

20092630e2

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; amending s. 320.643, F.S.; revising
24 provisions for a transfer, assignment, or sale of
25 franchise agreements; prohibiting rejection of
26 proposed transfer of interest in a motor vehicle
27 dealer entity to a trust or other entity, or a
28 beneficiary thereof, which is established for estate-
29 planning purposes; prohibiting placing certain

20092630e2

30 conditions on such transfer; revising provisions for a
31 hearing by the department or a court relating to a
32 proposed transfer; amending s. 320.696, F.S.; revising
33 warranty responsibility provisions; providing for
34 severability; amending s. 320.771, F.S.; conforming
35 provisions relating to certificate of title
36 requirements for recreational vehicle dealers;
37 providing an effective date.

38
39 Be It Enacted by the Legislature of the State of Florida:

40
41 Section 1. Subsections (10), (25), (26), and (36) of
42 section 320.64, Florida Statutes, are amended, and subsection
43 (38) is added to that section, to read:

44 320.64 Denial, suspension, or revocation of license;
45 grounds.—A license of a licensee under s. 320.61 may be denied,
46 suspended, or revoked within the entire state or at any specific
47 location or locations within the state at which the applicant or
48 licensee engages or proposes to engage in business, upon proof
49 that the section was violated with sufficient frequency to
50 establish a pattern of wrongdoing, and a licensee or applicant
51 shall be liable for claims and remedies provided in ss. 320.695
52 and 320.697 for any violation of any of the following
53 provisions. A licensee is prohibited from committing the
54 following acts:

55 (10) (a) The applicant or licensee has attempted to enter,
56 or has entered, into a franchise agreement with a motor vehicle
57 dealer who does not, at the time of the franchise agreement,
58 have proper facilities to provide the services to his or her

20092630e2

59 purchasers of new motor vehicles which are covered by the new
60 motor vehicle warranty issued by the applicant or licensee.

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

71 ~~(c)~~ ~~(b)~~ A licensee may, however, consistent with the
72 licensee's allocation obligations at law and to its other same
73 line-make motor vehicle dealers, provide to a motor vehicle
74 dealer a commitment to supply ~~allocate~~ additional vehicles or
75 provide a loan or grant of money as an inducement for the motor
76 vehicle dealer to ~~relocate,~~ expand, improve, remodel, alter, or
77 renovate its facilities if ~~the licensee delivers an assurance to~~
78 ~~the dealer that it will offer to supply to the dealer a~~
79 ~~sufficient quantity of new motor vehicles, consistent with its~~
80 ~~allocation obligations at law and to its other same line-make~~
81 ~~motor vehicle dealers, which will economically justify such~~
82 ~~relocation, expansion, improvement, remodeling, renovation, or~~
83 ~~alteration, in light of reasonably current and reasonably~~
84 ~~projected market and economic conditions.~~ the provisions of the
85 commitment are increase in vehicle allocation, the loan or grant
86 and the assurance, and the basis for them must be contained in a
87 writing ~~written agreement voluntarily agreed to entered into~~ by

20092630e2

88 the dealer and are ~~must be~~ made available, on substantially
89 similar terms, to any of the licensee's other same line-make
90 dealers in this state who voluntarily agree to make a
91 substantially similar facility expansion, improvement,
92 remodeling, alteration, or renovation ~~with whom the licensee~~
93 ~~offers to enter into such an agreement.~~

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

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

107 ~~(d) A licensee may not refuse to offer a program, bonus,~~
108 ~~incentive, or other benefit, in whole or in part, to a dealer in~~
109 ~~this state which it offers to its other same line-make dealers~~
110 ~~nationally or in the licensee's zone or region in which this~~
111 ~~state is included. Neither may it discriminate against a dealer~~
112 ~~in this state with respect to any program, bonus, incentive, or~~
113 ~~other benefit. For purposes of this chapter, a licensee may not~~
114 ~~establish this state alone as a zone, region, or territory by~~
115 ~~any other designation.~~

116 (f) ~~(e)~~ This subsection does ~~Paragraphs (a) and (b) do not~~

20092630e2

117 affect any contract between a licensee and any of its dealers
118 regarding relocation, expansion, improvement, remodeling,
119 renovation, or alteration which exists on the effective date of
120 this act.

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

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

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

136 (25) The applicant or licensee has undertaken an audit of
137 warranty, maintenance, and other service-related payments or
138 incentive payments, including payments to a motor vehicle dealer
139 under any licensee-issued program, policy, or other benefit,
140 which previously have been paid to a motor vehicle dealer in
141 violation of this section or has failed to comply with any of
142 its obligations under s. 320.696. An applicant or licensee may
143 reasonably and periodically audit a motor vehicle dealer to
144 determine the validity of paid claims as provided in s. 320.696.
145 Audits ~~Audit~~ of warranty, maintenance, and other service-related

20092630e2

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

20092630e2

175 basis for each of the claims for which the applicant or licensee
176 proposed a charge-back to the dealer and a written statement
177 containing the basis upon which the motor vehicle dealer was
178 selected for audit or review. Thereafter, the applicant or
179 licensee must provide the motor vehicle dealer's representative
180 a reasonable period after the meeting within which to respond to
181 the proposed charge-backs, with such period to be commensurate
182 with the volume of claims under consideration, but in no case
183 less than 45 days after the meeting. The applicant or licensee
184 is prohibited from changing or altering the basis for each of
185 the proposed charge-backs as presented to the motor vehicle
186 dealer's representative following the conclusion of the audit
187 unless the applicant or licensee receives new information
188 affecting the basis for one or more charge-backs and that new
189 information is received within 30 days after the conclusion of
190 the timely conducted audit. If the applicant or licensee claims
191 the existence of new information, the dealer must be given the
192 same right to a meeting and right to respond as when the charge-
193 back was originally presented. After all internal dispute
194 resolution processes provided through the applicant or licensee
195 have been completed, the applicant or licensee shall give
196 written notice to the motor vehicle dealer of the final amount
197 of its proposed charge-back. If the dealer disputes that amount,
198 the dealer may file a protest with the department within 30 days
199 after receipt of the notice. If a protest is timely filed, the
200 department shall notify the applicant or licensee of the filing
201 of the protest and the applicant or licensee may not take any
202 action to recover the amount of the proposed charge-back until
203 the department renders a final determination, which is not

20092630e2

204 subject to further appeal, that the charge-back is in compliance
205 with the provisions of this section. In any hearing pursuant to
206 this subsection, the applicant or licensee has the burden of
207 proof that its audit and resulting charge-back are in compliance
208 with this subsection.

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

20092630e2

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

256 (36) (a) Notwithstanding the terms of any franchise
257 agreement, in addition to any other statutory or contractual
258 rights of recovery after the voluntary or involuntary
259 termination, cancellation, or nonrenewal of a franchise, failing
260 to pay the motor vehicle dealer, as provided in paragraph (d)
261 ~~within 90 days after the effective date of the termination,~~

20092630e2

262 ~~cancellation, or nonrenewal~~, the following amounts:

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

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

270 a. Is in the current parts catalogue and is still in the
271 original, resalable merchandising package and in an unbroken
272 lot, except that sheet metal may be in a comparable substitute
273 for the original package; and

274 b. Was purchased by the dealer directly from the
275 manufacturer or distributor or from an outgoing authorized
276 dealer as a part of the dealer's initial inventory.

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

282 4. The fair market value of all special tools, data
283 processing equipment, and automotive service equipment owned by
284 the dealer which:

285 a. Were recommended in writing by the applicant or licensee
286 or its representative and designated as special tools and
287 equipment;

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

290 c. Are in usable and good condition except for reasonable

20092630e2

291 wear and tear.

292 5. The cost of transporting, handling, packing, storing,
293 and loading any property subject to repurchase under this
294 section.

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

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

20092630e2

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

338 (38) The applicant or licensee has failed or refused to
339 offer a bonus, incentive, or other benefit program, in whole or
340 in part, to a dealer or dealers in this state which it offers to
341 all of its other same line-make dealers nationally or to all of
342 its other same line-make dealers in the licensee's designated
343 zone, region, or other licensee-designated area of which this
344 state is a part, unless the failure or refusal to offer the
345 program in this state is reasonably supported by substantially
346 different economic or marketing considerations than are
347 applicable to the licensee's same line-make dealers in this
348 state. For purposes of this chapter, a licensee may not

20092630e2

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

366
367 A motor vehicle dealer who can demonstrate that a violation of,
368 or failure to comply with, any of the preceding provisions by an
369 applicant or licensee will or can adversely and pecuniarily
370 affect the complaining dealer, shall be entitled to pursue all
371 of the remedies, procedures, and rights of recovery available
372 under ss. 320.695 and 320.697.

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

375 320.642 Dealer licenses in areas previously served;
376 procedure.—

377 (1) Any licensee who proposes to establish an additional

20092630e2

378 motor vehicle dealership or permit the relocation of an existing
379 dealer to a location within a community or territory where the
380 same line-make vehicle is presently represented by a franchised
381 motor vehicle dealer or dealers shall give written notice of its
382 intention to the department. The ~~Such~~ notice shall state:

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

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

388 (c) The identity of all motor vehicle dealers who are
389 franchised to sell the same line-make vehicle with licensed
390 locations in the county and ~~or~~ any contiguous county to the
391 county where the additional or relocated motor vehicle dealer is
392 proposed to be located.

393 (d) The names and addresses of the dealer-operator and
394 principal investors in the proposed additional or relocated
395 motor vehicle dealership.

396

397 Immediately upon receipt of the ~~such~~ notice the department shall
398 cause a notice to be published in the Florida Administrative
399 Weekly. The published notice shall state that a petition or
400 complaint by any dealer with standing to protest pursuant to
401 subsection (3) must be filed not more than 30 days from the date
402 of publication of the notice in the Florida Administrative
403 Weekly. The published notice shall describe and identify the
404 proposed dealership sought to be licensed, and the department
405 shall cause a copy of the notice to be mailed to those dealers
406 identified in the licensee's notice under paragraph (c).

20092630e2

407 (3) An existing franchised motor vehicle dealer or dealers
408 shall have standing to protest a proposed additional or
409 relocated motor vehicle dealer when ~~where~~ the existing motor
410 vehicle dealer or dealers have a franchise agreement for the
411 same line-make vehicle to be sold or serviced by the proposed
412 additional or relocated motor vehicle dealer and are physically
413 located so as to meet or satisfy any of the following
414 requirements or conditions:

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

420 1. The proposed additional or relocated motor vehicle
421 dealer is to be located in the area designated or described as
422 the area of responsibility, or such similarly designated area,
423 including the entire area designated as a multiple-point area,
424 in the franchise agreement or in any related document or
425 commitment with the existing motor vehicle dealer or dealers of
426 the same line-make as such agreement existed upon October 1,
427 1988;

428 2. The existing motor vehicle dealer or dealers of the same
429 line-make have a licensed franchise location within a radius of
430 20 miles of the location of the proposed additional or relocated
431 motor vehicle dealer; or

432 3. Any existing motor vehicle dealer or dealers of the same
433 line-make can establish that during any 12-month period of the
434 36-month period preceding the filing of the licensee's
435 application for the proposed dealership, the ~~such~~ dealer or its

20092630e2

436 predecessor made 25 percent of its retail sales of new motor
437 vehicles to persons whose registered household addresses were
438 located within a radius of 20 miles of the location of the
439 proposed additional or relocated motor vehicle dealer; provided
440 the ~~such~~ existing dealer is located in the same county or any
441 county contiguous to the county where the additional or
442 relocated dealer is proposed to be located.

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

448 1. Any existing motor vehicle dealer or dealers of the same
449 line-make have a licensed franchise location within a radius of
450 12.5 miles of the location of the proposed additional or
451 relocated motor vehicle dealer; or

452 2. 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, 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 12.5 miles of the location of the
459 proposed additional or relocated motor vehicle dealer; provided
460 such existing dealer is located in the same county or any county
461 contiguous to the county where the additional or relocated
462 dealer is proposed to be located.

463 Section 3. Section 320.643, Florida Statutes, is amended to
464 read:

20092630e2

465 320.643 Transfer, assignment, or sale of franchise
466 agreements.—

467 (1) (a) Notwithstanding the terms of any franchise
468 agreement, a licensee shall not, by contract or otherwise, fail
469 or refuse to give effect to, prevent, prohibit, or penalize or
470 attempt to refuse to give effect to, prohibit, or penalize any
471 motor vehicle dealer from selling, assigning, transferring,
472 alienating, or otherwise disposing of its franchise agreement to
473 any other person or persons, including a corporation established
474 or existing for the purpose of owning or holding a franchise
475 agreement, unless the licensee proves at a hearing pursuant to a
476 complaint filed by a motor vehicle dealer under this section
477 that the ~~such~~ sale, transfer, alienation, or other disposition
478 is to a person who is not, or whose controlling executive
479 management is not, of good moral character or does not meet the
480 written, reasonable, and uniformly applied standards or
481 qualifications of the licensee relating to financial
482 qualifications of the transferee and business experience of the
483 transferee or the transferee's executive management. A motor
484 vehicle dealer who desires to sell, assign, transfer, alienate,
485 or otherwise dispose of a franchise shall notify, or cause the
486 proposed transferee to notify, the licensee, in writing, setting
487 forth the prospective transferee's name, address, financial
488 qualifications, and business experience during the previous 5
489 years. A licensee who receives such notice may, within 60 days
490 following such receipt, notify the motor vehicle dealer, in
491 writing, that the proposed transferee is not a person qualified
492 to be a transferee under this section and setting forth the
493 material reasons for such rejection. Failure of the licensee to

20092630e2

494 notify the motor vehicle dealer within the 60-day period of such
495 rejection shall be deemed an approval of the transfer. No such
496 transfer, assignment ~~assign~~, or sale shall be valid unless the
497 transferee agrees in writing to comply with all requirements of
498 the franchise then in effect, but with the ownership changed to
499 the transferee.

500 (b) A motor vehicle dealer whose proposed sale is rejected
501 may, within 60 days following such receipt of such rejection,
502 file with the department a complaint for a determination that
503 the proposed transferee has been rejected in violation of this
504 section. The licensee has the burden of proof with respect to
505 all issues raised by the ~~such~~ complaint. The department shall
506 determine, and enter an order providing, that the proposed
507 transferee is either qualified or is not and cannot be qualified
508 for specified reasons, or the order may provide the conditions
509 under which a proposed transferee would be qualified. If the
510 licensee fails to file such a response to the motor vehicle
511 dealer's complaint within 30 days after receipt of the
512 complaint, unless the parties agree in writing to an extension,
513 or if the department, after a hearing, renders a decision other
514 than one disqualifying the proposed transferee, the franchise
515 agreement between the motor vehicle dealer and the licensee is
516 ~~shall be~~ deemed amended to incorporate such transfer or amended
517 in accordance with the determination and order rendered,
518 effective upon compliance by the proposed transferee with any
519 conditions set forth in the determination or order.

520 (2) (a) Notwithstanding the terms of any franchise
521 agreement, a licensee shall not, by contract or otherwise, fail
522 or refuse to give effect to, prevent, prohibit, or penalize, or

20092630e2

523 attempt to refuse to give effect to, prevent, prohibit, or
524 penalize, any motor vehicle dealer or any proprietor, partner,
525 stockholder, owner, or other person who holds or otherwise owns
526 an interest therein from selling, assigning, transferring,
527 alienating, or otherwise disposing of, in whole or in part, the
528 equity interest of any of them in such motor vehicle dealer to
529 any other person or persons, including a corporation established
530 or existing for the purpose of owning or holding the stock or
531 ownership interests of other entities, unless the licensee
532 proves at a hearing pursuant to a complaint filed by a motor
533 vehicle dealer under this section that the ~~such~~ sale, transfer,
534 alienation, or other disposition is to a person who is not, or
535 whose controlling executive management is not, of good moral
536 character. A motor vehicle dealer, or any proprietor, partner,
537 stockholder, owner, or other person who holds or otherwise owns
538 an interest in the motor vehicle dealer, who desires to sell,
539 assign, transfer, alienate, or otherwise dispose of any interest
540 in such motor vehicle dealer shall notify, or cause the proposed
541 transferee to so notify, the licensee, in writing, of the
542 identity and address of the proposed transferee. A licensee who
543 receives such notice may, within 60 days following such receipt,
544 notify the motor vehicle dealer in writing that the proposed
545 transferee is not a person qualified to be a transferee under
546 this section and setting forth the material reasons for such
547 rejection. Failure of the licensee to notify the motor vehicle
548 dealer within the 60-day period of such rejection shall be
549 deemed an approval of the transfer. Any person whose proposed
550 sale of stock is rejected may file within 60 days of receipt of
551 such rejection a complaint with the department alleging that the

20092630e2

552 rejection was in violation of the law or the franchise
553 agreement. The licensee has the burden of proof with respect to
554 all issues raised by such complaint. The department shall
555 determine, and enter an order providing, that the proposed
556 transferee either is qualified or is not and cannot be qualified
557 for specified reasons; or the order may provide the conditions
558 under which a proposed transferee would be qualified. If the
559 licensee fails to file a response to the motor vehicle dealer's
560 complaint within 30 days of receipt of the complaint, unless the
561 parties agree in writing to an extension, or if the department,
562 after a hearing, renders a decision on the complaint other than
563 one disqualifying the proposed transferee, the transfer shall be
564 deemed approved in accordance with the determination and order
565 rendered, effective upon compliance by the proposed transferee
566 with any conditions set forth in the determination or order.

567 (b) Notwithstanding paragraph (a), a licensee may not
568 reject a proposed transfer of a legal, equitable, or beneficial
569 interest in a motor vehicle dealer to a trust or other entity,
570 or to any beneficiary thereof, which is established by an owner
571 of any interest in a motor vehicle dealer for purposes of estate
572 planning, if the controlling person of the trust or entity, or
573 the beneficiary, is of good moral character.

574 (3) A licensee may not condition any proposed transfer
575 under this section upon a relocation of a dealer, construction
576 of any addition or modification to, or any refurbishing or
577 remodeling of any dealership structure, facility, or building of
578 the existing motor vehicle dealer, or upon any modification of
579 the existing franchise agreement, except for the change of
580 ownership.

20092630e2

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

585 ~~(5)~~⁽⁴⁾ Notwithstanding the terms of any franchise
586 agreement, the acceptance by the licensee of the proposed
587 transferee shall not be unreasonably withheld. For the purposes
588 of this section, the refusal by the licensee to accept, in a
589 timely manner, a proposed transferee who satisfies the criteria
590 set forth in subsection (1) or subsection (2) is presumed to be
591 unreasonable.

592 ~~(6)~~⁽⁵⁾ It shall be a violation of this section for the
593 licensee to reject or withhold approval of a proposed transfer
594 unless the licensee can prove in any court of competent
595 jurisdiction in defense of any claim brought pursuant to s.
596 320.697 that, in fact, the rejection or withholding of approval
597 of the proposed transfer was not in violation of or precluded by
598 this section and was reasonable. The determination of whether
599 such rejection or withholding was not in violation of or
600 precluded by this section and was reasonable shall be based on
601 an objective standard. Alleging the permitted statutory grounds
602 by the licensee in the written rejection of the proposed
603 transfer shall not protect the licensee from liability for
604 violating this section.

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

607 320.696 Warranty responsibility.—

608 (6) A licensee shall not recover or attempt to recover,
609 directly or indirectly, any of its costs for compensating a

20092630e2

610 motor vehicle dealer under this section, ~~including by decreasing~~
611 ~~or eliminating solely in this state or as it relates to any of~~
612 ~~its dealers, any bonuses or other incentive that the licensee~~
613 ~~has in effect nationally, regionally, or in a territory by any~~
614 ~~other designation; by reducing the dealer's gross margin for any~~
615 ~~of the licensee's products or services where the wholesale price~~
616 ~~charged to the dealer is determined by the licensee and the~~
617 ~~reduction is not in effect nationally or regionally; by imposing~~
618 ~~a separate charge or surcharge to the wholesale price paid by a~~
619 ~~dealer in this state for any product or service offered to or~~
620 ~~supplied by a licensee under a franchise agreement with the~~
621 ~~dealer; or by passing on to the dealer any charge or surcharge~~
622 ~~of a common entity of the licensee.~~

623 Section 5. If any provision of this act or the application
624 thereof to any person or circumstance is held invalid, the
625 invalidity does not affect other provisions or applications of
626 the act which can be given effect without the invalid provision
627 or application, and to this end the provisions of this act are
628 severable.

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

631 320.771 License required of recreational vehicle dealers.-

632 (10) EVIDENCE OF TITLE REQUIRED.-

633 (a) The licensee shall also have in his or her possession
634 for each new recreational vehicle a manufacturer's invoice or
635 statement of origin, ~~and for each used recreational vehicle a~~
636 ~~properly assigned certificate of title or registration~~
637 ~~certificate if the used recreational vehicle was previously~~
638 ~~registered in a nontitle state, from the time the recreational~~

20092630e2

639 ~~vehicle is delivered to the licensee until it has been disposed~~
640 ~~of by the licensee.~~

641 (b) For each used recreational vehicle in the possession of
642 a licensee and offered for sale by him or her, the licensee
643 either shall have in his or her possession or control a duly
644 assigned certificate of title from the owner in accordance with
645 the provisions of chapter 319, or a registration certificate if
646 the used recreational vehicle was previously registered in a
647 nontitle state, from the time when the vehicle is delivered to
648 the licensee and offered for sale by him or her until it has
649 been disposed of by the licensee, or shall have reasonable
650 indicia of ownership or right of possession, or shall have made
651 proper application for a certificate of title or duplicate
652 certificate of title in accordance with the provisions of
653 chapter 319. A dealer may not sell or offer for sale a vehicle
654 in his or her possession unless the dealer satisfies the
655 requirements of this subsection. Reasonable indicia of ownership
656 shall include a duly assigned certificate of title; in the case
657 of a new vehicle, a manufacturer's certificate of origin issued
658 to or reassigned to the dealer; a consignment contract between
659 the owner and the dealer along with a secure power of attorney
660 from the owner to the dealer authorizing the dealer to apply for
661 a duplicate certificate of title and assign the title on behalf
662 of the owner; a court order awarding title to the vehicle to the
663 dealer; a salvage certificate of title; a photocopy of a duly
664 assigned certificate of title being held by a financial
665 institution as collateral for a business loan of money to the
666 dealer ("floor plan"); a copy of a canceled check or other
667 documentation evidencing that an outstanding lien on a vehicle

20092630e2

668 taken in trade by a licensed dealer has been satisfied and that
669 the certificate of title will be, but has not yet been, received
670 by the dealer; a vehicle purchase order or installment contract
671 for a specific vehicle identifying that vehicle as a trade-in on
672 a replacement vehicle; or a duly executed odometer disclosure
673 statement as required by Title IV of the Motor Vehicle
674 Information and Cost Savings Act of 1972 (Pub. L. No. 92-513, as
675 amended by Pub. L. No. 94-364 and Pub. L. No. 100-561) and by 49
676 C.F.R. part 580 bearing the signatures of the titled owners of a
677 traded-in vehicle.

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