

By the Committee on Transportation; and Senator Haridopolos

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

338
339 A motor vehicle dealer who can demonstrate that a violation of,
340 or failure to comply with, any of the preceding provisions by an
341 applicant or licensee will or can adversely and pecuniarily
342 affect the complaining dealer, shall be entitled to pursue all
343 of the remedies, procedures, and rights of recovery available
344 under ss. 320.695 and 320.697.

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

347 320.642 Dealer licenses in areas previously served;
348 procedure.—

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

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

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

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

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

368
369 Immediately upon receipt of the ~~such~~ notice the department shall
370 cause a notice to be published in the Florida Administrative
371 Weekly. The published notice shall state that a petition or
372 complaint by any dealer with standing to protest pursuant to
373 subsection (3) must be filed not more than 45 ~~30~~ days after ~~from~~
374 the date of publication of the notice in the Florida
375 Administrative Weekly. The published notice shall describe and
376 identify the proposed dealership sought to be licensed, and the
377 department shall cause a copy of the notice to be mailed to

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378 those dealers identified in the licensee's notice under
379 paragraph (c).

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

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

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

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

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

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

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

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

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

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

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

461 8. Whether the protesting dealer or dealers are in
462 substantial compliance with their dealer agreement.

463 9. Whether there is adequate interbrand and intrabrand
464 competition with respect to such ~~said~~ line-make in the community

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465 or territory and adequately convenient consumer care for the
466 motor vehicles of the line-make, including the adequacy of sales
467 and service facilities.

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

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

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

483 13. Whether the licensee has provided marketing and
484 advertising support of its line-make in the community or
485 territory on a basis comparable to its interbrand competitors.

486 14. Whether the economic conditions reasonably forecasted
487 by the licensee for the foreseeable future will enable all
488 existing same line-make dealers and the proposed new or
489 relocated dealership the opportunity for a reasonable return on
490 their investment, including supplying an adequate number of
491 every model of the licensee's new motor vehicles to them.

492 (3) An existing franchised motor vehicle dealer or dealers
493 ~~has shall have~~ standing to protest a proposed additional or

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494 relocated motor vehicle dealer when ~~where~~ the existing motor
495 vehicle dealer or dealers have a franchise agreement for the
496 same line-make vehicle to be sold or serviced by the proposed
497 additional or relocated motor vehicle dealer and are physically
498 located so as to meet or satisfy any of the following
499 requirements or conditions:

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

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

513 2. The existing motor vehicle dealer or dealers of the same
514 line-make have a licensed franchise location within a radius of
515 20 miles of the location of the proposed additional or relocated
516 motor vehicle dealer; or

517 3. Any existing motor vehicle dealer or dealers of the same
518 line-make can establish that during any 12-month period of the
519 36-month period preceding the filing of the licensee's
520 application for the proposed dealership, the ~~such~~ dealer or its
521 predecessor made 25 percent of its retail sales of new motor
522 vehicles to persons whose registered household addresses were

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523 located within a radius of 20 miles of the location of the
524 proposed additional or relocated motor vehicle dealer; provided
525 the ~~such~~ existing dealer is located in the same county or any
526 county contiguous to the county where the additional or
527 relocated dealer is proposed to be located.

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

533 1. Any existing motor vehicle dealer or dealers of the same
534 line-make have a licensed franchise location within a radius of
535 15 ~~12.5~~ miles of the location of the proposed additional or
536 relocated motor vehicle dealer; or

537 2. Any existing motor vehicle dealer or dealers of the same
538 line-make can establish that during any 12-month period of the
539 36-month period preceding the filing of the licensee's
540 application for the proposed dealership, such dealer or its
541 predecessor made 20 ~~25~~ percent of its retail sales of new motor
542 vehicles to persons whose registered household addresses were
543 located within a radius of 15 ~~12.5~~ miles of the location of the
544 proposed additional or relocated motor vehicle dealer, or
545 performed repairs on the same line-make motor vehicles which
546 constituted 15 percent of its total service department sales to
547 persons whose registered addresses were located within a radius
548 of 15 miles of the location of the proposed additional or
549 relocated dealer; provided such existing dealer is located in
550 the same county or any county contiguous to the county where the
551 additional or relocated dealer is proposed to be located.

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

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

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

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

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

570 3. The proposed location of the additional or relocated
571 service-only dealership is at least 10 7 miles from all existing
572 motor vehicle dealerships of the same line-make, other than
573 motor vehicle dealerships owned by the applicant.

574 (c) In determining whether existing franchised motor
575 vehicle dealers are providing adequate representation, adequate
576 competition, and convenient customer service ~~representations~~ in
577 the community or territory for the line-make in question in a
578 protest of the proposed addition or relocation of a service-only
579 dealership, the department may consider the elements set forth
580 in paragraph (2) (b), provided:

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

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

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

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

588 (d) If an application for a service-only dealership is
589 granted, the department shall issue a license which permits only
590 service, as defined in s. 320.60(16), and does not permit the
591 selling or leasing of new motor vehicles, as defined in s.
592 320.60(15). If a service-only dealership subsequently seeks to
593 sell new motor vehicles at its location, the notice and protest
594 provisions of this section shall apply.

595 Section 3. Section 320.643, Florida Statutes, is amended to
596 read:

597 320.643 Transfer, assignment, or sale of franchise
598 agreements.—

599 (1)(a) Notwithstanding the terms of any franchise
600 agreement, a licensee shall not, by contract or otherwise, fail
601 or refuse to give effect to, prevent, prohibit, or penalize or
602 attempt to refuse to give effect to, prohibit, or penalize any
603 motor vehicle dealer from selling, assigning, transferring,
604 alienating, or otherwise disposing of its franchise agreement to
605 any other person or persons, including a corporation established
606 or existing for the purpose of owning or holding a franchise
607 agreement, unless the licensee proves at a hearing pursuant to a
608 complaint filed by a motor vehicle dealer under this section
609 that the ~~such~~ sale, transfer, alienation, or other disposition

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610 is to a person who is not, or whose controlling executive
611 management is not, of good moral character or does not meet the
612 written, reasonable, and uniformly applied standards or
613 qualifications of the licensee relating to financial
614 qualifications of the transferee and business experience of the
615 transferee or the transferee's executive management. A motor
616 vehicle dealer who desires to sell, assign, transfer, alienate,
617 or otherwise dispose of a franchise shall notify, or cause the
618 proposed transferee to notify, the licensee, in writing, setting
619 forth the prospective transferee's name, address, financial
620 qualifications, and business experience during the previous 5
621 years. A licensee who receives such notice may, within 60 days
622 following such receipt, notify the motor vehicle dealer, in
623 writing, that the proposed transferee is not a person qualified
624 to be a transferee under this section and setting forth the
625 material reasons for such rejection. Failure of the licensee to
626 notify the motor vehicle dealer within the 60-day period of such
627 rejection shall be deemed an approval of the transfer. A ~~No such~~
628 transfer, assign, or sale is not ~~shall be~~ valid unless the
629 transferee agrees in writing to comply with all requirements of
630 the franchise then in effect.

631 (b) A motor vehicle dealer whose proposed sale is rejected
632 may, within 60 days following such receipt of such rejection,
633 file with the department a complaint for a determination that
634 the proposed transferee has been rejected in violation of this
635 section. The licensee has the burden of proof with respect to
636 all issues raised by the ~~such~~ complaint. The department shall
637 determine, and enter an order providing, that the proposed
638 transferee is either qualified or is not and cannot be qualified

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639 for specified reasons, or the order may provide the conditions
640 under which a proposed transferee would be qualified. If the
641 licensee fails to file ~~such~~ a response to the motor vehicle
642 dealer's complaint within 30 days after receipt of the
643 complaint, unless the parties agree in writing to an extension,
644 or if the department, after a hearing, renders a decision other
645 than one disqualifying the proposed transferee, the franchise
646 agreement between the motor vehicle dealer and the licensee is
647 ~~shall be~~ deemed amended to incorporate such transfer or amended
648 in accordance with the determination and order rendered,
649 effective upon compliance by the proposed transferee with any
650 conditions set forth in the determination or order.

651 (2) (a) Notwithstanding the terms of any franchise
652 agreement, a licensee shall not, by contract or otherwise, fail
653 or refuse to give effect to, prevent, prohibit, or penalize, or
654 attempt to refuse to give effect to, prevent, prohibit, or
655 penalize, any motor vehicle dealer or any proprietor, partner,
656 stockholder, owner, or other person who holds or otherwise owns
657 an interest therein from selling, assigning, transferring,
658 alienating, or otherwise disposing of, in whole or in part, the
659 equity interest of any of them in such motor vehicle dealer to
660 any other person or persons, including a corporation established
661 or existing for the purpose of owning or holding the stock or
662 ownership interests of other entities, unless the licensee
663 proves at a hearing pursuant to a complaint filed by a motor
664 vehicle dealer under this section that the ~~such~~ sale, transfer,
665 alienation, or other disposition is to a person who is not, or
666 whose controlling executive management is not, of good moral
667 character. A motor vehicle dealer, or any proprietor, partner,

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668 stockholder, owner, or other person who holds or otherwise owns
669 an interest in the motor vehicle dealer, who desires to sell,
670 assign, transfer, alienate, or otherwise dispose of any interest
671 in such motor vehicle dealer shall notify, or cause the proposed
672 transferee to so notify, the licensee, in writing, of the
673 identity and address of the proposed transferee. A licensee who
674 receives such notice may, within 60 days following such receipt,
675 notify the motor vehicle dealer in writing that the proposed
676 transferee is not a person qualified to be a transferee under
677 this section and setting forth the material reasons for such
678 rejection. Failure of the licensee to notify the motor vehicle
679 dealer within the 60-day period of such rejection shall be
680 deemed an approval of the transfer. Any person whose proposed
681 sale of stock is rejected may file within 60 days of receipt of
682 such rejection a complaint with the department alleging that the
683 rejection was in violation of the law or the franchise
684 agreement. The licensee has the burden of proof with respect to
685 all issues raised by such complaint. The department shall
686 determine, and enter an order providing, that the proposed
687 transferee either is qualified or is not and cannot be qualified
688 for specified reasons; or the order may provide the conditions
689 under which a proposed transferee would be qualified. If the
690 licensee fails to file a response to the motor vehicle dealer's
691 complaint within 30 days of receipt of the complaint, unless the
692 parties agree in writing to an extension, or if the department,
693 after a hearing, renders a decision on the complaint other than
694 one disqualifying the proposed transferee, the transfer shall be
695 deemed approved in accordance with the determination and order
696 rendered, effective upon compliance by the proposed transferee

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697 with any conditions set forth in the determination or order.

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

711 (3) During the pendency of any such department or court
712 hearing, the franchise agreement of the motor vehicle dealer
713 shall continue in effect in accordance with its terms. The
714 department or any court shall use reasonable efforts to expedite
715 any determination requested under this section.

716 (4) Notwithstanding the terms of any franchise agreement,
717 the acceptance by the licensee of the proposed transferee shall
718 not be unreasonably withheld, delayed, or conditioned. For the
719 purposes of this section, the refusal by the licensee to accept,
720 in a timely manner, a proposed transferee who satisfies the
721 criteria set forth in subsection (1) or subsection (2) is
722 presumed to be unreasonable.

723 (5) It shall be a violation of this section for the
724 licensee to reject, ~~or~~ withhold, delay, or condition approval of
725 a proposed transfer unless the licensee can prove in any court

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726 of competent jurisdiction in defense of any claim brought
727 pursuant to s. 320.697 that, in fact, the rejection or
728 withholding of approval of the proposed transfer was not in
729 violation of or precluded by this section and was reasonable.
730 The determination of whether such rejection or withholding was
731 reasonable shall be based on a preponderance of the evidence
732 presented during the proceeding on an objective standard.
733 Alleging the permitted statutory grounds by the licensee in the
734 written rejection of the proposed transfer does ~~shall~~ not
735 constitute a defense of the licensee, or protect the licensee
736 from liability for violating this section.

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

740 320.696 Warranty responsibility.-

741 (3) (a) A licensee shall compensate a motor vehicle dealer
742 for parts used in any work described in subsection (1). The
743 compensation may be an agreed percentage markup over the
744 licensee's dealer cost, but if an agreement is not reached
745 within 30 days after a dealer's written request, compensation
746 for the parts is the greater of:

747 1. The dealer's arithmetical mean percentage markup over
748 dealer cost for all parts charged by the dealer in 75 ~~50~~
749 consecutive retail customer repairs made by the dealer within a
750 3-month period before the dealer's written request for a change
751 in reimbursement pursuant to this section, or all of the retail
752 customer repair orders over that 3-month period if there are
753 fewer than 50 retail customer repair orders in that period. The
754 motor vehicle dealer shall give the licensee 10 days' written

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755 notice that it intends to make a written request to the licensee
756 for a warranty parts reimbursement increase and permit the
757 licensee, within that 10-day period, to select the initial
758 retail customer repair for the consecutive repair orders that
759 will be attached to the written request used for the markup
760 computation, provided that if the licensee fails to provide a
761 timely selection, the dealer may make that selection. No repair
762 order shall be excluded from the markup computation because it
763 contains both warranty, extended warranty, certified pre-owned
764 warranty, maintenance, recall, campaign service, or authorized
765 goodwill work and a retail customer repair. However, only the
766 retail customer repair portion of the repair order shall be
767 included in the computation, and the parts described in
768 paragraph (b) shall be excluded from the computation; or

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

771 ~~3. An amount equal to the dealer's markup over dealer cost~~
772 ~~that results in the same gross profit percentage for parts used~~
773 ~~in work done under subsection (1) as the dealer receives for~~
774 ~~parts used in the customer retail repairs, as evidenced by the~~
775 ~~average of said dealer's gross profit percentage in the dealer's~~
776 ~~financial statements for the 2 months preceding the dealer's~~
777 ~~request.~~

778
779 If a licensee reduces the suggested retail or list price for any
780 replacement part or accessory, it also shall reduce, by at least
781 the same percentage, the cost to the dealer for the part or
782 accessory. The dealer's markup or gross profit percentage shall
783 be uniformly applied to all of the licensee's parts used by the

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784 dealer in performing work covered by subsection (1).

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

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

802 (b) Compensation paid by a licensee to a motor vehicle
803 dealer may be an agreed hourly labor rate. If, however, an
804 agreement is not reached within 30 days after the dealer's
805 written request, the compensation shall ~~dealer may choose to be~~
806 ~~paid the greater of:~~

807 ~~1. the dealer's hourly labor rate for retail customer~~
808 ~~repairs, determined by dividing the amount of the dealer's total~~
809 ~~labor sales for retail customer repairs by the number of total~~
810 ~~labor hours that generated those sales for the month preceding~~
811 ~~the request, excluding the work in paragraph (c).; ~~or~~~~

812 ~~2. An amount equal to the dealer's markup over dealer cost~~

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813 ~~that results in the same gross profit percentage for labor hours~~
814 ~~performed in work covered by subsection (1) as the dealer~~
815 ~~receives for labor performed in its customer retail repairs, as~~
816 ~~evidenced by the average of said dealer's gross profit~~
817 ~~percentage in the dealer's financial statements provided to the~~
818 ~~licensee for the 2 months preceding the dealer's written~~
819 ~~request, if the dealer provides in the written request the~~
820 ~~arithmetical mean of the hourly wage paid to all of its~~
821 ~~technicians during that preceding month. The arithmetical mean~~
822 ~~shall be the dealer cost used in that calculation.~~

823

824 After an hourly labor rate is agreed or determined, the licensee
825 shall uniformly apply and pay that hourly labor rate for all
826 labor used by the dealer in performing work under subsection
827 (1). However, a licensee may ~~shall~~ not pay an hourly labor rate
828 less than the hourly rate it was paying to the dealer for work
829 done under subsection (1) on January 2, 2008. A licensee may
830 ~~shall~~ not eliminate or decrease flat-rate times from or
831 establish an unreasonable flat-rate time in its warranty repair
832 manual, warranty time guide, or any other similarly named
833 document, unless the licensee can prove that it has improved the
834 technology related to a particular repair and thereby has
835 lessened the average repair time. A licensee shall establish
836 reasonable flat-rate labor times in its warranty repair manuals
837 and warranty time guides for newly introduced model motor
838 vehicles which are at least consistent with its existing
839 documents. As used in this subsection, the terms "retail
840 customer repair" and "similar work" are not limited to a repair
841 to the same model vehicle or model year, but include prior

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842 repairs that resemble but are not identical to the repair for
843 which the dealer is making a claim for compensation.

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

852 (7) A licensee may ~~shall~~ not require, ~~influence, or attempt~~
853 ~~to influence~~ a motor vehicle dealer to implement or change the
854 prices for which it sells parts or labor in retail customer
855 repairs. A licensee shall not implement or continue a policy,
856 procedure, or program to any of its dealers in this state for
857 compensation under this section which is inconsistent with this
858 section.

859 Section 5. If any provision of this act or the application
860 thereof to any person or circumstance is held invalid, the
861 invalidity does not affect other provisions or applications of
862 the act which can be given effect without the invalid provision
863 or application, and to this end the provisions of this act are
864 severable.

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