By Senator Garcia

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A bill to be entitled

An act relating to motor vehicle dealers; amending s. 320.64, F.S.; providing an exception to the requirement that a specified provision does not affect certain contracts between a licensee and any of its dealers; providing that a motor vehicle dealer who completes certain approved construction or changes to or installation on the dealer's facility in reliance upon a certain program, standard, or policy, or bonus, incentive, rebate, or other benefit is deemed to be in full compliance with all of an applicant's or licensee's requirements related to the facility, sign, and image for a specified period; providing that a motor vehicle dealer that completed a facility in reliance upon a prior program, standard, or policy, bonus, incentive, rebate or other benefit, but elects not to comply with the provisions related to facility, sign, or image under a changed or new program, standard, policy, or other offer is not eligible for the new benefits but shall remain entitled to all prior benefits plus any increase in the benefits between the prior and the new or amended program, standard, policy, or offers for the remainder of the specified period; providing for construction; prohibiting the applicant or licensee from failing to act in good faith toward or deal fairly with one of its franchised motor vehicle dealers in an agreement; specifying when an applicant or licensee may have failed to act in good faith or deal fairly with a

motor vehicle dealer; requiring the Department of Highway Safety and Motor Vehicles or a court to consider, in certain actions, specified factors in determining whether an applicant or licensee has failed to act in good faith toward, or deal fairly with, a motor vehicle dealer under certain circumstances; providing that an affirmative determination to one or more of such factors is sufficient to sustain a finding of failure to act in good faith or deal fairly with a motor vehicle dealer; prohibiting an applicant or licensee from establishing, implementing, or enforcing criteria for measuring the sales or service performance of any of its franchised motor vehicle dealers in this state under certain circumstances; providing that relevant and material national or state criteria or data may be considered; prohibiting comparison to such data to outweigh applicable local and regional factors and data; defining the term "relevant and material"; requiring a survey to be based upon a statistically significant and valid random sample if certain measurement is based, in whole or in part, upon such survey; requiring an applicant, licensee, common entity, or affiliate thereof that seeks to establish, implement, or enforce against any dealer a performance measurement to describe in writing to the motor vehicle dealer, upon the dealer's request, how the measurement criteria about the dealer's sales and service performance was designed, calculated,

established, and applied; providing that any dealer against whom any such performance measurement criteria is sought to be used for any purpose adverse to the dealer has the right to file a complaint in court alleging that such performance criteria does not comply with specified provisions; providing for damages, attorney fees, and injunctive relief under certain circumstances; requiring the applicant or licensee to bear the ultimate burden of proof that the dealer performance measurement criteria complies with specified provisions and has been implemented and enforced uniformly by the applicant or licensee among its dealers in this state; adding certain remedies, procedures, and rights of recovery a motor vehicle dealer is entitled to pursue under certain circumstances; creating s. 320.648, F.S.; prohibiting an applicant or licensee from taking specified actions for the purpose of avoiding competitive disadvantages of a motor vehicle dealer and eliminating discrimination against a motor vehicle dealer under certain circumstances; providing applicability; providing for construction; amending s. 320.699, F.S.; authorizing a motor vehicle dealer or certain persons to seek a declaration and adjudication of rights under certain circumstances with respect to certain actions of an applicant or licensee by filing a complaint in court for injunctive relief and damages; requiring, after a certain prima facie showing, the burden of proof of all issues to be upon the applicant or

licensee to prove that a certain violation did not or will not occur; authorizing a court to issue injunctive relief and award costs and reasonable attorney fees to the complainant if relief is granted; providing an effective date.

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

Section 1. Section 320.64, Florida Statutes, is amended to read:

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

(1) The applicant or licensee is determined to be unable to carry out contractual obligations with its motor vehicle dealers.

(2) The applicant or licensee has knowingly made a material misstatement in its application for a license.

(3) The applicant or licensee willfully has failed to comply with significant provisions of ss. 320.60-320.70 or with any lawful rule or regulation adopted or promulgated by the

department.

(4) The applicant or licensee has indulged in any illegal act relating to his or her business.

(5) The applicant or licensee has coerced or attempted to coerce any motor vehicle dealer into accepting delivery of any motor vehicle or vehicles or parts or accessories therefor or any other commodities which have not been ordered by the dealer.

(6) The applicant or licensee has coerced or attempted to coerce any motor vehicle dealer to enter into any agreement with the licensee.

(7) The applicant or licensee has threatened to discontinue, cancel, or not to renew a franchise agreement of a licensed motor vehicle dealer, where the threatened discontinuation, cancellation, or nonrenewal, if implemented, would be in violation of any of the provisions of s. 320.641.

(8) The applicant or licensee discontinued, canceled, or failed to renew, a franchise agreement of a licensed motor vehicle dealer in violation of any of the provisions of s. 320.641.

(9) The applicant or licensee has threatened to modify or replace, or has modified or replaced, a franchise agreement with a succeeding franchise agreement which would adversely alter the rights or obligations of a motor vehicle dealer under an existing franchise agreement or which substantially impairs the sales, service obligations, or investment of the motor vehicle dealer.

(10)(a) The applicant or licensee has attempted to enter, or has entered, into a franchise agreement with a motor vehicle dealer who does not, at the time of the franchise agreement,

have proper facilities to provide the services to his or her purchasers of new motor vehicles which are covered by the new motor vehicle warranty issued by the applicant or licensee.

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

(c) A licensee may, however, consistent with the licensee's allocation obligations at law and to its other same line-make motor vehicle dealers, provide to a motor vehicle dealer a commitment to supply additional vehicles or provide a loan or grant of money as an inducement for the motor vehicle dealer to expand, improve, remodel, alter, or renovate its facilities if the provisions of the commitment are contained in a writing voluntarily agreed to by the dealer and are made available, on substantially similar terms, to any of the licensee's other same line-make dealers in this state who voluntarily agree to make a substantially similar facility expansion, improvement, remodeling, alteration, or renovation.

(d) Except as provided in paragraph (c), subsection (36), or as otherwise provided by law, this subsection does not require a licensee to provide financial support for, or contribution to, the purchase or sale of the assets of or equity in a motor vehicle dealer or a relocation of a motor vehicle

dealer because such support has been provided to other purchases, sales, or relocations.

(e) A licensee or its common entity may not take or threaten to take any action that is unfair or adverse to a dealer who does not enter into an agreement with the licensee pursuant to paragraph (c).

(f) Except as provided in s. 320.6992, this subsection does not affect any contract between a licensee and any of its dealers regarding relocation, expansion, improvement, remodeling, renovation, or alteration which exists on the effective date of this act.

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

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

(i) If an applicant or licensee establishes a program, standard, or policy or in any manner offers a bonus, incentive, rebate, or other benefit to a motor vehicle dealer in this state which is premised, wholly or in part, on dealer facility construction, improvements, renovations, expansions, remodeling, or alterations or installation of signs or other image elements, a motor vehicle dealer who completes any such approved construction or change to or installation on the dealer's facility in reliance upon such program, standard, or policy, or bonus, incentive, rebate, or other benefit is deemed to be in full compliance with all of the applicant's or licensee's requirements related to the facility, sign, and image for a

period of 10 years following such completion. If, during the 10-year period, the applicant or licensee changes or offers a new program, standard, or policy, or bonus, incentive, rebate, or other benefit related to relocation or remodeling, improvements, alterations, renovations, or replacement of the existing completed sales or service facilities, a motor vehicle dealer that completed a facility in reliance upon a prior program, standard, or policy, bonus, incentive, rebate, or other benefit, but elects not to comply with the provisions related to facility, sign, or image under the changed or new program, standard, policy, or other offer is not eligible for the new benefits but shall remain entitled to all prior benefits plus any increase in the benefits between the prior and the new or amended program, standard, policy, or offers for the remainder of the 10-year period. This paragraph does not obviate, affect, or alter any provision of subsection (38).

(11) The applicant or licensee has coerced a motor vehicle dealer to provide installment financing for the motor vehicle dealer's purchasers with a specified financial institution.

(12) The applicant or licensee has advertised, printed, displayed, published, distributed, broadcast, or televised, or caused or permitted to be advertised, printed, displayed, published, distributed, broadcast, or televised, in any manner whatsoever, any statement or representation with regard to the sale or financing of motor vehicles which is false, deceptive, or misleading.

(13) The applicant or licensee has sold, exchanged, or rented a motorcycle that ~~which~~ produces in excess of 5 brake horsepower, knowing the use thereof to be by, or intended for,

the holder of a restricted Florida driver license.

(14) The applicant or licensee has engaged in previous conduct that ~~which~~ would have been a ground for revocation or suspension of a license if the applicant or licensee had been licensed.

(15) The applicant or licensee, directly or indirectly, through the actions of any parent of the licensee, subsidiary of the licensee, or common entity causes a termination, cancellation, or nonrenewal of a franchise agreement by a present or previous distributor or importer unless, by the effective date of such action, the applicant or licensee offers the motor vehicle dealer whose franchise agreement is terminated, canceled, or not renewed a franchise agreement containing substantially the same provisions contained in the previous franchise agreement or files an affidavit with the department acknowledging its undertaking to assume and fulfill the rights, duties, and obligations of its predecessor distributor or importer under the terminated, canceled, or nonrenewed franchise agreement and the same is reinstated.

(16) Notwithstanding the terms of any franchise agreement, the applicant or licensee prevents or refuses to accept the succession to any interest in a franchise agreement by any legal heir or devisee under the will of a motor vehicle dealer or under the laws of descent and distribution of this state; provided, the applicant or licensee is not required to accept a succession where such heir or devisee does not meet licensee's written, reasonable, and uniformly applied minimal standard qualifications for dealer applicants or which, after notice and administrative hearing pursuant to chapter 120, is demonstrated

to be detrimental to the public interest or to the representation of the applicant or licensee. Nothing contained herein, however, shall prevent a motor vehicle dealer, during his or her lifetime, from designating any person as his or her successor in interest by written instrument filed with and accepted by the applicant or licensee. A licensee who rejects the successor transferee under this subsection shall have the burden of establishing in any proceeding where such rejection is in issue that the rejection of the successor transferee complies with this subsection.

(17) The applicant or licensee has included in any franchise agreement with a motor vehicle dealer terms or provisions that are contrary to, prohibited by, or otherwise inconsistent with the provisions contained in ss. 320.60-320.70, or has failed to include in such franchise agreement a provision conforming to the requirements of s. 320.63(3).

(18) The applicant or licensee has established a system of motor vehicle allocation or distribution or has implemented a system of allocation or distribution of motor vehicles to one or more of its franchised motor vehicle dealers which reduces or alters allocations or supplies of new motor vehicles to the dealer to achieve, directly or indirectly, a purpose that is prohibited by ss. 320.60-320.70, or which otherwise is unfair, inequitable, unreasonably discriminatory, or not supportable by reason and good cause after considering the equities of the affected motor vehicles dealer or dealers. An applicant or licensee shall maintain for 3 years records that describe its methods or formula of allocation and distribution of its motor vehicles and records of its actual allocation and distribution

of motor vehicles to its motor vehicle dealers in this state. As used in this subsection, "unfair" includes, without limitation, the refusal or failure to offer to any dealer an equitable supply of new vehicles under its franchise, by model, mix, or colors as the licensee offers or allocates to its other same line-make dealers in the state.

(19) The applicant or licensee, without good and fair cause, has delayed, refused, or failed to provide a supply of motor vehicles by series in reasonable quantities, including the models publicly advertised by the applicant or licensee as being available, or has delayed, refused, or failed to deliver motor vehicle parts and accessories within a reasonable time after receipt of an order by a franchised dealer. However, this subsection is not violated if such failure is caused by acts or causes beyond the control of the applicant or licensee.

(20) The applicant or licensee has required, or threatened to require, a motor vehicle dealer to prospectively assent to a release, assignment, novation, waiver, or estoppel, which instrument or document operates, or is intended by the applicant or licensee to operate, to relieve any person from any liability or obligation under the provisions of ss. 320.60-320.70.

(21) The applicant or licensee has threatened or coerced a motor vehicle dealer toward conduct or action whereby the dealer would waive or forego its right to protest the establishment or relocation of a motor vehicle dealer in the community or territory serviced by the threatened or coerced dealer.

(22) The applicant or licensee has refused to deliver, in reasonable quantities and within a reasonable time, to any duly licensed motor vehicle dealer who has an agreement with such

applicant or licensee for the retail sale of new motor vehicles and parts for motor vehicles sold or distributed by the applicant or licensee, any such motor vehicles or parts as are covered by such agreement. Such refusal includes the failure to offer to its same line-make franchised motor vehicle dealers all models manufactured for that line-make, or requiring a dealer to pay any extra fee, require a dealer to execute a separate franchise agreement, purchase unreasonable advertising displays or other materials, or relocate, expand, improve, remodel, renovate, recondition, or alter the dealer's existing facilities, or provide exclusive facilities as a prerequisite to receiving a model or series of vehicles. However, the failure to deliver any motor vehicle or part will not be considered a violation of this section if the failure is due to an act of God, work stoppage, or delay due to a strike or labor difficulty, a freight embargo, product shortage, or other cause over which the applicant or licensee has no control. An applicant or licensee may impose reasonable requirements on the motor vehicle dealer, other than the items listed above, including, but not limited to, the purchase of special tools required to properly service a motor vehicle and the undertaking of sales person or service person training related to the motor vehicle.

(23) The applicant or licensee has competed or is competing with respect to any activity covered by the franchise agreement with a motor vehicle dealer of the same line-make located in this state with whom the applicant or licensee has entered into a franchise agreement, except as permitted in s. 320.645.

(24) The applicant or licensee has sold a motor vehicle to

any retail consumer in the state except through a motor vehicle dealer holding a franchise agreement for the line-make that includes the motor vehicle. This section does not apply to sales by the applicant or licensee of motor vehicles to its current employees, employees of companies affiliated by common ownership, charitable not-for-profit-organizations, and the federal government.

(25) The applicant or licensee has undertaken or engaged in an audit of warranty, maintenance, and other service-related payments or incentive payments, including payments to a motor vehicle dealer under any licensee-issued program, policy, or other benefit, which were previously paid to a motor vehicle dealer in violation of this section or has failed to comply with any of its obligations under s. 320.696. An applicant or licensee may reasonably and periodically audit a motor vehicle dealer to determine the validity of paid claims as provided in s. 320.696. Audits of warranty, maintenance, and other service-related payments shall be performed by an applicant or licensee only during the 12-month period immediately following the date the claim was paid. Audits of incentive payments shall be performed only during the 12-month period immediately following the date the incentive was paid. As used in this section, the term "incentive" includes any bonus, incentive, or other monetary or nonmonetary consideration. After such time periods have elapsed, all warranty, maintenance, and other service-related payments and incentive payments shall be deemed final and incontrovertible for any reason notwithstanding any otherwise applicable law, and the motor vehicle dealer shall not be subject to any chargeback or repayment. An applicant or

licensee may deny a claim or, as a result of a timely conducted audit, impose a chargeback against a motor vehicle dealer for warranty, maintenance, or other service-related payments or incentive payments only if the applicant or licensee can show that the warranty, maintenance, or other service-related claim or incentive claim was false or fraudulent or that the motor vehicle dealer failed to substantially comply with the reasonable written and uniformly applied procedures of the applicant or licensee for such repairs or incentives, but only for that portion of the claim so shown. Notwithstanding the terms of any franchise agreement, guideline, program, policy, or procedure, an applicant or licensee may deny or charge back only that portion of a warranty, maintenance, or other service-related claim or incentive claim which the applicant or licensee has proven to be false or fraudulent or for which the dealer failed to substantially comply with the reasonable written and uniformly applied procedures of the applicant or licensee for such repairs or incentives, as set forth in this subsection. An applicant or licensee may not charge back a motor vehicle dealer subsequent to the payment of a warranty, maintenance, or service-related claim or incentive claim unless, within 30 days after a timely conducted audit, a representative of the applicant or licensee first meets in person, by telephone, or by video teleconference with an officer or employee of the dealer designated by the motor vehicle dealer. At such meeting the applicant or licensee must provide a detailed explanation, with supporting documentation, as to the basis for each of the claims for which the applicant or licensee proposed a chargeback to the dealer and a written statement containing the basis upon which

the motor vehicle dealer was selected for audit or review. Thereafter, the applicant or licensee must provide the motor vehicle dealer's representative a reasonable period after the meeting within which to respond to the proposed chargebacks, with such period to be commensurate with the volume of claims under consideration, but in no case less than 45 days after the meeting. The applicant or licensee is prohibited from changing or altering the basis for each of the proposed chargebacks as presented to the motor vehicle dealer's representative following the conclusion of the audit unless the applicant or licensee receives new information affecting the basis for one or more chargebacks and that new information is received within 30 days after the conclusion of the timely conducted audit. If the applicant or licensee claims the existence of new information, the dealer must be given the same right to a meeting and right to respond as when the chargeback was originally presented. After all internal dispute resolution processes provided through the applicant or licensee have been completed, the applicant or licensee shall give written notice to the motor vehicle dealer of the final amount of its proposed chargeback. If the dealer disputes that amount, the dealer may file a protest with the department within 30 days after receipt of the notice. If a protest is timely filed, the department shall notify the applicant or licensee of the filing of the protest, and the applicant or licensee may not take any action to recover the amount of the proposed chargeback until the department renders a final determination, which is not subject to further appeal, that the chargeback is in compliance with the provisions of this section. In any hearing pursuant to this subsection, the

applicant or licensee has the burden of proof that its audit and resulting chargeback are in compliance with this subsection.

(26) Notwithstanding the terms of any franchise agreement, including any licensee's program, policy, or procedure, the applicant or licensee has refused to allocate, sell, or deliver motor vehicles; charged back or withheld payments or other things of value for which the dealer is otherwise eligible under a sales promotion, program, or contest; prevented a motor vehicle dealer from participating in any promotion, program, or contest; or has taken or threatened to take any adverse action against a dealer, including chargebacks, reducing vehicle allocations, or terminating or threatening to terminate a franchise because the dealer sold or leased a motor vehicle to a customer who exported the vehicle to a foreign country or who resold the vehicle, unless the licensee proves that the dealer knew or reasonably should have known that the customer intended to export or resell the motor vehicle. There is a rebuttable presumption that the dealer neither knew nor reasonably should have known of its customer's intent to export or resell the vehicle if the vehicle is titled or registered in any state in this country. A licensee may not take any action against a motor vehicle dealer, including reducing its allocations or supply of motor vehicles to the dealer or charging back to a dealer any incentive payment previously paid, unless the licensee first meets in person, by telephone, or video conference with an officer or other designated employee of the dealer. At such meeting, the licensee must provide a detailed explanation, with supporting documentation, as to the basis for its claim that the dealer knew or reasonably should have known of the customer's

intent to export or resell the motor vehicle. Thereafter, the motor vehicle dealer shall have a reasonable period, commensurate with the number of motor vehicles at issue, but not less than 15 days, to respond to the licensee's claims. If, following the dealer's response and completion of all internal dispute resolution processes provided through the applicant or licensee, the dispute remains unresolved, the dealer may file a protest with the department within 30 days after receipt of a written notice from the licensee that it still intends to take adverse action against the dealer with respect to the motor vehicles still at issue. If a protest is timely filed, the department shall notify the applicant or licensee of the filing of the protest, and the applicant or licensee may not take any action adverse to the dealer until the department renders a final determination, which is not subject to further appeal, that the licensee's proposed action is in compliance with the provisions of this subsection. In any hearing pursuant to this subsection, the applicant or licensee has the burden of proof on all issues raised by this subsection. An applicant or licensee may not take any adverse action against a motor vehicle dealer because the dealer sold or leased a motor vehicle to a customer who exported the vehicle to a foreign country or who resold the vehicle unless the applicant or licensee provides written notification to the motor vehicle dealer of such resale or export within 12 months after the date the dealer sold or leased the vehicle to the customer.

(27) Notwithstanding the terms of any franchise agreement, the applicant or licensee has failed or refused to indemnify and hold harmless any motor vehicle dealer against any judgment for

damages, or settlements agreed to by the applicant or licensee, including, without limitation, court costs and reasonable attorney ~~attorneys~~ fees, arising out of complaints, claims, or lawsuits, including, without limitation, strict liability, negligence, misrepresentation, express or implied warranty, or revocation or rescission of acceptance of the sale of a motor vehicle, to the extent the judgment or settlement relates to the alleged negligent manufacture, design, or assembly of motor vehicles, parts, or accessories. Nothing herein shall obviate the licensee's obligations pursuant to chapter 681.

(28) The applicant or licensee has published, disclosed, or otherwise made available in any form information provided by a motor vehicle dealer with respect to sales prices of motor vehicles or profit per motor vehicle sold. Other confidential financial information provided by motor vehicle dealers shall not be published, disclosed, or otherwise made publicly available except in composite form. However, this information may be disclosed with the written consent of the dealer or in response to a subpoena or order of the department, a court or a lawful tribunal, or introduced into evidence in such a proceeding, after timely notice to an affected dealer.

(29) The applicant or licensee has failed to reimburse a motor vehicle dealer in full for the reasonable cost of providing a loaner vehicle to any customer who is having a vehicle serviced at the motor vehicle dealer, if a loaner is required by the applicant or licensee, or a loaner is expressly part of an applicant or licensee's customer satisfaction index or computation.

(30) The applicant or licensee has conducted or threatened

to conduct any audit of a motor vehicle dealer in order to coerce or attempt to coerce the dealer to forego any rights granted to the dealer under ss. 320.60-320.70 or under the agreement between the licensee and the motor vehicle dealer. Nothing in this section shall prohibit an applicant or licensee from reasonably and periodically auditing a dealer to determine the validity of paid claims, as permitted under this chapter, if the licensee complies with the provisions of ss. 320.60-320.70 applicable to such audits.

(31) From and after the effective date of enactment of this provision, the applicant or licensee has offered to any motor vehicle dealer a franchise agreement that:

(a) Requires that a motor vehicle dealer bring an administrative or legal action in a venue outside of this state;

(b) Requires that any arbitration, mediation, or other legal proceeding be conducted outside of this state; or

(c) Requires that a law of a state other than Florida be applied to any legal proceeding between a motor vehicle dealer and a licensee.

(32) Notwithstanding the terms of any franchise agreement, the applicant or licensee has rejected or withheld approval of any proposed transfer in violation of s. 320.643 or a proposed change of executive management in violation of s. 320.644.

(33) The applicant or licensee has attempted to sell or lease, or has sold or leased, used motor vehicles at retail of a line-make that is the subject of any franchise agreement with a motor vehicle dealer in this state, other than trucks with a net weight of more than 8,000 pounds.

(34) The applicant or licensee, after the effective date of

this subsection, has included in any franchise agreement with a motor vehicle dealer a mandatory obligation or requirement of the motor vehicle dealer to purchase, sell, or lease, or offer for purchase, sale, or lease, any quantity of used motor vehicles.

(35) The applicant or licensee has refused to assign allocation earned by a motor vehicle dealer, or has refused to sell motor vehicles to a motor vehicle dealer, because the motor vehicle dealer has failed or refused to purchase, sell, lease, or certify a certain quantity of used motor vehicles prescribed by the licensee.

(36)(a) Notwithstanding the terms of any franchise agreement, in addition to any other statutory or contractual rights of recovery after the voluntary or involuntary termination, cancellation, or nonrenewal of a franchise, failing to pay the motor vehicle dealer, as provided in paragraph (d), the following amounts:

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

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

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

b. Was purchased by the dealer directly from the

manufacturer or distributor or from an outgoing authorized dealer as a part of the dealer's initial inventory.

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

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

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

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

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

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

(b) If the termination, cancellation, or nonrenewal of the dealer's franchise is the result of the bankruptcy or reorganization of a licensee or its common entity, or the result of a licensee's plan, scheme, or policy, whether or not publicly declared, which is intended to or has the effect of decreasing the number of, or eliminating, the licensee's franchised motor vehicle dealers of a line-make in this state, or the result of a termination, elimination, or cessation of manufacture or reorganization of a licensee or its common entity, or the result

of a termination, elimination, or cessation of manufacture or distribution of a line-make, in addition to the above payments to the dealer, the licensee or its common entity, shall be liable to and shall pay the motor vehicle dealer for an amount at least equal to the fair market value of the franchise for the line-make, which shall be the greater of the value determined as of the day the licensee announces the action that results in the termination, cancellation, or nonrenewal, or the value determined on the day that is 12 months before that date. Fair market value of the franchise for the line-make includes only the goodwill value of the dealer's franchise for that line-make in the dealer's community or territory.

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

(d) The dealer shall return the property listed in this subsection to the licensee within 90 days after the effective date of the termination, cancellation, or nonrenewal. The licensee shall supply the dealer with reasonable instructions regarding the method by which the dealer must return the property. Absent shipping instructions and prepayment of shipping costs from the licensee or its common entity, the dealer shall tender the inventory and other items to be returned at the dealer's facility. The compensation for the property shall be paid by the licensee or its common entity simultaneously with the tender of inventory and other items, provided that, if the dealer does not have clear title to the inventory and other items and is not in a position to convey

that title to the licensee, payment for the property being returned may be made jointly to the dealer and the holder of any security interest.

(37) Notwithstanding the terms of any franchise agreement, the applicant or licensee has refused to allow or has limited or restricted a motor vehicle dealer from acquiring or adding a sales or service operation for another line-make of motor vehicles at the same or expanded facility at which the motor vehicle dealer currently operates a dealership unless the applicant or licensee can demonstrate that such refusal, limitation, or restriction is justified by consideration of reasonable facility and financial requirements and the dealer's performance for the existing line-make.

(38) The applicant or licensee has failed or refused to offer a bonus, incentive, or other benefit program, in whole or in part, to a dealer or dealers in this state which it offers to all of its other same line-make dealers nationally or to all of its other same line-make dealers in the licensee's designated zone, region, or other licensee-designated area of which this state is a part, unless the failure or refusal to offer the program in this state is reasonably supported by substantially different economic or marketing considerations than are applicable to the licensee's same line-make dealers in this state. For purposes of this chapter, a licensee may not establish this state alone as a designated zone, region, or area or any other designation for a specified territory. A licensee may offer a bonus, rebate, incentive, or other benefit program to its dealers in this state which is calculated or paid on a per vehicle basis and is related in part to a dealer's facility

or the expansion, improvement, remodeling, alteration, or renovation of a dealer's facility. Any dealer who does not comply with the facility criteria or eligibility requirements of such program is entitled to receive a reasonable percentage of the bonus, incentive, rebate, or other benefit offered by the licensee under that program by complying with the criteria or eligibility requirements unrelated to the dealer's facility under that program. For purposes of the previous sentence, the percentage unrelated to the facility criteria or requirements is presumed to be "reasonable" if it is not less than 80 percent of the total of the per vehicle bonus, incentive, rebate, or other benefits offered under the program.

(39) Notwithstanding any agreement, program, incentive, bonus, policy, or rule, an applicant or licensee may not fail to make any payment pursuant to any agreement, program, incentive, bonus, policy, or rule for any temporary replacement motor vehicle loaned, rented, or provided by a motor vehicle dealer to or for its service or repair customers, even if the temporary replacement motor vehicle has been leased, rented, titled, or registered to the motor vehicle dealer's rental or leasing division or an entity that is owned or controlled by the motor vehicle dealer, provided that the motor vehicle dealer or its rental or leasing division or entity complies with the written and uniformly enforced vehicle eligibility, use, and reporting requirements specified by the applicant or licensee in its agreement, program, policy, bonus, incentive, or rule relating to loaner vehicles.

(40) Notwithstanding the terms of any franchise agreement, the applicant or licensee may not require or coerce, or attempt

to require or coerce, a motor vehicle dealer to purchase goods or services from a vendor selected, identified, or designated by the applicant or licensee, or one of its parents, subsidiaries, divisions, or affiliates, by agreement, standard, policy, program, incentive provision, or otherwise, without making available to the motor vehicle dealer the option to obtain the goods or services of substantially similar design and quality from a vendor chosen by the motor vehicle dealer. If the motor vehicle dealer exercises such option, the dealer must provide written notice of its desire to use the alternative goods or services to the applicant or licensee, along with samples or clear descriptions of the alternative goods or services that the dealer desires to use. The licensee or applicant shall have the opportunity to evaluate the alternative goods or services for up to 30 days to determine whether it will provide a written approval to the motor vehicle dealer to use said alternative goods or services. Approval may not be unreasonably withheld by the applicant or licensee. If the motor vehicle dealer does not receive a response from the applicant or licensee within 30 days, approval to use the alternative goods or services is deemed granted. If a dealer using alternative goods or services complies with this subsection and has received approval from the licensee or applicant, the dealer is not ineligible for all benefits described in the agreement, standard, policy, program, incentive provision, or otherwise solely for having used such alternative goods or services. As used in this subsection, the term "goods or services" is limited to such goods and services used to construct or renovate dealership facilities or furniture and fixtures at the dealership facilities. The term does not

include:

(a) Any materials subject to the applicant's or licensee's intellectual property rights, including copyright, trademark, or trade dress rights;

(b) Any special tool and training as required by the applicant or licensee;

(c) Any part to be used in repairs under warranty obligations of an applicant or licensee;

(d) Any good or service paid for entirely by the applicant or licensee; or

(e) Any applicant's or licensee's design or architectural review service.

(41)(a) The applicant or licensee has failed to act in good faith toward or to deal fairly with one of its franchised motor vehicle dealers regarding the terms or provisions of an agreement. For purposes of this subsection, an applicant or licensee may have failed to act in good faith toward or deal fairly with a motor vehicle dealer even in the absence of any act or threat of coercion or intimidation made by the applicant or licensee toward the motor vehicle dealer or even in the absence of an allegation by the motor vehicle dealer that an express term or provision of a franchise agreement has been breached or violated by the applicant or licensee. In any action brought under this subsection, the department or a court of competent jurisdiction shall consider all of the following factors, among others, in determining whether an applicant or licensee has failed to act in good faith toward or deal fairly with a motor vehicle dealer regarding the terms or provisions of any agreement or in any of its dealings with a motor vehicle

dealer or in compliance with this subsection:

1. Whether the applicant or licensee has fairly taken into account the motor vehicle dealer's investment in its facilities, its sales or service or parts promotions, its staffing, and its general operations.

2. Whether the applicant or licensee has altered the rights of the motor vehicle dealer or the dealer's independence in operating the dealership.

3. Whether the applicant or licensee has altered the sales or service obligations of the motor vehicle dealer or adversely impaired the investment or the financial return of the motor vehicle dealer in any part of the motor vehicle dealer's sales, service, or parts operations.

4. Whether the applicant or licensee has fairly taken into account the equities and interests of the motor vehicle dealer.

(b) An affirmative determination regarding one or more of the factors under paragraph (a) is sufficient to sustain a finding of failure to act in good faith toward or deal fairly with a motor vehicle dealer.

(42)(a) An applicant or licensee may not establish, implement, or enforce criteria for measuring the sales or service performance of any of its franchised motor vehicle dealers in this state which may have a negative material or adverse effect on any dealer; which is unfair, unreasonable, arbitrary, or inequitable; or which does not include all applicable local and regional criteria, data, and facts. Relevant and material national or state criteria or data may be considered, but comparison to such data may not outweigh the local and regional factors and data. The term "relevant and

material" includes, but is not limited to, comparable size dealerships in comparable markets with comparable buyer profiles. If such measurement is based, in whole or in part, upon a survey, the survey must be based upon a statistically significant and valid random sample. Upon the request of any dealer, applicant, licensee, common entity, or affiliate thereof that seeks to establish, implement, or enforce against any dealer any such performance measurement must promptly describe in writing to the motor vehicle dealer, in detail, how the measurement criteria for the dealer's sales and service performance was designed, calculated, established, and applied.

(b) Any dealer, against whom any such performance measurement criteria are sought to be used for any purpose adverse to the dealer, has the right to file a complaint in any court of competent jurisdiction alleging that such performance criteria does not comply with this subsection and, if successful, shall be entitled to damages pursuant to s. 320.697, plus attorney fees and injunctive relief. The court is authorized to issue temporary, preliminary, and permanent injunctive relief without regard to the existence of an adequate remedy at law or irreparable harm and without requiring a bond of any complainant.

(c) In any proceeding under this subsection, the applicant or licensee shall bear the ultimate burden of proof that the dealer performance measurement criteria complies with this subsection and has been implemented and enforced uniformly by the applicant or licensee among its dealers in this state.

A motor vehicle dealer who can demonstrate that a violation of,

or failure to comply with, this section ~~any of the preceding provisions~~ by an applicant or licensee will or can adversely and pecuniarily affect the complaining dealer~~,~~ shall be entitled to pursue all of the remedies, procedures, and rights of recovery available under ss. 320.695, ~~and~~ 320.697, and 320.699.

Section 2. Section 320.648, Florida Statutes, is created to read:

320.648 Discriminatory practices; prohibitions.—

(1) For the purpose of avoiding competitive disadvantages of a motor vehicle dealer in this state by reason of differences in dealer cost of any motor vehicle and for the purpose of eliminating discrimination by an applicant or licensee against any motor vehicle dealer in this state, an applicant or licensee is prohibited from:

(a) Selling or offering to sell a new motor vehicle to a motor vehicle dealer at a lower actual, effective cost, including the cost of the vehicle transportation, than the actual, effective cost that the same model similarly equipped is offered to or is available to another same line-make motor dealer in this state during a similar period.

(b) Discriminating between its same-line make dealers in this state by the use of a promotional, incentive, or bonus plan, program, device, benefit, or otherwise, whether received by the motor vehicle dealer at the time of sale of the new motor vehicle to the dealer or later, which results in a lower cost, including the cost of the vehicle transportation, than the actual, effective cost that the same model similarly equipped is offered or is available to another same line-make model motor vehicle dealer in this state during a similar period.

(2) Subsection (1) does not prohibit a licensee's or applicant's offer of a promotion, bonus, or incentive which in effect does not discriminate against, and is functionally available to, all competing dealers of the same line-make in this state on substantially comparable terms, provided that it contains fair and reasonably achievable sales or service objectives.

(3) Subsection (1) does not obviate, affect, alter, or diminish s. 320.64(38).

Section 3. Section 320.699, Florida Statutes, is amended to read:

320.699 ~~Administrative~~ Hearings and adjudications; procedure.—

(1) A motor vehicle dealer, or person with entitlements to or in a motor vehicle dealer, who is directly and adversely affected by the action or conduct of an applicant or licensee which is alleged to be in violation of any provision of ss. 320.60-320.70, may seek a declaration and adjudication of its rights with respect to the alleged action or conduct of the applicant or licensee by:

(a) Filing with the department a request for a proceeding and an administrative hearing which conforms substantially with the requirements of ss. 120.569 and 120.57; ~~or~~

(b) Filing with the department a written objection or notice of protest pursuant to s. 320.642; or

(c) As an alternative, filing a complaint in any court of competent jurisdiction to seek temporary, preliminary, or permanent injunctive relief and civil damages pursuant to s. 320.697. Upon a prima facie showing by a complainant that such

violation has occurred, or may occur, the burden of proof of all issues must then be upon the applicant or licensee to prove that such violation did not or will not occur. In any such proceeding, a court may issue injunctive relief without regard to the existence of an adequate remedy at law or irreparable harm and without requiring any bond and may award costs and reasonable attorney fees to the complainant if relief is granted.

(2) If a written objection or notice of protest is filed with the department under paragraph (1)(b), a hearing shall be held not sooner than 180 days nor later than 240 days from the date of filing of the first objection or notice of protest, unless the time is extended by the administrative law judge for good cause shown. This subsection shall govern the schedule of hearings in lieu of any other provision of law with respect to administrative hearings conducted by the Department of Highway Safety and Motor Vehicles or the Division of Administrative Hearings, including performance standards of state agencies, which may be included in current and future appropriations acts.

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