

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

590-05739A-09

20092630c3

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; making rebuttable a  
8           presumption that a dealer had no actual knowledge and  
9           should not have known that a customer intended to  
10          export or resell a motor vehicle; clarifying a  
11          dealer's eligibility requirements for licensee-offered  
12          program bonuses, incentives, and other benefits;  
13          requiring certain payments if a termination,  
14          cancellation, or nonrenewal of a dealer's franchise is  
15          the result of cessation of manufacture or distribution  
16          of a line-make or a bankruptcy or reorganization;  
17          amending s. 320.642, F.S.; revising provisions for  
18          establishing an additional motor vehicle dealership in  
19          or relocating an existing dealer to a location within  
20          a community or territory where the same line-make  
21          vehicle is presently represented by a franchised motor  
22          vehicle dealer or dealers; revising requirements for  
23          protests; revising provisions for denial of an  
24          application for a motor vehicle dealer license in any  
25          community or territory; revising provisions for  
26          evidence to be considered by the Department of Highway  
27          Safety and Motor Vehicles when evaluating the  
28          application; revising provisions under which a dealer  
29          has standing to protest a proposed additional or

590-05739A-09

20092630c3

30 relocated motor vehicle dealer; amending s. 320.643,  
31 F.S.; revising provisions for a transfer, assignment,  
32 or sale of franchise agreements; prohibiting rejection  
33 of proposed transfer of interest in a motor vehicle  
34 dealer entity to a trust or other entity, or a  
35 beneficiary thereof, which is established for estate-  
36 planning purposes; prohibiting placing certain  
37 conditions on such transfer; revising provisions for a  
38 hearing by the department or a court relating to a  
39 proposed transfer; amending s. 320.696, F.S.; revising  
40 warranty responsibility provisions; providing for  
41 severability; providing an effective date.

42  
43 Be It Enacted by the Legislature of the State of Florida:

44  
45 Section 1. Subsections (10), (25), (26), and (36) of  
46 section 320.64, Florida Statutes, are amended, and subsection  
47 (38) is added to that section, to read:

48 320.64 Denial, suspension, or revocation of license;  
49 grounds.—A license of a licensee under s. 320.61 may be denied,  
50 suspended, or revoked within the entire state or at any specific  
51 location or locations within the state at which the applicant or  
52 licensee engages or proposes to engage in business, upon proof  
53 that the section was violated with sufficient frequency to  
54 establish a pattern of wrongdoing, and a licensee or applicant  
55 shall be liable for claims and remedies provided in ss. 320.695  
56 and 320.697 for any violation of any of the following  
57 provisions. A licensee is prohibited from committing the  
58 following acts:

590-05739A-09

20092630c3

59 (10) (a) The applicant or licensee has attempted to enter,  
60 or has entered, into a franchise agreement with a motor vehicle  
61 dealer who does not, at the time of the franchise agreement,  
62 have proper facilities to provide the services to his or her  
63 purchasers of new motor vehicles which are covered by the new  
64 motor vehicle warranty issued by the applicant or licensee.

65 (b) Notwithstanding any provision of a franchise, a  
66 licensee may not require a motor vehicle dealer, by agreement,  
67 program, policy, standard, or otherwise, ~~to relocate,~~ to make  
68 substantial changes, alterations, or remodeling to, or to  
69 replace a motor vehicle dealer's sales or service facilities  
70 unless the licensee's requirements are reasonable and  
71 justifiable in light of the current and reasonably foreseeable  
72 projections of economic conditions, financial expectations, and  
73 the motor vehicle dealer's market for the licensee's motor  
74 vehicles.

75 (c) ~~(b)~~ A licensee may, however, consistent with the  
76 licensee's allocation obligations at law and to its other same  
77 line-make motor vehicle dealers, provide to a motor vehicle  
78 dealer a commitment to supply ~~allocate~~ additional vehicles or  
79 provide a loan or grant of money as an inducement for the motor  
80 vehicle dealer to ~~relocate,~~ expand, improve, remodel, alter, or  
81 renovate its facilities if ~~the licensee delivers an assurance to~~  
82 ~~the dealer that it will offer to supply to the dealer a~~  
83 ~~sufficient quantity of new motor vehicles, consistent with its~~  
84 ~~allocation obligations at law and to its other same line-make~~  
85 ~~motor vehicle dealers, which will economically justify such~~  
86 ~~relocation, expansion, improvement, remodeling, renovation, or~~  
87 ~~alteration, in light of reasonably current and reasonably~~

590-05739A-09

20092630c3

88 ~~projected market and economic conditions. the provisions of the~~  
89 ~~commitment are increase in vehicle allocation, the loan or grant~~  
90 ~~and the assurance, and the basis for them must be contained in a~~  
91 ~~writing written agreement voluntarily agreed to entered into by~~  
92 the dealer and are ~~must be~~ made available, on substantially  
93 similar terms, to any of the licensee's other same line-make  
94 dealers in this state who voluntarily agree to make a  
95 substantially similar facility expansion, improvement,  
96 remodeling, alteration, or renovation ~~with whom the licensee~~  
97 ~~offers to enter into such an agreement.~~

98 (d) Except as provided in paragraph (c), subsection (36),  
99 or as otherwise provided by law, this subsection does not  
100 require a licensee to provide financial support for, or  
101 contribution to, the purchase or sale of the assets of or equity  
102 in a motor vehicle dealer or a relocation of a motor vehicle  
103 dealer because such support has been provided to other  
104 purchases, sales, or relocations.

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

111 ~~(d) A licensee may not refuse to offer a program, bonus,~~  
112 ~~incentive, or other benefit, in whole or in part, to a dealer in~~  
113 ~~this state which it offers to its other same line-make dealers~~  
114 ~~nationally or in the licensee's zone or region in which this~~  
115 ~~state is included. Neither may it discriminate against a dealer~~  
116 ~~in this state with respect to any program, bonus, incentive, or~~

590-05739A-09

20092630c3

117 ~~other benefit. For purposes of this chapter, a licensee may not~~  
118 ~~establish this state alone as a zone, region, or territory by~~  
119 ~~any other designation.~~

120 (f)-(e) This subsection does Paragraphs (a) and (b) do not  
121 affect any contract between a licensee and any of its dealers  
122 regarding relocation, expansion, improvement, remodeling,  
123 renovation, or alteration which exists on the effective date of  
124 this act.

125 ~~(f) Any portion of a licensee-offered program for a bonus,~~  
126 ~~incentive, or other benefit that, in whole or in part, is based~~  
127 ~~upon or aimed at inducing a dealer's relocation, expansion,~~  
128 ~~improvement, remodeling, renovation, or alteration of the~~  
129 ~~dealer's sales or service facility, or both, is void as to each~~  
130 ~~of the licensee's motor vehicle dealers in this state who,~~  
131 ~~nevertheless, shall be eligible for the entire amount of the~~  
132 ~~bonuses, incentives, or benefits offered in the program upon~~  
133 ~~compliance with the other eligibility provisions in the program.~~

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

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

140 (25) The applicant or licensee has undertaken an audit of  
141 warranty, maintenance, and other service-related payments or  
142 incentive payments, including payments to a motor vehicle dealer  
143 under any licensee-issued program, policy, or other benefit,  
144 which previously have been paid to a motor vehicle dealer in  
145 violation of this section or has failed to comply with any of

590-05739A-09

20092630c3

146 its obligations under s. 320.696. An applicant or licensee may  
147 reasonably and periodically audit a motor vehicle dealer to  
148 determine the validity of paid claims as provided in s. 320.696.  
149 Audits ~~Audit~~ of warranty, maintenance, and other service-related  
150 payments shall ~~only~~ be performed by an applicant or licensee  
151 only during ~~for~~ the 1-year period immediately following the date  
152 the claim was paid. Audit of incentive payments shall only be  
153 for an 18-month period immediately following the date the  
154 incentive was paid. After such time periods have elapsed, all  
155 warranty, maintenance, and other service-related payments and  
156 incentive payments shall be deemed final and incontrovertible  
157 for any reason notwithstanding any otherwise applicable law, and  
158 the motor vehicle dealer shall not be subject to any charge-back  
159 or repayment. An applicant or licensee may deny a claim or, as a  
160 result of a timely conducted audit, impose a charge-back against  
161 a motor vehicle dealer for warranty, maintenance, or other  
162 service-related payments or incentive payments only if An  
163 ~~applicant or licensee shall not deny a claim or charge a motor~~  
164 ~~vehicle dealer back subsequent to the payment of the claim~~  
165 ~~unless~~ the applicant or licensee can show that the warranty,  
166 maintenance, or other service-related claim or incentive claim  
167 was false or fraudulent or that the motor vehicle dealer failed  
168 to substantially comply with the reasonable written and  
169 uniformly applied procedures of the applicant or licensee for  
170 such repairs or incentives. An applicant or licensee may not  
171 charge a motor vehicle dealer back subsequent to the payment of  
172 a warranty, maintenance, or service-related claim or incentive  
173 claim unless, within 30 days after a timely conducted audit, a  
174 representative of the applicant or licensee first meets in

590-05739A-09

20092630c3

175 person, by telephone, or by video teleconference with an officer  
176 or employee of the dealer designated by the motor vehicle  
177 dealer. At such meeting the applicant or licensee must provide a  
178 detailed explanation, with supporting documentation, as to the  
179 basis for each of the claims for which the applicant or licensee  
180 proposed a charge-back to the dealer and a written statement  
181 containing the basis upon which the motor vehicle dealer was  
182 selected for audit or review. Thereafter, the applicant or  
183 licensee must provide the motor vehicle dealer's representative  
184 a reasonable period after the meeting within which to respond to  
185 the proposed charge-backs, with such period to be commensurate  
186 with the volume of claims under consideration, but in no case  
187 less than 45 days after the meeting. The applicant or licensee  
188 is prohibited from changing or altering the basis for each of  
189 the proposed charge-backs as presented to the motor vehicle  
190 dealer's representative following the conclusion of the audit  
191 unless the applicant or licensee receives new information  
192 affecting the basis for one or more charge-backs and that new  
193 information is received within 30 days after the conclusion of  
194 the timely conducted audit. If the applicant or licensee claims  
195 the existence of new information, the dealer must be given the  
196 same right to a meeting and right to respond as when the charge-  
197 back was originally presented. After all internal dispute  
198 resolution processes provided through the applicant or licensee  
199 have been completed, the applicant or licensee shall give  
200 written notice to the motor vehicle dealer of the final amount  
201 of its proposed charge-back. If the dealer disputes that amount,  
202 the dealer may file a protest with the department within 30 days  
203 after receipt of the notice. If a protest is timely filed, the

590-05739A-09

20092630c3

204 department shall notify the applicant or licensee of the filing  
205 of the protest and the applicant or licensee may not take any  
206 action to recover the amount of the proposed charge-back until  
207 the department renders a final determination, which is not  
208 subject to further appeal, that the charge-back is in compliance  
209 with the provisions of this section. In any hearing pursuant to  
210 this subsection, the applicant or licensee has the burden of  
211 proof that its audit and resulting charge-back are in compliance  
212 with this subsection.

213 (26) Notwithstanding the terms of any franchise agreement,  
214 including any licensee's program, policy, or procedure, the  
215 applicant or licensee has refused to allocate, sell, or deliver  
216 motor vehicles; charged back or withheld payments or other  
217 things of value for which the dealer is otherwise eligible under  
218 a sales promotion, program, or contest; prevented a motor  
219 vehicle dealer from participating in any promotion, program, or  
220 contest; or has taken or threatened to take any adverse action  
221 against a dealer, including charge-backs, reducing vehicle  
222 allocations, or terminating or threatening to terminate a  
223 franchise because the dealer sold or leased a motor vehicle to a  
224 customer who exported the vehicle to a foreign country or who  
225 resold the vehicle, unless the licensee proves that the dealer  
226 knew or reasonably should have known ~~had actual knowledge~~ that  
227 the customer intended to export or resell the motor vehicle.  
228 There is a rebuttable ~~conclusive~~ presumption that the dealer  
229 neither knew nor reasonably should have known of its customer's  
230 intent to export or resell the vehicle ~~had no actual knowledge~~  
231 if the vehicle is titled or registered in any state in this  
232 country. A licensee may not take any action against a motor



590-05739A-09

20092630c3

233 vehicle dealer, including reducing its allocations or supply of  
234 motor vehicles to the dealer, or charging back a dealer for an  
235 incentive payment previously paid, unless the licensee first  
236 meets in person, by telephone, or video conference with an  
237 officer or other designated employee of the dealer. At such  
238 meeting, the licensee must provide a detailed explanation, with  
239 supporting documentation, as to the basis for its claim that the  
240 dealer knew or reasonably should have known of the customer's  
241 intent to export or resell the motor vehicle. Thereafter, the  
242 motor vehicle dealer shall have a reasonable period,  
243 commensurate with the number of motor vehicles at issue, but not  
244 less than 15 days, to respond to the licensee's claims. If,  
245 following the dealer's response and completion of all internal  
246 dispute resolution processes provided through the applicant or  
247 licensee, the dispute remains unresolved, the dealer may file a  
248 protest with the department within 30 days after receipt of a  
249 written notice from the licensee that it still intends to take  
250 adverse action against the dealer with respect to the motor  
251 vehicles still at issue. If a protest is timely filed, the  
252 department shall notify the applicant or licensee of the filing  
253 of the protest and the applicant or licensee may not take any  
254 action adverse to the dealer until the department renders a  
255 final determination, which is not subject to further appeal,  
256 that the licensee's proposed action is in compliance with the  
257 provisions of this subsection. In any hearing pursuant to this  
258 subsection, the applicant or licensee has the burden of proof on  
259 all issues raised by this subsection.

260 (36) (a) Notwithstanding the terms of any franchise  
261 agreement, in addition to any other statutory or contractual

590-05739A-09

20092630c3

262 rights of recovery after the voluntary or involuntary  
263 termination, cancellation, or nonrenewal of a franchise, failing  
264 to pay the motor vehicle dealer, as provided in paragraph (d)  
265 ~~within 90 days after the effective date of the termination,~~  
266 ~~cancellation, or nonrenewal,~~ the following amounts:

267 1. The net cost paid by the dealer for each new car or  
268 truck in the dealer's inventory with mileage of 2,000 miles or  
269 less, or a motorcycle with mileage of 100 miles or less,  
270 exclusive of mileage placed on the vehicle before it was  
271 delivered to the dealer.

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

274 a. Is in the current parts catalogue and is still in the  
275 original, resalable merchandising package and in an unbroken  
276 lot, except that sheet metal may be in a comparable substitute  
277 for the original package; and

278 b. Was purchased by the dealer directly from the  
279 manufacturer or distributor or from an outgoing authorized  
280 dealer as a part of the dealer's initial inventory.

281 3. The fair market value of each undamaged sign owned by  
282 the dealer which bears a trademark or trade name used or claimed  
283 by the applicant or licensee or its representative which was  
284 purchased from or at the request of the applicant or licensee or  
285 its representative.

286 4. The fair market value of all special tools, data  
287 processing equipment, and automotive service equipment owned by  
288 the dealer which:

289 a. Were recommended in writing by the applicant or licensee  
290 or its representative and designated as special tools and

590-05739A-09

20092630c3

291 equipment;

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

294 c. Are in usable and good condition except for reasonable  
295 wear and tear.

296 5. The cost of transporting, handling, packing, storing,  
297 and loading any property subject to repurchase under this  
298 section.

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

590-05739A-09

20092630c3

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

324        (d) The dealer shall return the property listed in this  
325        subsection to the licensee within 90 days after the effective  
326        date of the termination, cancellation, or nonrenewal. The  
327        licensee shall supply the dealer with reasonable instructions  
328        regarding the method by which the dealer must return the  
329        property. Absent shipping instructions and prepayment of  
330        shipping costs from the licensee or its common entity, the  
331        dealer shall tender the inventory and other items to be returned  
332        at the dealer's facility. The compensation for the property  
333        shall be paid by the licensee or its common entity  
334        simultaneously with ~~within 60 days after~~ the tender of inventory  
335        and other items, provided that, if the dealer does not have ~~has~~  
336        clear title to the inventory and other items and is not in a  
337        position to convey that title to the licensee, ~~manufacturer or~~  
338        ~~distributor.~~ If the ~~inventory or other items are subject to a~~  
339        ~~security interest,~~ the licensee may make payment for the  
340        property being returned may be made jointly to the dealer and  
341        the holder of any ~~the~~ security interest.

342        (38) The applicant or licensee has failed or refused to  
343        offer a bonus, incentive, or other benefit program, in whole or  
344        in part, to a dealer or dealers in this state which it offers to  
345        all of its other same line-make dealers nationally or to all of  
346        its other same line-make dealers in the licensee's designated  
347        zone, region, or other licensee-designated area of which this  
348        state is a part, unless the failure or refusal to offer the

590-05739A-09

20092630c3

349 program in this state is reasonably supported by substantially  
350 different economic or marketing considerations than are  
351 applicable to the licensee's same line-make dealers in this  
352 state. For purposes of this chapter, a licensee may not  
353 establish this state alone as a designated zone, region, or area  
354 or any other designation for a specified territory. A licensee  
355 may offer a bonus, rebate, incentive, or other benefit program  
356 to its dealers in this state which is calculated or paid on a  
357 per vehicle basis and is related in part to a dealer's facility  
358 or the expansion, improvement, remodeling, alteration, or  
359 renovation of a dealer's facility. Any dealer who does not  
360 comply with the facility criteria or eligibility requirements of  
361 such program is entitled to receive a reasonable percentage of  
362 the bonus, incentive, rebate, or other benefit offered by the  
363 licensee under that program by complying with the criteria or  
364 eligibility requirements unrelated to the dealer's facility  
365 under that program. For purposes of the previous sentence, the  
366 percentage unrelated to the facility criteria or requirements is  
367 presumed to be "reasonable" if it is not less than 80 percent of  
368 the total of the per vehicle bonus, incentive, rebate, or other  
369 benefits offered under the program.

370  
371 A motor vehicle dealer who can demonstrate that a violation of,  
372 or failure to comply with, any of the preceding provisions by an  
373 applicant or licensee will or can adversely and pecuniarily  
374 affect the complaining dealer, shall be entitled to pursue all  
375 of the remedies, procedures, and rights of recovery available  
376 under ss. 320.695 and 320.697.

377 Section 2. Subsection (1), paragraph (a) of subsection (2),

590-05739A-09

20092630c3

378 and subsection (3) of section 320.642, Florida Statutes, are  
379 amended to read:

380 320.642 Dealer licenses in areas previously served;  
381 procedure.—

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

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

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

393 (c) The identity of all motor vehicle dealers who are  
394 franchised to sell the same line-make vehicle with licensed  
395 locations in the county and ~~or~~ any contiguous county to the  
396 county where the additional or relocated motor vehicle dealer is  
397 proposed to be located.

398 (d) The names and addresses of the dealer-operator and  
399 principal investors in the proposed additional or relocated  
400 motor vehicle dealership.

401  
402 Immediately upon receipt of the ~~such~~ notice the department shall  
403 cause a notice to be published in the Florida Administrative  
404 Weekly. The published notice shall state that a petition or  
405 complaint by any dealer with standing to protest pursuant to  
406 subsection (3) must be filed not more than 30 days from the date

590-05739A-09

20092630c3

407 of publication of the notice in the Florida Administrative  
408 Weekly. The published notice shall describe and identify the  
409 proposed dealership sought to be licensed, and the department  
410 shall cause a copy of the notice to be mailed to those dealers  
411 identified in the licensee's notice under paragraph (c).

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

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

417 2. The licensee fails to show that the existing franchised  
418 dealer or dealers who register new motor vehicle retail sales or  
419 retail leases of the same line-make in the community or  
420 territory of the proposed dealership are not providing adequate  
421 representation of such line-make motor vehicles in such  
422 community or territory. Adequacy of representation must be  
423 measured with respect to the community or territory as a whole  
424 and not with respect to any part thereof or any identifiable  
425 plot therein. The burden of proof in establishing inadequate  
426 representation shall be on the licensee.

427 (3) An existing franchised motor vehicle dealer or dealers  
428 shall have standing to protest a proposed additional or  
429 relocated motor vehicle dealer when ~~where~~ the existing motor  
430 vehicle dealer or dealers have a franchise agreement for the  
431 same line-make vehicle to be sold or serviced by the proposed  
432 additional or relocated motor vehicle dealer and are physically  
433 located so as to meet or satisfy any of the following  
434 requirements or conditions:

435 (a) If the proposed additional or relocated motor vehicle

590-05739A-09

20092630c3

436 dealer is to be located in a county with a population of less  
437 than 300,000 according to the most recent data of the United  
438 States Census Bureau or the data of the Bureau of Economic and  
439 Business Research of the University of Florida:

440 1. The proposed additional or relocated motor vehicle  
441 dealer is to be located in the area designated or described as  
442 the area of responsibility, or such similarly designated area,  
443 including the entire area designated as a multiple-point area,  
444 in the franchise agreement or in any related document or  
445 commitment with the existing motor vehicle dealer or dealers of  
446 the same line-make as such agreement existed upon October 1,  
447 1988;

448 2. The existing motor vehicle dealer or dealers of the same  
449 line-make have a licensed franchise location within a radius of  
450 20 miles of the location of the proposed additional or relocated  
451 motor vehicle dealer; or

452 3. Any existing motor vehicle dealer or dealers of the same  
453 line-make can establish that during any 12-month period of the  
454 36-month period preceding the filing of the licensee's  
455 application for the proposed dealership, the ~~such~~ dealer or its  
456 predecessor made 25 percent of its retail sales of new motor  
457 vehicles to persons whose registered household addresses were  
458 located within a radius of 20 miles of the location of the  
459 proposed additional or relocated motor vehicle dealer; provided  
460 the ~~such~~ existing dealer is located in the same county or any  
461 county contiguous to the county where the additional or  
462 relocated dealer is proposed to be located.

463 (b) If the proposed additional or relocated motor vehicle  
464 dealer is to be located in a county with a population of more



590-05739A-09

20092630c3

465 than 300,000 according to the most recent data of the United  
466 States Census Bureau or the data of the Bureau of Economic and  
467 Business Research of the University of Florida:

468 1. Any existing motor vehicle dealer or dealers of the same  
469 line-make have a licensed franchise location within a radius of  
470 12.5 miles of the location of the proposed additional or  
471 relocated motor vehicle dealer; or

472 2. Any existing motor vehicle dealer or dealers of the same  
473 line-make can establish that during any 12-month period of the  
474 36-month period preceding the filing of the licensee's  
475 application for the proposed dealership, such dealer or its  
476 predecessor made 25 percent of its retail sales of new motor  
477 vehicles to persons whose registered household addresses were  
478 located within a radius of 12.5 miles of the location of the  
479 proposed additional or relocated motor vehicle dealer; provided  
480 such existing dealer is located in the same county or any county  
481 contiguous to the county where the additional or relocated  
482 dealer is proposed to be located.

483 Section 3. Section 320.643, Florida Statutes, is amended to  
484 read:

485 320.643 Transfer, assignment, or sale of franchise  
486 agreements.—

487 (1) (a) Notwithstanding the terms of any franchise  
488 agreement, a licensee shall not, by contract or otherwise, fail  
489 or refuse to give effect to, prevent, prohibit, or penalize or  
490 attempt to refuse to give effect to, prohibit, or penalize any  
491 motor vehicle dealer from selling, assigning, transferring,  
492 alienating, or otherwise disposing of its franchise agreement to  
493 any other person or persons, including a corporation established

590-05739A-09

20092630c3

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

520 (b) A motor vehicle dealer whose proposed sale is rejected  
521 may, within 60 days following such receipt of such rejection,  
522 file with the department a complaint for a determination that

590-05739A-09

20092630c3

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

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

590-05739A-09

20092630c3

552 proves at a hearing pursuant to a complaint filed by a motor  
553 vehicle dealer under this section that the ~~such~~ sale, transfer,  
554 alienation, or other disposition is to a person who is not, or  
555 whose controlling executive management is not, of good moral  
556 character. A motor vehicle dealer, or any proprietor, partner,  
557 stockholder, owner, or other person who holds or otherwise owns  
558 an interest in the motor vehicle dealer, who desires to sell,  
559 assign, transfer, alienate, or otherwise dispose of any interest  
560 in such motor vehicle dealer shall notify, or cause the proposed  
561 transferee to so notify, the licensee, in writing, of the  
562 identity and address of the proposed transferee. A licensee who  
563 receives such notice may, within 60 days following such receipt,  
564 notify the motor vehicle dealer in writing that the proposed  
565 transferee is not a person qualified to be a transferee under  
566 this section and setting forth the material reasons for such  
567 rejection. Failure of the licensee to notify the motor vehicle  
568 dealer within the 60-day period of such rejection shall be  
569 deemed an approval of the transfer. Any person whose proposed  
570 sale of stock is rejected may file within 60 days of receipt of  
571 such rejection a complaint with the department alleging that the  
572 rejection was in violation of the law or the franchise  
573 agreement. The licensee has the burden of proof with respect to  
574 all issues raised by such complaint. The department shall  
575 determine, and enter an order providing, that the proposed  
576 transferee either is qualified or is not and cannot be qualified  
577 for specified reasons; or the order may provide the conditions  
578 under which a proposed transferee would be qualified. If the  
579 licensee fails to file a response to the motor vehicle dealer's  
580 complaint within 30 days of receipt of the complaint, unless the

590-05739A-09

20092630c3

581 parties agree in writing to an extension, or if the department,  
582 after a hearing, renders a decision on the complaint other than  
583 one disqualifying the proposed transferee, the transfer shall be  
584 deemed approved in accordance with the determination and order  
585 rendered, effective upon compliance by the proposed transferee  
586 with any conditions set forth in the determination or order.

587 (b) Notwithstanding paragraph (a), a licensee may not  
588 reject a proposed transfer of a legal, equitable, or beneficial  
589 interest in a motor vehicle dealer to a trust or other entity,  
590 or to any beneficiary thereof, which is established by an owner  
591 of any interest in a motor vehicle dealer for purposes of estate  
592 planning, if the controlling person of the trust or entity, or  
593 the beneficiary, is of good moral character.

594 (3) A licensee may not condition any proposed transfer  
595 under this section upon a relocation of a dealer, construction  
596 of any addition or modification to, or any refurbishing or  
597 remodeling of any dealership structure, facility, or building of  
598 the existing motor vehicle dealer, or upon any modification of  
599 the existing franchise agreement, except for the change of  
600 ownership.

601 (4)~~(3)~~ During the pendency of any such hearing, the  
602 franchise agreement of the motor vehicle dealer shall continue  
603 in effect in accordance with its terms. The department shall  
604 expedite any determination requested under this section.

605 (5)~~(4)~~ Notwithstanding the terms of any franchise  
606 agreement, the acceptance by the licensee of the proposed  
607 transferee shall not be unreasonably withheld. For the purposes  
608 of this section, the refusal by the licensee to accept, in a  
609 timely manner, a proposed transferee who satisfies the criteria

590-05739A-09

20092630c3

610 set forth in subsection (1) or subsection (2) is presumed to be  
611 unreasonable.

612 (6)~~(5)~~ It shall be a violation of this section for the  
613 licensee to reject or withhold approval of a proposed transfer  
614 unless the licensee can prove in any court of competent  
615 jurisdiction in defense of any claim brought pursuant to s.  
616 320.697 that, in fact, the rejection or withholding of approval  
617 of the proposed transfer was not in violation of or precluded by  
618 this section and was reasonable. The determination of whether  
619 such rejection or withholding was not in violation of or  
620 precluded by this section and was reasonable shall be based on  
621 an objective standard. Alleging the permitted statutory grounds  
622 by the licensee in the written rejection of the proposed  
623 transfer shall not protect the licensee from liability for  
624 violating this section.

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

627 320.696 Warranty responsibility.—

628 (6) A licensee shall not recover or attempt to recover,  
629 directly or indirectly, any of its costs for compensating a  
630 motor vehicle dealer under this section,~~including by decreasing~~  
631 ~~or eliminating solely in this state or as it relates to any of~~  
632 ~~its dealers, any bonuses or other incentive that the licensee~~  
633 ~~has in effect nationally, regionally, or in a territory by any~~  
634 ~~other designation; by reducing the dealer's gross margin for any~~  
635 ~~of the licensee's products or services where the wholesale price~~  
636 ~~charged to the dealer is determined by the licensee and the~~  
637 ~~reduction is not in effect nationally or regionally; by imposing~~  
638 ~~a separate charge or surcharge to the wholesale price paid by a~~

590-05739A-09

20092630c3

639 ~~dealer in this state for any product or service offered to or~~  
640 ~~supplied by a licensee under a franchise agreement with the~~  
641 ~~dealer; or by passing on to the dealer any charge or surcharge~~  
642 ~~of a common entity of the licensee.~~

643       Section 5. If any provision of this act or the application  
644 thereof to any person or circumstance is held invalid, the  
645 invalidity does not affect other provisions or applications of  
646 the act which can be given effect without the invalid provision  
647 or application, and to this end the provisions of this act are  
648 severable.

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