

By the Committees on Commerce; and Transportation; and Senator Haridopolos

577-04413-09

20092630c2

1 A bill to be entitled
2 An act relating to motor vehicle dealerships; amending
3 s. 320.64, F.S.; revising provisions prohibiting
4 certain acts by a motor vehicle manufacturer, factory
5 branch, distributor, or importer licensed under
6 specified provisions; revising conditions and
7 procedures for certain audits; removing a presumption
8 that a dealer had no actual knowledge that a customer
9 intended to export or resell a motor vehicle;
10 clarifying a dealer's eligibility requirements for
11 licensee-offered program bonuses, incentives, and
12 other benefits; requiring certain payments if a
13 termination, cancellation, or nonrenewal of a dealer's
14 franchise is the result of bankruptcy or
15 reorganization; amending s. 320.642, F.S.; revising
16 provisions for establishing an additional motor
17 vehicle dealership in or relocating an existing dealer
18 to a location within a community or territory where
19 the same line-make vehicle is presently represented by
20 a franchised motor vehicle dealer or dealers; revising
21 notice requirements; revising provisions for denial of
22 an application for a motor vehicle dealer license in
23 any community or territory; revising provisions for
24 evidence to be considered by the Department of Highway
25 Safety and Motor Vehicles when evaluating the
26 application; revising provisions under which a dealer
27 has standing to protest a proposed additional or
28 relocated motor vehicle dealer; revising provisions
29 for a proposed addition or relocation concerning a

577-04413-09

20092630c2

30 dealership that performs only service; amending s.
31 320.643, F.S.; revising provisions for a transfer,
32 assignment, or sale of franchise agreements;
33 prohibiting rejection of proposed transfer of interest
34 in a motor vehicle dealer entity to a trust or other
35 entity, or a beneficiary thereof, which is established
36 for estate-planning purposes; prohibiting placing
37 certain conditions on such transfer; revising
38 provisions for a hearing by the department or a court
39 relating to a proposed transfer; amending s. 320.696,
40 F.S.; eliminating one of the methods for determining
41 warranty labor and parts reimbursement and more
42 particularly describing exceptions to such
43 calculations; providing for severability; providing an
44 effective date.

45
46 Be It Enacted by the Legislature of the State of Florida:

47
48 Section 1. Subsection (5), paragraphs (a), (b), (c), (d),
49 and (f) of subsection (10), and subsections (25), (26), and (36)
50 of section 320.64, Florida Statutes, are amended, and paragraph
51 (h) is added to subsection (10) of that section, to read:

52 320.64 Denial, suspension, or revocation of license;
53 grounds.—A license of a licensee under s. 320.61 may be denied,
54 suspended, or revoked within the entire state or at any specific
55 location or locations within the state at which the applicant or
56 licensee engages or proposes to engage in business, upon proof
57 that the section was violated with sufficient frequency to
58 establish a pattern of wrongdoing, and a licensee or applicant

577-04413-09

20092630c2

59 shall be liable for claims and remedies provided in ss. 320.695
60 and 320.697 for any violation of any of the following
61 provisions. A licensee is prohibited from committing the
62 following acts:

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

71 (10) (a) The applicant or licensee has attempted to enter,
72 or has entered, into a franchise agreement with a motor vehicle
73 dealer who does not, at the time of the franchise agreement,
74 have proper facilities to provide the services to his or her
75 purchasers of new motor vehicles which are covered by the new
76 motor vehicle warranty issued by the applicant or licensee.
77 Notwithstanding any provision of a franchise, a licensee may not
78 require a motor vehicle dealer, by franchise agreement, program,
79 policy, standard, or otherwise, to relocate, to make substantial
80 changes, alterations, or remodeling to, or to replace a motor
81 vehicle dealer's sales or service facilities unless the licensee
82 can demonstrate that the licensee's requirements are reasonable
83 and justifiable in light of the current and reasonably
84 foreseeable projections of economic conditions, financial
85 expectations, and the motor vehicle dealer's market for the
86 licensee's motor vehicles.

87 (b) A licensee may, however, provide to a motor vehicle

577-04413-09

20092630c2

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

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

577-04413-09

20092630c2

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

121 (d) Except for a program, bonus, incentive, or other
122 benefit offered by a licensee to its dealers in a market area
123 where the licensee's unrealized sales potential or other market
124 conditions, compared to its competitors' sales of motor
125 vehicles, justifies the licensee's offers, a licensee may not
126 refuse to offer a program, bonus, incentive, or other benefit,
127 ~~in whole or in part,~~ to a dealer in this state which it offers
128 generally to its other same line-make dealers nationally or in
129 the licensee's zone or region in which this state is included.
130 Neither may a licensee ~~it~~ discriminate against a dealer in this
131 state with respect to any program, bonus, incentive, or other
132 benefit. For purposes of this chapter, a licensee may not
133 establish this state alone as a zone, region, or territory by
134 any other designation.

135 (f) A licensee may offer any program for a bonus,
136 incentive, or other benefit to its motor vehicle dealers in this
137 state which contains rules, criteria, or eligibility
138 requirements relating to a motor vehicle dealer's facilities and
139 nonfacility-related eligibility provisions. However, if any
140 portion of a licensee-offered program for a bonus, incentive, or
141 other benefit contains any qualifying rule, criteria, or
142 eligibility requirement that relates to a motor vehicle dealer's
143 ~~that, in whole or in part, is based upon or aimed at inducing a~~
144 ~~dealer's~~ relocation, expansion, improvement, remodeling,
145 renovation, or alteration of the dealer's sales or service

577-04413-09

20092630c2

146 facility, or both, each of the licensee's motor vehicle dealers
147 in this state, upon complying with all such qualifying
148 provisions, is entitled to obtain the entire bonus, incentive,
149 or other benefit offered. A motor vehicle dealer who does not
150 comply with the facility-related rules, criteria, or eligibility
151 requirements, but complies with the other program's rules,
152 criteria, or eligibility requirements, is entitled to receive a
153 reasonable licensee-predetermined percentage of the bonus,
154 incentive, or other benefit under the program which is unrelated
155 to the motor vehicle dealer's facilities. The licensee's
156 predetermined percentage unrelated to facilities is presumed
157 "reasonable" if it is not less than 75 percent of the total
158 bonus, incentive, or other benefit offered under ~~is void as to~~
159 ~~each of the licensee's motor vehicle dealers in this state who,~~
160 ~~nevertheless, shall be eligible for the entire amount of the~~
161 ~~bonuses, incentives, or benefits offered in the program upon~~
162 ~~compliance with the other eligibility provisions in the program.~~

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

166 (25) The applicant or licensee has undertaken an audit of
167 warranty, maintenance, and other service-related payments or
168 incentive payments, including payments to a motor vehicle dealer
169 under any licensee-issued program, policy, or other benefit,
170 which previously have been paid to a motor vehicle dealer in
171 violation of this section, or has failed to comply with any of
172 its obligations under s. 320.696. An applicant or licensee may
173 reasonably and periodically audit a motor vehicle dealer to
174 determine the validity of paid claims as provided in s. 320.696.

577-04413-09

20092630c2

175 Audits ~~Audit~~ of warranty, maintenance, and other service-related
176 payments shall ~~only~~ be performed by an applicant or licensee
177 only during ~~for~~ the 1-year period immediately following the date
178 the claim was paid. Audits ~~Audit~~ of incentive payments shall
179 ~~only~~ be performed by an applicant or licensee only during ~~for~~ an
180 18-month period immediately following the date the incentive was
181 paid. After those time periods have elapsed, all warranty,
182 maintenance, and other service-related payments and incentive
183 payments shall be deemed final and incontrovertible for any
184 reason recognized under any applicable law and the motor vehicle
185 dealer is not subject to any charge-back or repayment. An
186 applicant or licensee may deny a claim or, as a result of a
187 timely conducted audit, impose a charge-back against a motor
188 vehicle dealer for warranty, maintenance, or other service-
189 related payments or incentive payments only if ~~An applicant or~~
190 ~~licensee shall not deny a claim or charge a motor vehicle dealer~~
191 ~~back subsequent to the payment of the claim unless the applicant~~
192 ~~or licensee can show that the~~ warranty, maintenance, or other
193 service-related claim or incentive claim was false or fraudulent
194 or that the motor vehicle dealer failed to substantially comply
195 with the reasonable written and uniformly applied procedures of
196 the applicant or licensee for such repairs or incentives. An
197 applicant or licensee may not charge a motor vehicle dealer back
198 subsequent to the payment of a warranty, maintenance, or
199 service-related claim or incentive claim unless, within 30 days
200 after a timely conducted audit, a representative of the
201 applicant or licensee first meets in person, by telephone, or by
202 video teleconference with an officer or employee of the dealer
203 designated by the motor vehicle dealer. At such meeting the

577-04413-09

20092630c2

204 applicant or licensee must provide a detailed explanation, with
205 supporting documentation, as to the basis for each of the claims
206 for which the applicant or licensee proposed a charge-back to
207 the dealer and a written statement containing the basis upon
208 which the motor vehicle dealer was selected for audit or review.
209 Thereafter, the applicant or licensee must provide the motor
210 vehicle dealer's representative a reasonable period after the
211 meeting within which to respond to the proposed charge-backs,
212 with such period to be commensurate with the volume of claims
213 under consideration, but in no case less than 45 days after the
214 meeting. The applicant or licensee is prohibited from changing
215 or altering the basis for each of the proposed charge-backs as
216 presented to the motor vehicle dealer's representative following
217 the conclusion of the audit unless the applicant or licensee
218 receives new information affecting the basis for one or more
219 charge-backs and that new information is received within 60 days
220 after the conclusion of the timely conducted audit. If the
221 applicant or licensee claims the existence of new information,
222 the dealer must be given the same right to a meeting within 30
223 days after the applicant's or licensee's receipt of the new
224 information and right to respond as when the charge-back was
225 originally presented.

226 (26) Notwithstanding the terms of any franchise agreement,
227 including any licensee's program, policy, or procedure, the
228 applicant or licensee has refused to allocate, sell, or deliver
229 motor vehicles; charged back or withheld payments or other
230 things of value for which the dealer is otherwise eligible under
231 a sales promotion, program, or contest; prevented a motor
232 vehicle dealer from participating in any promotion, program, or

577-04413-09

20092630c2

233 contest; or has taken or threatened to take any adverse action
234 against a dealer, including charge-backs, reducing vehicle
235 allocations, or terminating or threatening to terminate a
236 franchise because the dealer sold or leased a motor vehicle to a
237 customer who exported the vehicle to a foreign country or who
238 resold the vehicle, unless the licensee proves that the dealer
239 had actual knowledge that the customer intended to export or
240 resell the motor vehicle. ~~There is a conclusive presumption that~~
241 ~~the dealer had no actual knowledge if the vehicle is titled or~~
242 ~~registered in any state in this country.~~

243 (36) (a) Notwithstanding the terms of any franchise
244 agreement, in addition to any other statutory or contractual
245 rights of recovery after the voluntary or involuntary
246 termination of a franchise, failing to pay the motor vehicle
247 dealer, within 90 days after the effective date of the
248 termination, cancellation, or nonrenewal, the following amounts:

249 1. The net cost paid by the dealer for each new car or
250 truck in the dealer's inventory with mileage of 2,000 miles or
251 less, or a motorcycle with mileage of 100 miles or less,
252 exclusive of mileage placed on the vehicle before it was
253 delivered to the dealer.

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

256 a. Is in the current parts catalogue and is still in the
257 original, resalable merchandising package and in an unbroken
258 lot, except that sheet metal may be in a comparable substitute
259 for the original package; and

260 b. Was purchased by the dealer directly from the
261 manufacturer or distributor or from an outgoing authorized

577-04413-09

20092630c2

262 dealer as a part of the dealer's initial inventory.

263 3. The fair market value of each undamaged sign owned by
264 the dealer which bears a trademark or trade name used or claimed
265 by the applicant or licensee or its representative which was
266 purchased from or at the request of the applicant or licensee or
267 its representative.

268 4. The fair market value of all special tools, data
269 processing equipment, and automotive service equipment owned by
270 the dealer which:

271 a. Were recommended in writing by the applicant or licensee
272 or its representative and designated as special tools and
273 equipment;

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

276 c. Are in usable and good condition except for reasonable
277 wear and tear.

278 5. The cost of transporting, handling, packing, storing,
279 and loading any property subject to repurchase under this
280 section.

281 6. If the termination, cancellation, or nonrenewal of the
282 dealer's franchise is the result of the bankruptcy or
283 reorganization of a licensee or its common entity, or the
284 termination, elimination, or cessation of the line-make, in
285 addition to the above payments to the dealer, the licensee, or
286 if it is unable to do so, its common entity, is liable to the
287 motor vehicle dealer for the following:

288 a. An amount at least equal to the fair market value of the
289 franchise for the line-make, which shall be the greater of the
290 value determined as of the day the licensee announces the action

577-04413-09

20092630c2

291 that results in the termination, cancellation, or nonrenewal,
292 and the value determined on the day that is 12 months before
293 that date. In determining the fair market value of a franchise
294 for a line-make, if the line-make is not the only line-make for
295 which the dealer holds a franchise in its dealership facilities,
296 the dealer is also entitled to compensation for the contribution
297 of the line-make to payment of the rent or to covering the
298 dealer's obligation for the fair rental value of the dealership
299 facilities for the period described in sub-subparagraph b. Fair
300 market value of the franchise for the line-make includes only
301 the goodwill value of the dealer's franchise for that line-make
302 in the dealer's community or territory.

303 b. If the line-make is the only line-make for which the
304 dealer holds a franchise in the dealership facilities, the
305 licensee, or its common entity if the licensee is unable to pay,
306 also shall pay to the dealer with respect to the dealership
307 facilities leased or owned by the dealership or its principal
308 owner a sum equal to the rent for the unexpired term of the
309 lease or 3 years' rent, whichever is less, or, if the dealer or
310 its principal owner owns the dealership facilities, a sum equal
311 to the reasonable fair rental value of the dealership facilities
312 for a period of 3 years as if the franchise were still in
313 existence at the facilities, if the motor vehicle dealer uses
314 reasonable commercial efforts to mitigate this liability by
315 attempting, in good faith, to lease or sell the facilities
316 within a reasonable time on terms that are consistent with local
317 zoning requirements to preserve the facilities' right to sell
318 and service motor vehicles.

319 (b) This subsection does not apply to a termination,

577-04413-09

20092630c2

320 cancellation, or nonrenewal that is implemented as a result of
321 the sale of the assets or corporate stock or other ownership
322 interests of the dealer. The dealer shall return the property
323 listed in this subsection to the licensee at the dealer's place
324 of business on a date selected by the dealer in the absence of
325 an agreement with the licensee which is within 90 days after the
326 effective date of the termination, cancellation, or nonrenewal.
327 The licensee shall supply the dealer with reasonable
328 instructions regarding the packing for transport method by which
329 the dealer must return the property. The compensation for the
330 property shall be paid by the licensee to the motor vehicle
331 dealer upon and simultaneously with ~~within 60 days after the~~
332 ~~tender of inventory and other items,~~ provided that ~~if~~ the dealer
333 does not have ~~has~~ clear title to the inventory and other items
334 and is not in a position to convey that title to the licensee
335 ~~manufacturer or distributor~~. ~~If the inventory or other items are~~
336 ~~subject to a security interest,~~ The licensee shall ~~may~~ make
337 payment jointly to the dealer and the holder of any ~~the~~ security
338 interest.

339
340 A motor vehicle dealer who can demonstrate that a violation of,
341 or failure to comply with, any of the preceding provisions by an
342 applicant or licensee will or can adversely and pecuniarily
343 affect the complaining dealer, shall be entitled to pursue all
344 of the remedies, procedures, and rights of recovery available
345 under ss. 320.695 and 320.697.

346 Section 2. Subsections (1), (2), (3), and (6) of section
347 320.642, Florida Statutes, are amended to read:

348 320.642 Dealer licenses in areas previously served;

577-04413-09

20092630c2

349 procedure.—

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

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

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

361 (c) The identity of all motor vehicle dealers who are
362 franchised to sell the same line-make vehicle with licensed
363 locations in the county and ~~or~~ any contiguous county to the
364 county where the additional or relocated motor vehicle dealer is
365 proposed to be located.

366 (d) The names and addresses of the dealer-operator and
367 principal investors in the proposed additional or relocated
368 motor vehicle dealership.

369
370 Immediately upon receipt of the ~~such~~ notice the department shall
371 cause a notice to be published in the Florida Administrative
372 Weekly. The published notice shall state that a petition or
373 complaint by any dealer with standing to protest pursuant to
374 subsection (3) must be filed not more than 45 ~~30~~ days after ~~from~~
375 the date of publication of the notice in the Florida
376 Administrative Weekly. The published notice shall describe and
377 identify the proposed dealership sought to be licensed, and the

577-04413-09

20092630c2

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

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

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

386 2. The licensee fails to show that the existing franchised
387 dealer or dealers who register new motor vehicle retail sales or
388 retail leases of the same line-make in the community or
389 territory of the proposed dealership are not providing adequate
390 representation, adequate competition, and convenient customer
391 service of such line-make motor vehicles in a manner beneficial
392 to the public interest in such community or territory. The
393 ultimate burden of proof in establishing inadequate
394 representation, inadequate competition, and inconvenient
395 customer service is ~~shall be~~ on the licensee. Any geographic
396 area used for comparison to evaluate the performance of the
397 line-make or of the existing motor vehicle dealer or dealers
398 within the community or territory must be reasonably similar in
399 demographic traits to the community or territory of the proposed
400 site, including such factors as age, income, education, vehicle
401 size, class, model preference, and product popularity, and the
402 comparison area must not be smaller than the largest entire
403 county in which any of the protesting dealers are located.
404 Reasonably expected market sales or service penetration must be
405 measured with respect to the community or territory as a whole
406 and not with respect to any part thereof or any identifiable

577-04413-09

20092630c2

407 plot therein.

408 (b) In determining whether the existing franchised motor
409 vehicle dealer or dealers are providing adequate representation,
410 adequate competition, and convenient customer service in the
411 community or territory for the line-make, the department may
412 consider evidence of any factor deemed material by the finder of
413 fact in the unique circumstances, which may include, but is not
414 limited to:

415 1. The market share and return-on-investment impact of the
416 establishment of the proposed or relocated dealer on the
417 consumers, public interest, existing dealers, and the licensee;
418 ~~provided,~~ however, ~~that~~ financial impact other than return on
419 investment may ~~only~~ be considered only with respect to the
420 protesting dealer or dealers.

421 2. The size and permanency of investment reasonably made
422 and reasonable obligations incurred by the existing dealer or
423 dealers to perform their obligations under the dealer agreement,
424 including requirements made by the licensee up to 5 years before
425 the date of the publication of the notice.

426 3. The reasonably expected market penetration of the line-
427 make motor vehicle for the community or territory involved,
428 after consideration of all factors which may affect such said
429 penetration, including, but not limited to, demographic factors
430 such as age, income, education, vehicle size, class, model
431 preference, line-make, product popularity, retail lease
432 transactions, reasonably foreseeable economic projections,
433 financial expectations, availability of reasonable terms,
434 reasonable amounts of credit to prospective customers, or other
435 factors affecting sales to consumers of the community or

577-04413-09

20092630c2

436 territory.

437 4. Any actions by the licensee ~~licensees~~ in denying its
438 existing dealer or dealers of the same line-make the opportunity
439 for reasonable growth, market expansion, or relocation,
440 including the availability of line-make vehicles by model, in
441 keeping with the reasonable expectations of the licensee in
442 providing an adequate number of dealers in the community or
443 territory, and with respect to a proposed additional motor
444 vehicle dealer, any actions by the licensee or its common entity
445 in making credit available to the existing dealers in reasonable
446 amounts and on reasonable terms or the existence of credit
447 otherwise available to the dealers in reasonable amounts and on
448 reasonable terms.

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

452 6. Distance, travel time, traffic patterns, and
453 accessibility between the existing dealer or dealers of the same
454 line-make and the location of the proposed additional or
455 relocated dealer for prospective customers.

456 7. Whether there will likely be a material positive impact
457 and a material benefit ~~benefits~~ to consumers ~~will likely occur~~
458 from the establishment or relocation of the proposed dealership
459 which will not ~~cannot~~ be obtained by other geographic or
460 demographic changes or expected changes in the community or
461 territory or by a material increase in advertising by the
462 licensee.

463 8. Whether the protesting dealer or dealers are in
464 substantial compliance with their dealer agreement.

577-04413-09

20092630c2

465 9. Whether there is adequate interbrand and intrabrand
466 competition with respect to such ~~said~~ line-make in the community
467 or territory and adequately convenient consumer care for the
468 motor vehicles of the line-make, including the adequacy of sales
469 and service facilities.

470 10. Whether the establishment or relocation of the proposed
471 dealership is ~~appears to be~~ warranted and justified based on
472 economic and marketing conditions pertinent to dealers competing
473 in the community or territory, including anticipated future
474 changes.

475 11. The volume of registrations and service business
476 transacted by the existing dealer or dealers of the same line-
477 make in the relevant community or territory of the proposed
478 dealership.

479 12. With respect to a proposed additional motor vehicle
480 dealer, the past and reasonably foreseeable expected growth or
481 decline in population, density of population, and new motor
482 vehicle registrations in the community or territory of the
483 proposed dealership for competing motor vehicles, and whether
484 existing same line-make dealers will be unable to adjust their
485 dealership operations to adequately deal with such changes.

486 13. With respect to a proposed additional motor vehicle
487 dealer, whether the licensee has provided marketing and
488 advertising support of its line-make in the community or
489 territory on a basis comparable to its interbrand competitors.

490 14. With respect to a proposed additional motor vehicle
491 dealer, whether the economic conditions reasonably forecasted by
492 the licensee for the foreseeable future will enable all existing
493 same line-make dealers and the proposed new or relocated

577-04413-09

20092630c2

494 dealership the opportunity for a reasonable return on their
495 investment, including supplying an adequate number of every
496 model of the licensee's new motor vehicles to them.

497 (3) An existing franchised motor vehicle dealer or dealers
498 has ~~shall have~~ standing to protest a proposed additional or
499 relocated motor vehicle dealer when ~~where~~ the existing motor
500 vehicle dealer or dealers have a franchise agreement for the
501 same line-make vehicle to be sold or serviced by the proposed
502 additional or relocated motor vehicle dealer and are physically
503 located so as to meet or satisfy any of the following
504 requirements or conditions:

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

510 1. The proposed additional or relocated motor vehicle
511 dealer is to be located in the area designated or described as
512 the area of responsibility, or such similarly designated area,
513 including the entire area designated as a multiple-point area,
514 in the franchise agreement or in any related document or
515 commitment with the existing motor vehicle dealer or dealers of
516 the same line-make as such agreement existed on or after the
517 effective date of this act ~~upon October 1, 1988;~~

518 2. The existing motor vehicle dealer or dealers of the same
519 line-make have a licensed franchise location within a radius of
520 20 miles of the location of the proposed additional or relocated
521 motor vehicle dealer; or

522 3. Any existing motor vehicle dealer or dealers of the same

577-04413-09

20092630c2

523 line-make can establish that during any 12-month period of the
524 36-month period preceding the filing of the licensee's
525 application for the proposed dealership, the ~~such~~ dealer or its
526 predecessor made 25 percent of its retail sales of new motor
527 vehicles to persons whose registered household addresses were
528 located within a radius of 20 miles of the location of the
529 proposed additional or relocated motor vehicle dealer; provided
530 the ~~such~~ existing dealer is located in the same county or any
531 county contiguous to the county where the additional or
532 relocated dealer is proposed to be located.

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

538 1. Any existing motor vehicle dealer or dealers of the same
539 line-make have a licensed franchise location within a radius of
540 15 ~~12.5~~ miles of the location of the proposed additional motor
541 vehicle dealer or within 12.5 miles of the location of the
542 proposed relocated motor vehicle dealer; or

543 2. Any existing motor vehicle dealer or dealers of the same
544 line-make can establish that during any 12-month period of the
545 36-month period preceding the filing of the licensee's
546 application for the proposed dealership, such dealer or its
547 predecessor made 20 ~~25~~ percent of its retail sales of new motor
548 vehicles to persons whose registered household addresses were
549 located within a radius of 15 ~~12.5~~ miles of the location of the
550 proposed additional motor vehicle dealer or within 12.5 miles of
551 the location of the proposed relocated motor vehicle dealer, or

577-04413-09

20092630c2

552 performed repairs on the same line-make motor vehicles which
553 constituted 20 percent of its total service department sales to
554 persons whose registered addresses were located within a radius
555 of 15 miles of the location of the proposed additional motor
556 vehicle dealer or within 12.5 miles of the location of the
557 proposed relocated dealer; provided such existing dealer is
558 located in the same county or any county contiguous to the
559 county where the additional or relocated dealer is proposed to
560 be located.

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

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

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

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

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

579 3. The proposed location of the additional or relocated
580 service-only dealership is at least 10 7 miles from all existing

577-04413-09

20092630c2

581 motor vehicle dealerships of the same line-make, other than
582 motor vehicle dealerships owned by the applicant.

583 (c) In determining whether existing franchised motor
584 vehicle dealers are providing adequate representation, adequate
585 competition, and convenient customer service ~~representations~~ in
586 the community or territory for the line-make in question in a
587 protest of the proposed addition or relocation of a service-only
588 dealership, the department may consider the elements set forth
589 in paragraph (2) (b), provided:

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

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

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

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

597 (d) If an application for a service-only dealership is
598 granted, the department shall issue a license which permits only
599 service, as defined in s. 320.60(16), and does not permit the
600 selling or leasing of new motor vehicles, as defined in s.
601 320.60(15). If a service-only dealership subsequently seeks to
602 sell new motor vehicles at its location, the notice and protest
603 provisions of this section shall apply.

604 Section 3. Section 320.643, Florida Statutes, is amended to
605 read:

606 320.643 Transfer, assignment, or sale of franchise
607 agreements.—

608 (1) (a) Notwithstanding the terms of any franchise
609 agreement, a licensee shall not, by contract or otherwise, fail

577-04413-09

20092630c2

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

577-04413-09

20092630c2

639 requirements of the franchise then in effect.

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

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

577-04413-09

20092630c2

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

577-04413-09

20092630c2

697 for specified reasons; or the order may provide the conditions
698 under which a proposed transferee would be qualified. If the
699 licensee fails to file a response to the motor vehicle dealer's
700 complaint within 30 days of receipt of the complaint, unless the
701 parties agree in writing to an extension, or if the department,
702 after a hearing, renders a decision on the complaint other than
703 one disqualifying the proposed transferee, the transfer shall be
704 deemed approved in accordance with the determination and order
705 rendered, effective upon compliance by the proposed transferee
706 with any conditions set forth in the determination or order.

707 (b) Notwithstanding paragraph (a), a licensee or the
708 department may not reject a proposed transfer of a legal,
709 equitable, or beneficial interest in a motor vehicle dealer to a
710 trust or other entity, or to any beneficiary thereof, which is
711 established by an owner of any interest in a motor vehicle
712 dealer for purposes of estate planning, if the controlling
713 person of the trust or entity thereof, or the beneficiary, is of
714 good moral character. A licensee or the department may not
715 condition any proposed transfer under this section upon a
716 relocation of, construction of any addition or modification to,
717 or any refurbishing or remodeling of any dealership structure,
718 facility, or building of the existing motor vehicle dealer, or
719 upon any modification of the existing franchise agreement.

720 (3) During the pendency of any such department or court
721 hearing, the franchise agreement of the motor vehicle dealer
722 shall continue in effect in accordance with its terms. The
723 department or any court shall use reasonable efforts to expedite
724 any determination requested under this section.

725 (4) Notwithstanding the terms of any franchise agreement,

577-04413-09

20092630c2

726 the acceptance by the licensee of the proposed transferee shall
727 not be unreasonably withheld, delayed, or conditioned. For the
728 purposes of this section, the refusal by the licensee to accept,
729 in a timely manner, a proposed transferee who satisfies the
730 criteria set forth in subsection (1) or subsection (2) is
731 presumed to be unreasonable.

732 (5) It shall be a violation of this section for the
733 licensee to reject, ~~or~~ withhold, delay, or condition approval of
734 a proposed transfer unless the licensee can prove in any court
735 of competent jurisdiction in defense of any claim brought
736 pursuant to s. 320.697 that, in fact, the rejection or
737 withholding of approval of the proposed transfer was not in
738 violation of or precluded by this section and was reasonable.
739 The determination of whether such rejection or withholding was
740 reasonable shall be based on a preponderance of the evidence
741 presented during the proceeding on an objective standard.
742 Alleging the permitted statutory grounds by the licensee in the
743 written rejection of the proposed transfer does ~~shall~~ not
744 constitute a defense of the licensee, or protect the licensee
745 from liability for violating this section.

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

749 320.696 Warranty responsibility.—

750 (3) (a) A licensee shall compensate a motor vehicle dealer
751 for parts used in any work described in subsection (1). The
752 compensation may be an agreed percentage markup over the
753 licensee's dealer cost, but if an agreement is not reached
754 within 30 days after a dealer's written request, compensation

577-04413-09

20092630c2

755 for the parts is the greater of:

756 1. The dealer's arithmetical mean percentage markup over
757 dealer cost for all parts charged by the dealer in 75 ~~50~~
758 consecutive retail customer repairs made by the dealer within a
759 3-month period before the dealer's written request for a change
760 in reimbursement pursuant to this section, or all of the retail
761 customer repair orders over that 3-month period if there are
762 fewer than 75 ~~50~~ retail customer repair orders in that period.
763 The motor vehicle dealer shall give the licensee 10 days'
764 written notice that it intends to make a written request to the
765 licensee for a warranty parts reimbursement increase and permit
766 the licensee, within that 10-day period, to select the initial
767 retail customer repair for the consecutive repair orders that
768 will be attached to the written request used for the markup
769 computation, provided that if the licensee fails to provide a
770 timely selection, the dealer may make that selection. No repair
771 order shall be excluded from the markup computation because it
772 contains both warranty, extended warranty, certified pre-owned
773 warranty, maintenance, recall, campaign service, or authorized
774 goodwill work and a retail customer repair. However, only the
775 retail customer repair portion of the repair order shall be
776 included in the computation, and the parts described in
777 paragraph (b) shall be excluded from the computation; or

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

780 ~~3. An amount equal to the dealer's markup over dealer cost~~
781 ~~that results in the same gross profit percentage for parts used~~
782 ~~in work done under subsection (1) as the dealer receives for~~
783 ~~parts used in the customer retail repairs, as evidenced by the~~

577-04413-09

20092630c2

784 ~~average of said dealer's gross profit percentage in the dealer's~~
785 ~~financial statements for the 2 months preceding the dealer's~~
786 ~~request.~~

787
788 If a licensee reduces the suggested retail or list price for any
789 replacement part or accessory, it also shall reduce, by at least
790 the same percentage, the cost to the dealer for the part or
791 accessory. The dealer's markup or gross profit percentage shall
792 be uniformly applied to all of the licensee's parts used by the
793 dealer in performing work covered by subsection (1).

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

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

811 (b) Compensation paid by a licensee to a motor vehicle
812 dealer may be an agreed hourly labor rate. If, however, an

577-04413-09

20092630c2

813 agreement is not reached within 30 days after the dealer's
814 written request, the compensation shall ~~dealer may choose to be~~
815 ~~paid the greater of:~~

816 ~~1. the dealer's hourly labor rate for retail customer~~
817 ~~repairs, determined by dividing the amount of the dealer's total~~
818 ~~labor sales for retail customer repairs by the number of total~~
819 ~~labor hours that generated those sales for the month preceding~~
820 ~~the request, excluding the work in paragraph (c).; or~~

821 ~~2. An amount equal to the dealer's markup over dealer cost~~
822 ~~that results in the same gross profit percentage for labor hours~~
823 ~~performed in work covered by subsection (1) as the dealer~~
824 ~~receives for labor performed in its customer retail repairs, as~~
825 ~~evidenced by the average of said dealer's gross profit~~
826 ~~percentage in the dealer's financial statements provided to the~~
827 ~~licensee for the 2 months preceding the dealer's written~~
828 ~~request, if the dealer provides in the written request the~~
829 ~~arithmetical mean of the hourly wage paid to all of its~~
830 ~~technicians during that preceding month. The arithmetical mean~~
831 ~~shall be the dealer cost used in that calculation.~~

832

833 After an hourly labor rate is agreed or determined, the licensee
834 shall uniformly apply and pay that hourly labor rate for all
835 labor used by the dealer in performing work under subsection
836 (1). However, a licensee may ~~shall~~ not pay an hourly labor rate
837 less than the hourly rate it was paying to the dealer for work
838 done under subsection (1) on January 2, 2008. A licensee may
839 ~~shall~~ not eliminate or decrease flat-rate times from or
840 establish an unreasonable flat-rate time in its warranty repair
841 manual, warranty time guide, or any other similarly named

577-04413-09

20092630c2

842 document, unless the licensee can prove that it has improved the
843 technology related to a particular repair and thereby has
844 lessened the average repair time. A licensee shall establish
845 reasonable flat-rate labor times in its warranty repair manuals
846 and warranty time guides for newly introduced model motor
847 vehicles which are at least consistent with its existing
848 documents. As used in this subsection, the terms "retail
849 customer repair" and "similar work" are not limited to a repair
850 to the same model vehicle or model year, but include prior
851 repairs that resemble but are not identical to the repair for
852 which the dealer is making a claim for compensation.

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

861 (7) A licensee may ~~shall~~ not require, ~~influence, or attempt~~
862 ~~to influence~~ a motor vehicle dealer to implement or change the
863 prices for which it sells parts or labor in retail customer
864 repairs. A licensee shall not implement or continue a policy,
865 procedure, or program to any of its dealers in this state for
866 compensation under this section which is inconsistent with this
867 section.

868 Section 5. If any provision of this act or the application
869 thereof to any person or circumstance is held invalid, the
870 invalidity does not affect other provisions or applications of

577-04413-09

20092630c2

871 the act which can be given effect without the invalid provision
872 or application, and to this end the provisions of this act are
873 severable.

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