relocated dealer on the  
106 consumers, public interest, existing dealers, and the licensee;  
107 ~~provided,~~ however, that financial impact other than return on  
108 investment may only be considered with respect to the protesting  
109 dealer or dealers.

110 2. The size and permanency of investment reasonably made  
111 and reasonable obligations incurred by the existing dealer or  
112 dealers to perform their obligations under the dealer agreement,  
113 including requirements made by the licensee up to 5 years prior  
114 to the date of the publication of the notice.

115 3. The reasonably expected market penetration of the line-  
116 make motor vehicle for the community or territory involved,

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117 after consideration of all factors which may affect said  
118 penetration, including, but not limited to, demographic factors  
119 such as age, income, education, vehicle size, class, or model  
120 preference, line-make, product popularity, retail lease  
121 transactions, reasonably foreseeable economic projections,  
122 financial expectations, availability of reasonable terms and  
123 reasonable amounts of credit to prospective customers, or other  
124 factors affecting sales to consumers of the community or  
125 territory.

126 4. Any actions by the licensee ~~licensees~~ in denying its  
127 existing dealer or dealers of the same line-make the opportunity  
128 for reasonable growth, market expansion, or relocation,  
129 including the availability of line-make vehicles by model, in  
130 keeping with the reasonable expectations of the licensee in  
131 providing an adequate number of dealers in the community or  
132 territory, and the licensee making credit available to the  
133 existing dealers in reasonable amounts and on reasonable terms.

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

137 6. Distance, travel time, traffic patterns, and  
138 accessibility, between the existing dealer or dealers of the  
139 same line-make and the location of the proposed additional or  
140 relocated dealer, for prospective customers.

141 7. Whether there will likely be a material positive impact  
142 and a material benefit ~~benefits~~ to consumers ~~will likely occur~~  
143 from the establishment or relocation of the proposed dealership  
144 which will not ~~cannot~~ be obtained by other geographic or  
145 demographic changes or expected changes in the community or

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146 territory, by a material increase in advertising by the  
147 licensee, or by awarding to the protesting dealer or dealers an  
148 agreement to operate an additional sales-only dealership in the  
149 community or territory.

150 8. Whether the protesting dealer or dealers are in  
151 substantial compliance with their dealer agreement.

152 9. Whether there is adequate interbrand and intrabrand  
153 competition with respect to said line-make in the community or  
154 territory and adequately convenient consumer care for the motor  
155 vehicles of the line-make, including the adequacy of sales and  
156 service facilities.

157 10. Whether the establishment or relocation of the proposed  
158 dealership ~~is appears to be~~ warranted and justified based on  
159 economic and marketing conditions pertinent to dealers competing  
160 in the community or territory, including anticipated future  
161 changes.

162 11. The volume of registrations and service business  
163 transacted by the existing dealer or dealers of the same line-  
164 make in the relevant community or territory of the proposed  
165 dealership.

166 12. The past and reasonably foreseeable expected growth or  
167 decline in population, density of population, and new motor  
168 vehicle registrations in the community or territory of the  
169 proposed dealership for competing motor vehicles, and whether  
170 existing same line-make dealers will be unable to adjust their  
171 dealership operations to adequately deal with such changes.

172 13. Whether the licensee has offered the protesting dealer  
173 or dealers the opportunity to own and operate the proposed new  
174 motor vehicle dealership in the community or territory.

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175       14. Whether the economic conditions reasonably forecasted  
176 by the licensee for the foreseeable future will enable all  
177 existing dealers and the proposed new or relocated dealership  
178 the opportunity for a reasonable return on their investment,  
179 including supplying an adequate number of every model of the  
180 licensee's new motor vehicles to them.

181       (3) An existing franchised motor vehicle dealer or dealers  
182 shall have standing to protest a proposed additional or  
183 relocated motor vehicle dealer where the existing motor vehicle  
184 dealer or dealers have a franchise agreement for the same line-  
185 make vehicle to be sold or serviced by the proposed additional  
186 or relocated motor vehicle dealer and are physically located so  
187 as to meet or satisfy any of the following requirements or  
188 conditions:

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

194       1. The proposed additional or relocated motor vehicle  
195 dealer is to be located in the area designated or described as  
196 the area of responsibility, or such similarly designated area,  
197 including the entire area designated as a multiple-point area,  
198 in the franchise agreement or in any related document or  
199 commitment with the existing motor vehicle dealer or dealers of  
200 the same line-make as such agreement existed on or after July 1,  
201 2009 ~~upon October 1, 1988;~~

202       2. The existing motor vehicle dealer or dealers of the same  
203 line-make have a licensed franchise location within a radius of

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204 30 ~~20~~ miles of the location of the proposed additional or  
205 relocated motor vehicle dealer; or

206 3. Any existing motor vehicle dealer or dealers of the same  
207 line-make can establish that during any 12-month period of the  
208 36-month period preceding the filing of the licensee's  
209 application for the proposed dealership, such dealer or its  
210 predecessor made 10 ~~25~~ percent of its retail sales of new motor  
211 vehicles to persons whose registered household addresses were  
212 located within a radius of 35 ~~20~~ miles of the location of the  
213 proposed additional or relocated motor vehicle dealer; provided  
214 such existing dealer is located in the same county or any county  
215 contiguous to the county where the additional or relocated  
216 dealer is proposed to be located.

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

222 1. Any existing motor vehicle dealer or dealers of the same  
223 line-make have a licensed franchise location within a radius of  
224 20 ~~12.5~~ miles of the location of the proposed additional or  
225 relocated motor vehicle dealer; or

226 2. Any existing motor vehicle dealer or dealers of the same  
227 line-make can establish that during any 12-month period of the  
228 36-month period preceding the filing of the licensee's  
229 application for the proposed dealership, such dealer or its  
230 predecessor made 10 ~~25~~ percent of its retail sales of new motor  
231 vehicles to persons whose registered household addresses were  
232 located within a radius of 20 ~~12.5~~ miles of the location of the



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233 proposed additional or relocated motor vehicle dealer; provided  
234 such existing dealer is located in the same county or any county  
235 contiguous to the county where the additional or relocated  
236 dealer is proposed to be located.

237 (4) The department's decision to deny issuance of a license  
238 under this section shall remain in effect for a period of 12  
239 months. The department shall not issue a license for the  
240 proposed additional or relocated motor vehicle dealer until a  
241 final decision by the department is rendered determining that  
242 the application for the motor vehicle dealer's license should be  
243 granted.

244 (5) (a) The opening or reopening of the same or a successor  
245 motor vehicle dealer within 24 ~~12~~ months is not considered an  
246 additional motor vehicle dealer subject to protest within the  
247 meaning of this section, if:

248 1. The opening or reopening is within the same or an  
249 adjacent county and is within 2 miles of the former motor  
250 vehicle dealer location;

251 2. There is no dealer within 25 miles of the proposed  
252 location or the proposed location is further from each existing  
253 dealer of the same line-make than the prior location is from  
254 each dealer of the same line-make within 25 miles of the new  
255 location;

256 3. The opening or reopening is within 6 miles of the prior  
257 location and, if any existing motor vehicle dealer of the same  
258 line-make is located within 15 miles of the former location, the  
259 proposed location is no closer to any existing dealer of the  
260 same line-make within 15 miles of the proposed location; or

261 4. The opening or reopening is within 6 miles of the prior

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262 location and, if all existing motor vehicle dealers of the same  
263 line-make are beyond 15 miles of the former location, the  
264 proposed location is further than 15 miles from any existing  
265 motor vehicle dealer of the same line-make.

266 (b) Any other such opening or reopening shall constitute an  
267 additional motor vehicle dealer within the meaning of this  
268 section.

269 (c) If a motor vehicle dealer has been opened or reopened  
270 pursuant to this subsection, the licensee may not propose a  
271 motor vehicle dealer of the same line-make to be located within  
272 4 miles of the previous location of such dealer for 2 years  
273 after the date the relocated dealership opens.

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

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

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

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

289 2. There is no existing dealer of the same line-make closer  
290 than the applicant to the proposed location of the additional or

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291 relocated service-only dealership; and

292 3. The proposed location of the additional or relocated  
293 service-only dealership is at least 15 7 miles from all existing  
294 motor vehicle dealerships of the same line-make, other than  
295 motor vehicle dealerships owned by the applicant.

296 (c) In determining whether existing franchised motor  
297 vehicle dealers are providing adequate representation, adequate  
298 competition, and convenient customer service ~~representations~~ in  
299 the community or territory for the line-make in question in a  
300 protest of the proposed addition or relocation of a service-only  
301 dealership, the department may consider the elements set forth  
302 in paragraph (2) (b), provided:

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

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

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

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

310 (d) If an application for a service-only dealership is  
311 granted, the department shall issue a license which permits only  
312 service, as defined in s. 320.60(16), and does not permit the  
313 selling or leasing of new motor vehicles, as defined in s.  
314 320.60(15). If a service-only dealership subsequently seeks to  
315 sell new motor vehicles at its location, the notice and protest  
316 provisions of this section shall apply.

317 (7) Measurements of the distance between proposed or  
318 existing dealer locations required by this section shall be  
319 taken from the geometric centroid of the property that

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320 encompasses all of the existing or proposed motor vehicle dealer  
321 operations.

322 (8) The department shall not be obligated to determine the  
323 accuracy of any distance asserted by any party in a notice  
324 submitted to it. Any dispute concerning a distance measurement  
325 asserted by a party shall be resolved by a hearing conducted in  
326 accordance with ss. 120.569 and 120.57.

327 Section 2. Section 320.643, Florida Statutes, is amended to  
328 read:

329 320.643 Transfer, assignment, or sale of franchise  
330 agreements.—

331 (1) (a) Notwithstanding the terms of any franchise  
332 agreement, a licensee shall not, by contract or otherwise, fail  
333 or refuse to give effect to, prevent, prohibit, or penalize or  
334 attempt to refuse to give effect to, prohibit, or penalize any  
335 motor vehicle dealer from selling, assigning, transferring,  
336 alienating, or otherwise disposing of its franchise agreement to  
337 any other person or persons, including a corporation established  
338 or existing for the purpose of owning or holding a franchise  
339 agreement, unless the licensee proves at a hearing pursuant to a  
340 complaint filed by a motor vehicle dealer under this section  
341 that such sale, transfer, alienation, or other disposition is to  
342 a person who is not, or whose controlling executive management  
343 is not, of good moral character or does not meet the written,  
344 reasonable, and uniformly applied standards or qualifications of  
345 the licensee relating to financial qualifications of the  
346 transferee and business experience of the transferee or the  
347 transferee's executive management. A motor vehicle dealer who  
348 desires to sell, assign, transfer, alienate, or otherwise

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349 dispose of a franchise shall notify, or cause the proposed  
350 transferee to notify, the licensee, in writing, setting forth  
351 the prospective transferee's name, address, financial  
352 qualifications, and business experience during the previous 5  
353 years. A licensee who receives such notice may, within 60 days  
354 following such receipt, notify the motor vehicle dealer, in  
355 writing, that the proposed transferee is not a person qualified  
356 to be a transferee under this section and setting forth the  
357 material reasons for such rejection. Failure of the licensee to  
358 notify the motor vehicle dealer within the 60-day period of such  
359 rejection shall be deemed an approval of the transfer. No such  
360 transfer, assign, or sale shall be valid unless the transferee  
361 agrees in writing to comply with all requirements of the  
362 franchise then in effect.

363 (b) A motor vehicle dealer whose proposed sale is rejected  
364 may, within 60 days following such receipt of such rejection,  
365 file with the department a complaint for a determination that  
366 the proposed transferee has been rejected in violation of this  
367 section. The licensee has the burden of proof with respect to  
368 all issues raised by such complaint. The department shall  
369 determine, and enter an order providing, that the proposed  
370 transferee is either qualified or is not and cannot be qualified  
371 for specified reasons, or the order may provide the conditions  
372 under which a proposed transferee would be qualified. If the  
373 licensee fails to file such a response to the motor vehicle  
374 dealer's complaint within 30 days after receipt of the  
375 complaint, unless the parties agree in writing to an extension,  
376 or if the department, after a hearing, renders a decision other  
377 than one disqualifying the proposed transferee, the franchise

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378 agreement between the motor vehicle dealer and the licensee  
379 shall be deemed amended to incorporate such transfer or amended  
380 in accordance with the determination and order rendered,  
381 effective upon compliance by the proposed transferee with any  
382 conditions set forth in the determination or order.

383       (2) (a) Notwithstanding the terms of any franchise  
384 agreement, a licensee shall not, by contract or otherwise, fail  
385 or refuse to give effect to, prevent, prohibit, or penalize, or  
386 attempt to refuse to give effect to, prevent, prohibit, or  
387 penalize, any motor vehicle dealer or any proprietor, partner,  
388 stockholder, owner, or other person who holds or otherwise owns  
389 an interest therein from selling, assigning, transferring,  
390 alienating, or otherwise disposing of, in whole or in part, the  
391 equity interest of any of them in such motor vehicle dealer to  
392 any other person or persons, including a corporation established  
393 or existing for the purpose of owning or holding the stock or  
394 ownership interests of other entities, unless the licensee  
395 proves at a hearing pursuant to a complaint filed by a motor  
396 vehicle dealer under this section that such sale, transfer,  
397 alienation, or other disposition is to a person who is not, or  
398 whose controlling executive management is not, of good moral  
399 character. A motor vehicle dealer, or any proprietor, partner,  
400 stockholder, owner, or other person who holds or otherwise owns  
401 an interest in the motor vehicle dealer, who desires to sell,  
402 assign, transfer, alienate, or otherwise dispose of any interest  
403 in such motor vehicle dealer shall notify, or cause the proposed  
404 transferee to so notify, the licensee, in writing, of the  
405 identity and address of the proposed transferee. A licensee who  
406 receives such notice may, within 60 days following such receipt,

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407 notify the motor vehicle dealer in writing that the proposed  
408 transferee is not a person qualified to be a transferee under  
409 this section and setting forth the material reasons for such  
410 rejection. Failure of the licensee to notify the motor vehicle  
411 dealer within the 60-day period of such rejection shall be  
412 deemed an approval of the transfer. Any person whose proposed  
413 sale of stock is rejected may file within 60 days of receipt of  
414 such rejection a complaint with the department alleging that the  
415 rejection was in violation of the law or the franchise  
416 agreement. The licensee has the burden of proof with respect to  
417 all issues raised by such complaint. The department shall  
418 determine, and enter an order providing, that the proposed  
419 transferee either is qualified or is not and cannot be qualified  
420 for specified reasons; or the order may provide the conditions  
421 under which a proposed transferee would be qualified. If the  
422 licensee fails to file a response to the motor vehicle dealer's  
423 complaint within 30 days of receipt of the complaint, unless the  
424 parties agree in writing to an extension, or if the department,  
425 after a hearing, renders a decision on the complaint other than  
426 one disqualifying the proposed transferee, the transfer shall be  
427 deemed approved in accordance with the determination and order  
428 rendered, effective upon compliance by the proposed transferee  
429 with any conditions set forth in the determination or order.

430 (b) Notwithstanding paragraph (a), a licensee, the  
431 department, or any court shall not reject a proposed transfer of  
432 a legal, equitable, or beneficial interest in a motor vehicle  
433 dealer entity to a trust or other entity, or to any beneficiary  
434 thereof, that is established by an owner of any interest in a  
435 motor vehicle dealer for estate planning purposes; nor shall a

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436 licensee, the department, or any court condition any proposed  
437 transfer under this section upon a relocation of, construction  
438 of any addition or modification to, or any refurbishing or  
439 remodeling of any dealership structure, facility, or building of  
440 the existing motor vehicle dealer, or upon any modification of  
441 the existing franchise agreement.

442 (3) During the pendency of any such department or court  
443 hearing, the franchise agreement of the motor vehicle dealer  
444 shall continue in effect in accordance with its terms. The  
445 department or any court shall use reasonable efforts to expedite  
446 any determination requested under this section.

447 (4) Notwithstanding the terms of any franchise agreement,  
448 the acceptance by the licensee of the proposed transferee shall  
449 not be unreasonably withheld, delayed, or conditioned. For the  
450 purposes of this section, the refusal by the licensee to accept,  
451 in a timely manner, a proposed transferee who satisfies the  
452 criteria set forth in subsection (1) or subsection (2) is  
453 presumed to be unreasonable.

454 (5) It shall be a violation of this section for the  
455 licensee to reject, ~~or~~ withhold, delay, or condition approval of  
456 a proposed transfer unless the licensee can prove in any court  
457 of competent jurisdiction in defense of any claim brought  
458 pursuant to s. 320.697 that, in fact, the rejection or  
459 withholding of approval of the proposed transfer was not in  
460 violation of or precluded by this section and was reasonable.  
461 The determination of whether such rejection or withholding was  
462 reasonable shall be based on a preponderance of the evidence  
463 presented during the proceeding on an objective standard.  
464 Alleging the permitted statutory grounds by the licensee in the



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465 written rejection of the proposed transfer shall not constitute  
466 a defense of the licensee, or protect the licensee from  
467 liability for violating this section.

468 Section 3. If any provision of this act or the application  
469 thereof to any person or circumstance is held invalid, the  
470 invalidity shall not affect other provisions or applications of  
471 the act which can be given effect without the invalid provision  
472 or application, and to this end the provisions of this act are  
473 declared severable.

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