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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

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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; amending s. 320.771, F.S.; conforming
42 provisions relating to certificate of title
43 requirements for recreational vehicle dealers;
44 providing an effective date.

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

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

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

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59 and 320.697 for any violation of any of the following
60 provisions. A licensee is prohibited from committing the
61 following acts:

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

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

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

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

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

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

114 ~~(d) A licensee may not refuse to offer a program, bonus,~~
115 ~~incentive, or other benefit, in whole or in part, to a dealer in~~
116 ~~this state which it offers to its other same line-make dealers~~

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117 ~~nationally or in the licensee's zone or region in which this~~
118 ~~state is included. Neither may it discriminate against a dealer~~
119 ~~in this state with respect to any program, bonus, incentive, or~~
120 ~~other benefit. For purposes of this chapter, a licensee may not~~
121 ~~establish this state alone as a zone, region, or territory by~~
122 ~~any other designation.~~

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

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

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

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

143 (25) The applicant or licensee has undertaken an audit of
144 warranty, maintenance, and other service-related payments or
145 incentive payments, including payments to a motor vehicle dealer

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

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

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204 of its proposed charge-back. If the dealer disputes that amount,
205 the dealer may file a protest with the department within 30 days
206 after receipt of the notice. If a protest is timely filed, the
207 department shall notify the applicant or licensee of the filing
208 of the protest and the applicant or licensee may not take any
209 action to recover the amount of the proposed charge-back until
210 the department renders a final determination, which is not
211 subject to further appeal, that the charge-back is in compliance
212 with the provisions of this section. In any hearing pursuant to
213 this subsection, the applicant or licensee has the burden of
214 proof that its audit and resulting charge-back are in compliance
215 with this subsection.

216 (26) Notwithstanding the terms of any franchise agreement,
217 including any licensee's program, policy, or procedure, the
218 applicant or licensee has refused to allocate, sell, or deliver
219 motor vehicles; charged back or withheld payments or other
220 things of value for which the dealer is otherwise eligible under
221 a sales promotion, program, or contest; prevented a motor
222 vehicle dealer from participating in any promotion, program, or
223 contest; or has taken or threatened to take any adverse action
224 against a dealer, including charge-backs, reducing vehicle
225 allocations, or terminating or threatening to terminate a
226 franchise because the dealer sold or leased a motor vehicle to a
227 customer who exported the vehicle to a foreign country or who
228 resold the vehicle, unless the licensee proves that the dealer
229 knew or reasonably should have known ~~had actual knowledge~~ that
230 the customer intended to export or resell the motor vehicle.
231 There is a rebuttable ~~conclusive~~ presumption that the dealer
232 neither knew nor reasonably should have known of its customer's

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233 intent to export or resell the vehicle ~~had no actual knowledge~~
234 if the vehicle is titled or registered in any state in this
235 country. A licensee may not take any action against a motor
236 vehicle dealer, including reducing its allocations or supply of
237 motor vehicles to the dealer, or charging back a dealer for an
238 incentive payment previously paid, unless the licensee first
239 meets in person, by telephone, or video conference with an
240 officer or other designated employee of the dealer. At such
241 meeting, the licensee must provide a detailed explanation, with
242 supporting documentation, as to the basis for its claim that the
243 dealer knew or reasonably should have known of the customer's
244 intent to export or resell the motor vehicle. Thereafter, the
245 motor vehicle dealer shall have a reasonable period,
246 commensurate with the number of motor vehicles at issue, but not
247 less than 15 days, to respond to the licensee's claims. If,
248 following the dealer's response and completion of all internal
249 dispute resolution processes provided through the applicant or
250 licensee, the dispute remains unresolved, the dealer may file a
251 protest with the department within 30 days after receipt of a
252 written notice from the licensee that it still intends to take
253 adverse action against the dealer with respect to the motor
254 vehicles still at issue. If a protest is timely filed, the
255 department shall notify the applicant or licensee of the filing
256 of the protest and the applicant or licensee may not take any
257 action adverse to the dealer until the department renders a
258 final determination, which is not subject to further appeal,
259 that the licensee's proposed action is in compliance with the
260 provisions of this subsection. In any hearing pursuant to this
261 subsection, the applicant or licensee has the burden of proof on

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262 all issues raised by this subsection.

263 (36) (a) Notwithstanding the terms of any franchise
264 agreement, in addition to any other statutory or contractual
265 rights of recovery after the voluntary or involuntary
266 termination, cancellation, or nonrenewal of a franchise, failing
267 to pay the motor vehicle dealer, as provided in paragraph (d)
268 ~~within 90 days after the effective date of the termination,~~
269 ~~cancellation, or nonrenewal,~~ the following amounts:

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

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

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

281 b. Was purchased by the dealer directly from the
282 manufacturer or distributor or from an outgoing authorized
283 dealer as a part of the dealer's initial inventory.

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

289 4. The fair market value of all special tools, data
290 processing equipment, and automotive service equipment owned by

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291 the dealer which:

292 a. Were recommended in writing by the applicant or licensee
293 or its representative and designated as special tools and
294 equipment;

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

297 c. Are in usable and good condition except for reasonable
298 wear and tear.

299 5. The cost of transporting, handling, packing, storing,
300 and loading any property subject to repurchase under this
301 section.

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

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320 market value of the franchise for the line-make includes only
321 the goodwill value of the dealer's franchise for that line-make
322 in the dealer's community or territory.

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

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

345 (38) The applicant or licensee has failed or refused to
346 offer a bonus, incentive, or other benefit program, in whole or
347 in part, to a dealer or dealers in this state which it offers to
348 all of its other same line-make dealers nationally or to all of

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

373
374 A motor vehicle dealer who can demonstrate that a violation of,
375 or failure to comply with, any of the preceding provisions by an
376 applicant or licensee will or can adversely and pecuniarily
377 affect the complaining dealer, shall be entitled to pursue all

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378 of the remedies, procedures, and rights of recovery available
379 under ss. 320.695 and 320.697.

380 Section 2. Subsection (1), paragraph (a) of subsection (2),
381 and subsection (3) of section 320.642, Florida Statutes, are
382 amended to read:

383 320.642 Dealer licenses in areas previously served;
384 procedure.—

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

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

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

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

401 (d) The names and addresses of the dealer-operator and
402 principal investors in the proposed additional or relocated
403 motor vehicle dealership.

404

405 Immediately upon receipt of the ~~such~~ notice the department shall
406 cause a notice to be published in the Florida Administrative

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407 Weekly. The published notice shall state that a petition or
408 complaint by any dealer with standing to protest pursuant to
409 subsection (3) must be filed not more than 30 days from the date
410 of publication of the notice in the Florida Administrative
411 Weekly. The published notice shall describe and identify the
412 proposed dealership sought to be licensed, and the department
413 shall cause a copy of the notice to be mailed to those dealers
414 identified in the licensee's notice under paragraph (c).

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

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

420 2. The licensee fails to show that the existing franchised
421 dealer or dealers who register new motor vehicle retail sales or
422 retail leases of the same line-make in the community or
423 territory of the proposed dealership are not providing adequate
424 representation of such line-make motor vehicles in such
425 community or territory. Adequacy of representation must be
426 measured with respect to the community or territory as a whole
427 and not with respect to any part thereof or any identifiable
428 plot therein. The previous sentence, however, shall not be
429 applicable in any protest of a proposal to establish an
430 additional, or to relocate an existing, same line-make motor
431 vehicle dealer by a distributor that is not a manufacturer, a
432 division of a manufacturer, an entity that is controlled by a
433 manufacturer, or a common entity of a manufacturer, and that is
434 not owned, in whole or in part, directly or indirectly, by a
435 manufacturer. The burden of proof in establishing inadequate

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436 representation shall be on the licensee.

437 (3) An existing franchised motor vehicle dealer or dealers
438 shall have standing to protest a proposed additional or
439 relocated motor vehicle dealer when ~~where~~ the existing motor
440 vehicle dealer or dealers have a franchise agreement for the
441 same line-make vehicle to be sold or serviced by the proposed
442 additional or relocated motor vehicle dealer and are physically
443 located so as to meet or satisfy any of the following
444 requirements or conditions:

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

450 1. The proposed additional or relocated motor vehicle
451 dealer is to be located in the area designated or described as
452 the area of responsibility, or such similarly designated area,
453 including the entire area designated as a multiple-point area,
454 in the franchise agreement or in any related document or
455 commitment with the existing motor vehicle dealer or dealers of
456 the same line-make as such agreement existed upon October 1,
457 1988;

458 2. The existing motor vehicle dealer or dealers of the same
459 line-make have a licensed franchise location within a radius of
460 20 miles of the location of the proposed additional or relocated
461 motor vehicle dealer; or

462 3. Any existing motor vehicle dealer or dealers of the same
463 line-make can establish that during any 12-month period of the
464 36-month period preceding the filing of the licensee's

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465 application for the proposed dealership, the ~~such~~ dealer or its
466 predecessor made 25 percent of its retail sales of new motor
467 vehicles to persons whose registered household addresses were
468 located within a radius of 20 miles of the location of the
469 proposed additional or relocated motor vehicle dealer; provided
470 the ~~such~~ existing dealer is located in the same county or any
471 county contiguous to the county where the additional or
472 relocated dealer is proposed to be located.

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

478 1. Any existing motor vehicle dealer or dealers of the same
479 line-make have a licensed franchise location within a radius of
480 12.5 miles of the location of the proposed additional or
481 relocated motor vehicle dealer; or

482 2. Any existing motor vehicle dealer or dealers of the same
483 line-make can establish that during any 12-month period of the
484 36-month period preceding the filing of the licensee's
485 application for the proposed dealership, such dealer or its
486 predecessor made 25 percent of its retail sales of new motor
487 vehicles to persons whose registered household addresses were
488 located within a radius of 12.5 miles of the location of the
489 proposed additional or relocated motor vehicle dealer; provided
490 such existing dealer is located in the same county or any county
491 contiguous to the county where the additional or relocated
492 dealer is proposed to be located.

493 Section 3. Section 320.643, Florida Statutes, is amended to

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494 read:

495 320.643 Transfer, assignment, or sale of franchise
496 agreements.—

497 (1) (a) Notwithstanding the terms of any franchise
498 agreement, a licensee shall not, by contract or otherwise, fail
499 or refuse to give effect to, prevent, prohibit, or penalize or
500 attempt to refuse to give effect to, prohibit, or penalize any
501 motor vehicle dealer from selling, assigning, transferring,
502 alienating, or otherwise disposing of its franchise agreement to
503 any other person or persons, including a corporation established
504 or existing for the purpose of owning or holding a franchise
505 agreement, unless the licensee proves at a hearing pursuant to a
506 complaint filed by a motor vehicle dealer under this section
507 that the ~~such~~ sale, transfer, alienation, or other disposition
508 is to a person who is not, or whose controlling executive
509 management is not, of good moral character or does not meet the
510 written, reasonable, and uniformly applied standards or
511 qualifications of the licensee relating to financial
512 qualifications of the transferee and business experience of the
513 transferee or the transferee's executive management. A motor
514 vehicle dealer who desires to sell, assign, transfer, alienate,
515 or otherwise dispose of a franchise shall notify, or cause the
516 proposed transferee to notify, the licensee, in writing, setting
517 forth the prospective transferee's name, address, financial
518 qualifications, and business experience during the previous 5
519 years. A licensee who receives such notice may, within 60 days
520 following such receipt, notify the motor vehicle dealer, in
521 writing, that the proposed transferee is not a person qualified
522 to be a transferee under this section and setting forth the

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523 material reasons for such rejection. Failure of the licensee to
524 notify the motor vehicle dealer within the 60-day period of such
525 rejection shall be deemed an approval of the transfer. No such
526 transfer, assignment ~~assign~~, or sale shall be valid unless the
527 transferee agrees in writing to comply with all requirements of
528 the franchise then in effect, but with the ownership changed to
529 the transferee.

530 (b) A motor vehicle dealer whose proposed sale is rejected
531 may, within 60 days following such receipt of such rejection,
532 file with the department a complaint for a determination that
533 the proposed transferee has been rejected in violation of this
534 section. The licensee has the burden of proof with respect to
535 all issues raised by the ~~such~~ complaint. The department shall
536 determine, and enter an order providing, that the proposed
537 transferee is either qualified or is not and cannot be qualified
538 for specified reasons, or the order may provide the conditions
539 under which a proposed transferee would be qualified. If the
540 licensee fails to file such a response to the motor vehicle
541 dealer's complaint within 30 days after receipt of the
542 complaint, unless the parties agree in writing to an extension,
543 or if the department, after a hearing, renders a decision other
544 than one disqualifying the proposed transferee, the franchise
545 agreement between the motor vehicle dealer and the licensee is
546 ~~shall be~~ deemed amended to incorporate such transfer or amended
547 in accordance with the determination and order rendered,
548 effective upon compliance by the proposed transferee with any
549 conditions set forth in the determination or order.

550 (2) (a) Notwithstanding the terms of any franchise
551 agreement, a licensee shall not, by contract or otherwise, fail

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552 or refuse to give effect to, prevent, prohibit, or penalize, or
553 attempt to refuse to give effect to, prevent, prohibit, or
554 penalize, any motor vehicle dealer or any proprietor, partner,
555 stockholder, owner, or other person who holds or otherwise owns
556 an interest therein from selling, assigning, transferring,
557 alienating, or otherwise disposing of, in whole or in part, the
558 equity interest of any of them in such motor vehicle dealer to
559 any other person or persons, including a corporation established
560 or existing for the purpose of owning or holding the stock or
561 ownership interests of other entities, unless the licensee
562 proves at a hearing pursuant to a complaint filed by a motor
563 vehicle dealer under this section that the ~~such~~ sale, transfer,
564 alienation, or other disposition is to a person who is not, or
565 whose controlling executive management is not, of good moral
566 character. A motor vehicle dealer, or any proprietor, partner,
567 stockholder, owner, or other person who holds or otherwise owns
568 an interest in the motor vehicle dealer, who desires to sell,
569 assign, transfer, alienate, or otherwise dispose of any interest
570 in such motor vehicle dealer shall notify, or cause the proposed
571 transferee to so notify, the licensee, in writing, of the
572 identity and address of the proposed transferee. A licensee who
573 receives such notice may, within 60 days following such receipt,
574 notify the motor vehicle dealer in writing that the proposed
575 transferee is not a person qualified to be a transferee under
576 this section and setting forth the material reasons for such
577 rejection. Failure of the licensee to notify the motor vehicle
578 dealer within the 60-day period of such rejection shall be
579 deemed an approval of the transfer. Any person whose proposed
580 sale of stock is rejected may file within 60 days of receipt of

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581 such rejection a complaint with the department alleging that the
582 rejection was in violation of the law or the franchise
583 agreement. The licensee has the burden of proof with respect to
584 all issues raised by such complaint. The department shall
585 determine, and enter an order providing, that the proposed
586 transferee either is qualified or is not and cannot be qualified
587 for specified reasons; or the order may provide the conditions
588 under which a proposed transferee would be qualified. If the
589 licensee fails to file a response to the motor vehicle dealer's
590 complaint within 30 days of receipt of the complaint, unless the
591 parties agree in writing to an extension, or if the department,
592 after a hearing, renders a decision on the complaint other than
593 one disqualifying the proposed transferee, the transfer shall be
594 deemed approved in accordance with the determination and order
595 rendered, effective upon compliance by the proposed transferee
596 with any conditions set forth in the determination or order.

597 (b) Notwithstanding paragraph (a), a licensee may not
598 reject a proposed transfer of a legal, equitable, or beneficial
599 interest in a motor vehicle dealer to a trust or other entity,
600 or to any beneficiary thereof, which is established by an owner
601 of any interest in a motor vehicle dealer for purposes of estate
602 planning, if the controlling person of the trust or entity, or
603 the beneficiary, is of good moral character.

604 (3) A licensee may not condition any proposed transfer
605 under this section upon a relocation of a dealer, construction
606 of any addition or modification to, or any refurbishing or
607 remodeling of any dealership structure, facility, or building of
608 the existing motor vehicle dealer, or upon any modification of
609 the existing franchise agreement, except for the change of

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610 ownership.

611 ~~(4)(3)~~ During the pendency of any such hearing, the
612 franchise agreement of the motor vehicle dealer shall continue
613 in effect in accordance with its terms. The department shall
614 expedite any determination requested under this section.

615 ~~(5)(4)~~ Notwithstanding the terms of any franchise
616 agreement, the acceptance by the licensee of the proposed
617 transferee shall not be unreasonably withheld. For the purposes
618 of this section, the refusal by the licensee to accept, in a
619 timely manner, a proposed transferee who satisfies the criteria
620 set forth in subsection (1) or subsection (2) is presumed to be
621 unreasonable.

622 ~~(6)(5)~~ It shall be a violation of this section for the
623 licensee to reject or withhold approval of a proposed transfer
624 unless the licensee can prove in any court of competent
625 jurisdiction in defense of any claim brought pursuant to s.
626 320.697 that, in fact, the rejection or withholding of approval
627 of the proposed transfer was not in violation of or precluded by
628 this section and was reasonable. The determination of whether
629 such rejection or withholding was not in violation of or
630 precluded by this section and was reasonable shall be based on
631 an objective standard. Alleging the permitted statutory grounds
632 by the licensee in the written rejection of the proposed
633 transfer shall not protect the licensee from liability for
634 violating this section.

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

637 320.696 Warranty responsibility.—

638 (6) A licensee shall not recover or attempt to recover,

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639 directly or indirectly, any of its costs for compensating a
640 motor vehicle dealer under this section, ~~including by decreasing~~
641 ~~or eliminating solely in this state or as it relates to any of~~
642 ~~its dealers, any bonuses or other incentive that the licensee~~
643 ~~has in effect nationally, regionally, or in a territory by any~~
644 ~~other designation; by reducing the dealer's gross margin for any~~
645 ~~of the licensee's products or services where the wholesale price~~
646 ~~charged to the dealer is determined by the licensee and the~~
647 ~~reduction is not in effect nationally or regionally; by imposing~~
648 ~~a separate charge or surcharge to the wholesale price paid by a~~
649 ~~dealer in this state for any product or service offered to or~~
650 ~~supplied by a licensee under a franchise agreement with the~~
651 ~~dealer; or by passing on to the dealer any charge or surcharge~~
652 ~~of a common entity of the licensee.~~

653 Section 5. If any provision of this act or the application
654 thereof to any person or circumstance is held invalid, the
655 invalidity does not affect other provisions or applications of
656 the act which can be given effect without the invalid provision
657 or application, and to this end the provisions of this act are
658 severable.

659 Section 6. Subsection (10) of section 320.771, Florida
660 Statutes, is amended to read:

661 320.771 License required of recreational vehicle dealers.—

662 (10) EVIDENCE OF TITLE REQUIRED.—

663 (a) The licensee shall also have in his or her possession
664 for each new recreational vehicle a manufacturer's invoice or
665 statement of origin, ~~and for each used recreational vehicle a~~
666 ~~properly assigned certificate of title or registration~~
667 ~~certificate if the used recreational vehicle was previously~~

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668 ~~registered in a nontitle state, from the time the recreational~~
669 ~~vehicle is delivered to the licensee until it has been disposed~~
670 ~~of by the licensee.~~

671 (b) For each used recreational vehicle in the possession of
672 a licensee and offered for sale by him or her, the licensee
673 either shall have in his or her possession or control a duly
674 assigned certificate of title from the owner in accordance with
675 the provisions of chapter 319, or a registration certificate if
676 the used recreational vehicle was previously registered in a
677 nontitle state, from the time when the vehicle is delivered to
678 the licensee and offered for sale by him or her until it has
679 been disposed of by the licensee, or shall have reasonable
680 indicia of ownership or right of possession, or shall have made
681 proper application for a certificate of title or duplicate
682 certificate of title in accordance with the provisions of
683 chapter 319. A dealer may not sell or offer for sale a vehicle
684 in his or her possession unless the dealer satisfies the
685 requirements of this subsection. Reasonable indicia of ownership
686 shall include a duly assigned certificate of title; in the case
687 of a new vehicle, a manufacturer's certificate of origin issued
688 to or reassigned to the dealer; a consignment contract between
689 the owner and the dealer along with a secure power of attorney
690 from the owner to the dealer authorizing the dealer to apply for
691 a duplicate certificate of title and assign the title on behalf
692 of the owner; a court order awarding title to the vehicle to the
693 dealer; a salvage certificate of title; a photocopy of a duly
694 assigned certificate of title being held by a financial
695 institution as collateral for a business loan of money to the
696 dealer ("floor plan"); a copy of a canceled check or other

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697 documentation evidencing that an outstanding lien on a vehicle
698 taken in trade by a licensed dealer has been satisfied and that
699 the certificate of title will be, but has not yet been, received
700 by the dealer; a vehicle purchase order or installment contract
701 for a specific vehicle identifying that vehicle as a trade-in on
702 a replacement vehicle; or a duly executed odometer disclosure
703 statement as required by Title IV of the Motor Vehicle
704 Information and Cost Savings Act of 1972 (Pub. L. No. 92-513, as
705 amended by Pub. L. No. 94-364 and Pub. L. No. 100-561) and by 49
706 C.F.R. part 580 bearing the signatures of the titled owners of a
707 traded-in vehicle.

708 Section 7. This act shall take effect upon becoming a law.