

1 Section 320.27, Florida Statutes, is amended to read:

2 320.27 Motor vehicle dealers.--

3 (5) SUPPLEMENTAL LICENSE.--Any person licensed hereunder shall obtain a
4 supplemental license for each permanent additional place or places of business not contiguous to
5 the premises for which the original license is issued, on a form to be furnished by the
6 department, and upon payment of a fee of \$50 for each such additional location. Upon making
7 renewal applications for such supplemental licenses, such applicant shall pay \$50 for each
8 additional location. A supplemental license authorizing off-premises sales shall be issued, at no
9 charge to the dealer, for a period not to exceed 10 consecutive calendar days. To obtain such a
10 temporary supplemental license for off-premises sales, the applicant must be a licensed dealer;
11 must notify the applicable local department office of the specific dates and location for which
12 such license is requested, display a sign at the licensed location clearly identifying the dealer,
13 and provide staff to work at the temporary location for the duration of the off-premises sale; must
14 meet any local government permitting requirements; and must have permission of the property
15 owner to sell at that location. ~~In the case of an off-premises sale by a motor vehicle dealer
16 licensed under subparagraph (1)(c)1. for the sale of new motor vehicles, the applicant must also
17 include documentation notifying the applicable licensee licensed under s. 320.61 of the intent to
18 engage in an off-premises sale 5 working days prior to the date of the off-premises sale. The
19 licensee shall either approve or disapprove of the off-premises sale within 2 working days after
20 receiving notice; otherwise, it will be deemed approved. This section does not apply to a
21 nonselling motor vehicle show or public display of new motor vehicles.~~

22 Section 320.61, Florida Statutes, is amended to read:

23 320.61 Licenses required of motor vehicle manufacturers, distributors, importers, etc.--

1 ~~(4) When a complaint of unfair or prohibited cancellation or nonrenewal of a dealer~~
2 ~~agreement is made by a motor vehicle dealer against a licensee and such complaint is pending~~
3 ~~pursuant to ss. 320.60-320.70, no replacement application for such agreement shall be granted~~
4 ~~and no license shall be issued by the department under s. 320.27 to any replacement dealer until a~~
5 ~~final decision is rendered on the complaint of unfair cancellation, so long as the dealer agreement~~
6 ~~of the complaining dealer is in effect as provided under s. 320.641(7).~~

7 Section 320.63, Florida Statutes, is amended to read:

8 320.63 Application for license; contents.--Any person desiring to be licensed pursuant to
9 ss. 320.60-320.70 shall make application therefor to the department upon a form containing such
10 information as the department requires. The department shall require, with such application or
11 otherwise and from time to time, all of the following, which information may be considered by
12 the department in determining the fitness of the applicant or licensee to engage in the business
13 for which the applicant or licensee desires to be licensed:

14 (3) From each manufacturer, distributor, or importer which utilizes an identical blanket
15 basic agreement for its dealers or distributors in this state, which agreement comprises all or any
16 part of the applicant's or licensee's agreements with motor vehicle dealers in this state, a copy of
17 the written agreement and all supplements thereto, together with a list of the applicant's or
18 licensee's authorized dealers or distributors and their addresses. The applicant or licensee shall
19 further notify the department immediately of the appointment of any additional dealer or
20 distributor. The applicant or licensee shall annually report to the department on its efforts to add
21 new minority dealer points, including difficulties encountered under ss. 320.61-320.70. For
22 purposes of this section "minority" shall have the same meaning as that given it in the definition
23 of "minority person" in s. 288.703(3). ~~Not later than 60 days prior to the date a revision or~~

1 ~~modification to a franchise agreement is offered uniformly to a licensee's motor vehicle dealers~~
2 ~~in this state, the licensee shall notify the department of such revision, modification, or addition to~~
3 ~~the franchise agreement on file with the department. In no event may a franchise agreement, or~~
4 ~~any addendum or supplement thereto, be offered to a motor vehicle dealer in this state until the~~
5 ~~applicant or licensee files an affidavit with the department acknowledging that the terms or~~
6 ~~provisions of the agreement, or any related document, are not inconsistent with, prohibited by, or~~
7 ~~contrary to the provisions contained in ss. 320.60-320.70. Any franchise agreement offered to a~~
8 ~~motor vehicle dealer in this state shall provide that all terms and conditions in such agreement~~
9 ~~inconsistent with the law and rules of this state are of no force and effect.~~

10 (4) A ~~certified~~ copy of the delivery and preparation obligations of its motor vehicle
11 dealers.

12 (5) ~~An affidavit stating the rates which the applicant or licensee pays or agrees to pay~~
13 ~~any authorized motor vehicle dealer licensed in this state for the parts and labor advanced or~~
14 ~~incurred by such authorized motor vehicle dealer for or on account of any delivery and~~
15 ~~preparation obligations imposed by the applicant or the licensee on its dealers or relating to~~
16 ~~warranty obligations which the applicant or licensee or its principle is obligated to perform.~~

17 Section 320.64, Florida Statutes, is amended to read:

18 320.64 Denial, suspension, or revocation of license; grounds.--A license of a licensee
19 under s. 320.61 may be denied, suspended, or revoked within the entire state or at any specific
20 location or locations within the state at which the applicant or licensee engages or proposes to
21 engage in business, upon proof that the section was violated with sufficient frequency to
22 establish a pattern of wrongdoing, and a licensee or applicant shall be liable for claims and

1 remedies provided in ss. 320.695 and 320.697 for any violation of any of the following
2 provisions. A licensee is prohibited from committing the following acts:

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

5 ~~(1)~~ (2) The applicant or licensee has knowingly made a material misstatement in its
6 application for a license.

7 ~~(2)~~ (3) The applicant or licensee willfully has failed to comply with significant
8 provisions of ss. 320.60-320.70 or with any lawful rule or regulation adopted or promulgated by
9 the department.

10 ~~(3)~~ (4) The applicant or licensee has indulged in any illegal act relating to his or her
11 business.

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

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

17 ~~(7) The applicant or licensee has threatened to discontinue, cancel, or not to renew a~~
18 ~~franchise agreement of a licensed motor vehicle dealer, where the threatened discontinuation,~~
19 ~~cancellation, or nonrenewal, if implemented, would be in violation of any of the provisions of s.~~
20 ~~320.641~~

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

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

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

10 ~~(4)(11)~~ The applicant or licensee has coerced a motor vehicle dealer to provide
11 installment financing for the motor vehicle dealer's purchasers with a specified financial
12 institution.

13 ~~(5)(12)~~ The applicant or licensee has advertised, printed, displayed, published,
14 distributed, broadcast, or televised, or caused or permitted to be advertised, printed, displayed,
15 published, distributed, broadcast, or televised, in any manner whatsoever, any statement or
16 representation with regard to the sale or financing of motor vehicles which is false, deceptive, or
17 misleading.

18 ~~(6)(13)~~ The applicant or licensee has sold, exchanged, or rented a motorcycle which
19 produces in excess of 5 brake horsepower, knowing the use thereof to be by, or intended for, the
20 holder of a restricted Florida driver's license.

21 ~~(7)(14)~~ The applicant or licensee has engaged in previous conduct which would have
22 been a ground for revocation or suspension of a license if the applicant or licensee had been
23 licensed.

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

10 ~~(16) Notwithstanding the terms of any franchise agreement, the applicant or licensee~~
11 ~~prevents or refuses to accept the succession to any interest in a franchise agreement by any legal~~
12 ~~heir or devisee under the will of a motor vehicle dealer or under the laws of descent and~~
13 ~~distribution of this state; provided, the applicant or licensee is not required to accept a succession~~
14 ~~where such heir or devisee does not meet licensee's written, reasonable, and uniformly applied~~
15 ~~minimal standard qualifications for dealer applicants or which, after notice and administrative~~
16 ~~hearing pursuant to chapter 120, is demonstrated to be detrimental to the public interest or to the~~
17 ~~representation of the applicant or licensee. Nothing contained herein, however, shall prevent a~~
18 ~~motor vehicle dealer, during his or her lifetime, from designating any person as his or her~~
19 ~~successor in interest by written instrument filed with and accepted by the applicant or licensee. A~~
20 ~~licensee who rejects the successor transferee under this subsection shall have the burden of~~
21 ~~establishing in any proceeding where such rejection is in issue that the rejection of the successor~~
22 ~~transferee complies with this subsection.~~

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

5 ~~(18) The applicant or licensee has established a system of motor vehicle allocation or~~
6 ~~distribution or has implemented a system of allocation or distribution of motor vehicles to one or~~
7 ~~more of its franchised motor vehicle dealers which is unfair, inequitable, unreasonably~~
8 ~~discriminatory, or not supportable by reason and good cause after considering the equities of the~~
9 ~~affected motor vehicles dealer or dealers. An applicant or licensee shall maintain for 3 years~~
10 ~~records that describe its methods or formula of allocation and distribution of its motor vehicles~~
11 ~~and records of its actual allocation and distribution of motor vehicles to its motor vehicle dealers~~
12 ~~in this state.~~

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

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

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

5 ~~(22) The applicant or licensee has refused to deliver, in reasonable quantities and within~~
6 ~~a reasonable time, to any duly licensed motor vehicle dealer who has an agreement with such~~
7 ~~applicant or licensee for the retail sale of new motor vehicles and parts for motor vehicles sold or~~
8 ~~distributed by the applicant or licensee, any such motor vehicles or parts as are covered by such~~
9 ~~agreement. Such refusal includes the failure to offer to its same line make franchised motor~~
10 ~~vehicle dealers all models manufactured for that line make, or requiring a dealer to pay any extra~~
11 ~~fee, require a dealer to execute a separate franchise agreement, purchase unreasonable~~
12 ~~advertising displays or other materials, or remodel, renovate, or recondition the dealer's existing~~
13 ~~facilities, or provide exclusive facilities as a prerequisite to receiving a model or series of~~
14 ~~vehicles. However, the failure to deliver any motor vehicle or part will not be considered a~~
15 ~~violation of this section if the failure is due to an act of God, work stoppage, or delay due to a~~
16 ~~strike or labor difficulty, a freight embargo, product shortage, or other cause over which the~~
17 ~~applicant or licensee has no control. An applicant or licensee may impose reasonable~~
18 ~~requirements on the motor vehicle dealer, other than the items listed above, including, but not~~
19 ~~limited to, the purchase of special tools required to properly service a motor vehicle and the~~
20 ~~undertaking of sales person or service person training related to the motor vehicle.~~

21 ~~(23) The applicant or licensee has competed or is competing with respect to any activity~~
22 ~~covered by the franchise agreement with a motor vehicle dealer of the same line make located in~~

1 this state with whom the applicant or licensee has entered into a franchise agreement, except as
2 permitted in s. 320.645

3 (24) ~~The applicant or licensee has sold a motor vehicle to any retail consumer in the state
4 except through a motor vehicle dealer holding a franchise agreement for the line make that
5 includes the motor vehicle. This section does not apply to sales by the applicant or licensee of
6 motor vehicles to its current employees, employees of companies affiliated by common
7 ownership, charitable not for profit organizations, and the federal government.~~

8 (25) ~~The applicant or licensee has undertaken an audit of warranty payments or incentive
9 payment previously paid to a motor vehicle dealer in violation of this section or has failed to
10 comply with s. 320.696 An applicant or licensee may reasonably and periodically audit a motor
11 vehicle dealer to determine the validity of paid claims. Audit of warranty payments shall only be
12 for the 1 year period immediately following the date the claim was paid. Audit of incentive
13 payments shall only be for an 18 month period immediately following the date the incentive was
14 paid. An applicant or licensee shall not deny a claim or charge a motor vehicle dealer back
15 subsequent to the payment of the claim unless the applicant or licensee can show that the claim
16 was false or fraudulent or that the motor vehicle dealer failed to substantially comply with the
17 reasonable written and uniformly applied procedures of the applicant or licensee for such repairs
18 or incentives. An applicant or licensee may not charge a motor vehicle dealer back subsequent to
19 the payment of a claim unless a representative of the applicant or licensee first meets in person,
20 by telephone, or by video teleconference with an officer or employee of the dealer designated by
21 the motor vehicle dealer. At such meeting the applicant or licensee must provide a detailed
22 explanation, with supporting documentation, as to the basis for each of the claims for which the
23 applicant or licensee proposed a charge back to the dealer and a written statement containing the~~

1 basis upon which the motor vehicle dealer was selected for audit or review. Thereafter, the
2 applicant or licensee must provide the motor vehicle dealer's representative a reasonable period
3 after the meeting within which to respond to the proposed charge-backs, with such period to be
4 commensurate with the volume of claims under consideration, but in no case less than 45 days
5 after the meeting. The applicant or licensee is prohibited from changing or altering the basis for
6 each of the proposed charge-backs as presented to the motor vehicle dealer's representative
7 following the conclusion of the audit unless the applicant or licensee receives new information
8 affecting the basis for one or more charge-backs. If the applicant or licensee claims the existence
9 of new information, the dealer must be given the same right to a meeting and right to respond as
10 when the charge-back was originally presented.

11 (26) Notwithstanding the terms of any franchise agreement, the applicant or licensee has
12 refused to allocate, sell, or deliver motor vehicles; charged back or withheld payments or other
13 things of value for which the dealer is otherwise eligible under a sales promotion, program, or
14 contest; or prevented the motor vehicle dealer from participating in any promotion, program, or
15 contest for selling a motor vehicle to a customer who was present at the dealership and the motor
16 vehicle dealer did not know or should not have reasonably known that the vehicle would be
17 shipped to a foreign country. There will be a rebuttable presumption that the dealer did not know
18 or should not have reasonably known that the vehicle would be shipped to a foreign country if
19 the vehicle is titled in one of the 50 United States.

20 (27) Notwithstanding the terms of any franchise agreement, the applicant or licensee has
21 failed or refused to indemnify and hold harmless any motor vehicle dealer against any judgment
22 for damages, or settlements agreed to by the applicant or licensee, including, without limitation,
23 court costs and reasonable attorneys fees, arising out of complaints, claims, or lawsuits,

1 including, without limitation, strict liability, negligence, misrepresentation, express or implied
2 warranty, or revocation or rescission of acceptance of the sale of a motor vehicle, to the extent
3 the judgment or settlement relates to the alleged negligent manufacture, design, or assembly of
4 motor vehicles, parts, or accessories. Nothing herein shall obviate the licensee's obligations
5 pursuant to chapter 681.

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

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

17 (30) The applicant or licensee has conducted or threatened to conduct any audit of a
18 motor vehicle dealer in order to coerce or attempt to coerce the dealer to forego any rights
19 granted to the dealer under ss. 320.60-320.70 or under the agreement between the licensee and
20 the motor vehicle dealer. Nothing in this section shall prohibit an applicant or licensee from
21 reasonably and periodically auditing a dealer to determine the validity of paid claims.

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

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

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

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

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

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

13 ~~(34) The applicant or licensee, after the effective date of this subsection, has included in~~
14 ~~any franchise agreement with a motor vehicle dealer a mandatory obligation or requirement of~~
15 ~~the motor vehicle dealer to purchase, sell, or lease, or offer for purchase, sale, or lease, any~~
16 ~~quantity of used motor vehicles.~~

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

21 ~~(36)(a) Notwithstanding the terms of any franchise agreement, in addition to any other~~
22 ~~statutory or contractual rights of recovery after the voluntary or involuntary termination of a~~

1 franchise, failing to pay the motor vehicle dealer, within 90 days after the effective date of the
2 termination, cancellation, or nonrenewal, the following amounts:

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

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

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

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

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

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

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

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

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

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

3 ~~(b) This subsection does not apply to a termination, cancellation, or nonrenewal that is~~
4 ~~implemented as a result of the sale of the assets or stock of the dealer. The dealer shall return the~~
5 ~~property listed in this subsection to the licensee within 90 days after the effective date of the~~
6 ~~termination, cancellation, or nonrenewal. The licensee shall supply the dealer with reasonable~~
7 ~~instructions regarding the method by which the dealer must return the property. The~~
8 ~~compensation for the property shall be paid by the licensee within 60 days after the tender of~~
9 ~~inventory and other items, if the dealer has clear title to the inventory and other items and is in a~~
10 ~~position to convey that title to the manufacturer or distributor. If the inventory or other items are~~
11 ~~subject to a security interest, the licensee may make payment jointly to the dealer and the holder~~
12 ~~of the security interest.~~

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

20
21 ~~A motor vehicle dealer who can demonstrate that a violation of, or failure to comply with, any of~~
22 ~~the preceding provisions by an applicant or licensee will or can adversely and pecuniarily affect~~

1 ~~the complaining dealer, shall be entitled to pursue all of the remedies, procedures, and rights of~~
2 ~~recovery available under ss. 320.695 and 320.697.~~

3 Section 320.6403, Florida Statutes, is repealed

4 Section 320.6405, Florida Statutes, is repealed.

5 Section 320.641, Florida Statutes, is amended to read:

6 320.641 Discontinuations, cancellations, nonrenewals, modifications, and replacement of
7 franchise agreements.--

8 (1)~~(a)~~—An applicant or licensee shall give written notice to ~~the motor vehicle dealer and~~
9 ~~the department of the licensee's intention to discontinue, cancel, or fail to renew a franchise~~
10 ~~agreement. or of the licensee's intention to modify a franchise or replace a franchise with a~~
11 ~~succeeding franchise, which modification or replacement will adversely alter the rights or~~
12 ~~obligations of a motor vehicle dealer under an existing franchise agreement or will substantially~~
13 ~~impair the sales, service obligations, or investment of the motor vehicle dealer, at least 90 days~~
14 ~~before the effective date thereof, together with the specific grounds for such action.~~

15 (b) ~~The failure by the licensee to comply with the 90-day notice period and procedure~~
16 ~~prescribed herein shall render voidable, at the option of the motor vehicle dealer, any~~
17 ~~discontinuation, cancellation, nonrenewal, modification, or replacement of any franchise~~
18 ~~agreement. Designation of a franchise agreement at a specific location as a "nondesignated~~
19 ~~point" shall be deemed an evasion of this section and constitutes an unfair cancellation.~~

20 (2) ~~Franchise agreements are deemed to be continuing unless the applicant or licensee~~
21 ~~has notified the department of the discontinuation of, cancellation of, failure to renew,~~
22 ~~modification of, or replacement of the agreement of any of its motor vehicle dealers; and annual~~

1 renewal of the license provided for under ss. 320.60-320.70 is not necessary for any cause of
2 action against the licensee.

3 (3) ~~Any motor vehicle dealer who receives a notice of intent to discontinue, cancel, not~~
4 ~~renew, modify, or replace may, within the 90-day notice period, file a petition or complaint for a~~
5 ~~determination of whether such action is an unfair or prohibited discontinuation, cancellation,~~
6 ~~nonrenewal, modification, or replacement. Agreements and certificates of appointment shall~~
7 ~~continue in effect until final determination of the issues raised in such petition or complaint by~~
8 ~~the motor vehicle dealer. A discontinuation, cancellation, or nonrenewal of a franchise~~
9 ~~agreement is unfair if it is not clearly permitted by the franchise agreement; is not undertaken in~~
10 ~~good faith; is not undertaken for good cause; or is based on an alleged breach of the franchise~~
11 ~~agreement which is not in fact a material and substantial breach; or, if the grounds relied upon~~
12 ~~for termination, cancellation, or nonrenewal have not been applied in a uniform and consistent~~
13 ~~manner by the licensee. If the notice of discontinuation, cancellation, or nonrenewal relates to an~~
14 ~~alleged failure of the new motor vehicle dealer's sales or service performance obligations under~~
15 ~~the franchise agreement, the new motor vehicle dealer must first be provided with at least 180~~
16 ~~days to correct the alleged failure before a licensee may send the notice of discontinuation,~~
17 ~~cancellation, or nonrenewal. A modification or replacement is unfair if it is not clearly permitted~~
18 ~~by the franchise agreement; is not undertaken in good faith; or is not undertaken for good cause.~~
19 ~~The applicant or licensee shall have the burden of proof that such action is fair and not~~
20 ~~prohibited.~~

21 (4) ~~Notwithstanding any other provision of this section, the failure of a motor vehicle~~
22 ~~dealer to be engaged in business with the public for 10 consecutive business days constitutes~~
23 ~~abandonment by the dealer of his or her franchise agreement. If any motor vehicle dealer~~

1 ~~abandons his or her franchise agreement, he or she has no cause of action under this section. For~~
2 ~~the purpose of this section, a dealer shall be considered to be engaged in business with the public~~
3 ~~if a sales and service facility is open and is performing such services 8 hours a day, 5 days a~~
4 ~~week, excluding holidays. However, it will not be considered abandonment if such failure to~~
5 ~~engage in business is due to an act of God, a work stoppage, or a delay due to a strike or labor~~
6 ~~difficulty, a freight embargo, or other cause over which the motor vehicle dealer has no control,~~
7 ~~including any violation of ss. 320.60-320.70.~~

8 ~~(5) Notwithstanding any other provision of this section, if a motor vehicle dealer has~~
9 ~~abandoned his or her franchise agreement as provided in subsection (4), the licensee may give~~
10 ~~written notice to the dealer and the department of the licensee's intention to discontinue, cancel,~~
11 ~~or fail to renew the franchise agreement with the dealer at least 15 days before the effective date~~
12 ~~thereof, specifying the grounds for such action. A motor vehicle dealer receiving such notice~~
13 ~~may file a petition or complaint for determination of whether in fact there has been an~~
14 ~~abandonment of the franchise.~~

15 ~~(6) If the complainant motor vehicle dealer prevails, he or she shall have a cause of~~
16 ~~action against the licensee for reasonable attorneys' fees and costs incurred by him or her in such~~
17 ~~proceeding, and he or she shall have a cause of action under s. 320.697~~

18 ~~(7) Except as provided in s.320.643, no replacement motor vehicle dealer shall be named~~
19 ~~for this point or location to engage in business and the franchise agreement shall remain in effect~~
20 ~~until a final judgment is entered after all appeals are exhausted, provided that, when a motor~~
21 ~~vehicle dealer appeals a decision upholding a discontinuation, cancellation, or nonrenewal based~~
22 ~~upon abandonment or revocation of the dealer's license pursuant to s.320.27, as lawful reasons~~
23 ~~for such discontinuation, cancellation, or nonrenewal, the franchise agreement shall remain in~~

1 effect pending exhaustion of all appeals only if the motor vehicle dealer establishes a likelihood
2 of success on appeal and that the public interest will not be harmed by keeping the franchise
3 agreement in effect pending entry of final judgment after such appeal.

4 (8) ~~If a transfer is proposed pursuant to s. 320.643(1) or (2) after a notice of intent to~~
5 ~~discontinue, cancel, or not renew a franchise agreement is received but, prior to the final~~
6 ~~determination, including exhaustion of all appellate remedies of a motor vehicle dealer's~~
7 ~~complaint or petition contesting such action, the termination proceedings shall be stayed, without~~
8 ~~bond, during the period that the transfer is being reviewed by the licensee pursuant to s.~~
9 ~~320.643~~ During the period that the transfer is being reviewed by the licensee, pursuant to
10 s.320.643, the franchise agreement shall remain in full force and effect, and the motor vehicle
11 dealer shall retain all rights and remedies pursuant to the terms and conditions of the franchise
12 agreement and applicable law, including all rights of transfer until such time as the licensee has
13 accepted or rejected the proposed transfer. If the proposed transfer is rejected, the motor vehicle
14 dealer shall retain all of its rights pursuant to s. 320.643 to an administrative determination as to
15 whether the licensee's rejection is in compliance with the provisions of s.320.643, and during the
16 pendency of any such administrative proceeding, and any related appellate proceedings, the
17 termination proceedings shall remain stayed without bond, the franchise agreement shall remain
18 in full force and effect, and the motor vehicle dealer shall retain all rights and remedies pursuant
19 to the terms and conditions of the franchise agreement and applicable law, including all rights of
20 transfer. If a transfer is approved by the licensee or mandated by law, the termination
21 proceedings shall be dismissed with prejudice as moot. This subsection applies only to the first
22 two proposed transfers pursuant to s. 320.643(1) or (2) after notice of intent to discontinue,
23 cancel, or not renew is received.

1 Section 320.642, Florida Statutes, is amended to read:

2 320.642 Dealer licenses in areas previously served; procedure.--

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

7 ~~(a) The specific location at which the additional or relocated motor vehicle dealership~~
8 ~~will be established.~~

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

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

14 ~~(d) The names and addresses of the dealer operator and principal investors in the~~
15 ~~proposed additional or relocated motor vehicle dealership.~~

16

17 Immediately upon receipt of such notice ~~the department shall cause a notice to be published in~~
18 ~~the Florida Administrative Weekly. The published notice shall state that a petition or complaint~~
19 ~~by any dealer with standing to protest pursuant to subsection (3) must be filed not more than 30~~
20 ~~days from the date of publication of the notice in the Florida Administrative Weekly. The~~
21 ~~published notice shall describe and identify the proposed dealership sought to be licensed, and~~
22 ~~the department shall cause a copy of the notice to be mailed to those dealers identified in the~~
23 ~~licensee's notice under paragraph (c).~~

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

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

5 ~~2. The licensee fails to show that the existing franchised dealer or dealers who register~~
6 ~~new motor vehicle retail sales or retail leases of the same line make in the community or territory~~
7 ~~of the proposed dealership are not providing adequate representation of such line make motor~~
8 ~~vehicles in such community or territory. The burden of proof in establishing inadequate~~
9 ~~representation shall be on the licensee.~~

10 ~~(b) In determining whether the existing franchised motor vehicle dealer or dealers are~~
11 ~~providing adequate representation in the community or territory for the line make, the~~
12 ~~department may consider evidence which may include, but is not limited to:~~

13 ~~1. The impact of the establishment of the proposed or relocated dealer on the consumers,~~
14 ~~public interest, existing dealers, and the licensee; provided, however, that financial impact may~~
15 ~~only be considered with respect to the protesting dealer or dealers.~~

16 ~~2. The size and permanency of investment reasonably made and reasonable obligations~~
17 ~~incurred by the existing dealer or dealers to perform their obligations under the dealer agreement.~~

18 ~~3. The reasonably expected market penetration of the line make motor vehicle for the~~
19 ~~community or territory involved, after consideration of all factors which may affect said~~
20 ~~penetration, including, but not limited to, demographic factors such as age, income, education,~~
21 ~~size class preference, product popularity, retail lease transactions, or other factors affecting sales~~
22 ~~to consumers of the community or territory.~~

1 4. ~~Any actions by the licensee in denying its existing dealer or dealers of the same line-~~
2 ~~make the opportunity for reasonable growth, market expansion, or relocation, including the~~
3 ~~availability of line-make vehicles in keeping with the reasonable expectations of the licensee in~~
4 ~~providing an adequate number of dealers in the community or territory.~~

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

7 6. ~~Distance, travel time, traffic patterns, and accessibility between the existing dealer or~~
8 ~~dealers of the same line make and the location of the proposed additional or relocated dealer.~~

9 7. ~~Whether benefits to consumers will likely occur from the establishment or relocation~~
10 ~~of the dealership which cannot be obtained by other geographic or demographic changes or~~
11 ~~expected changes in the community or territory.~~

12 8. ~~Whether the protesting dealer or dealers are in substantial compliance with their dealer~~
13 ~~agreement.~~

14 9. ~~Whether there is adequate interbrand and intrabrand competition with respect to said~~
15 ~~line make in the community or territory and adequately convenient consumer care for the motor~~
16 ~~vehicles of the line make, including the adequacy of sales and service facilities.~~

17 10. ~~Whether the establishment or relocation of the proposed dealership appears to be~~
18 ~~warranted and justified based on economic and marketing conditions pertinent to dealers~~
19 ~~competing in the community or territory, including anticipated future changes.~~

20 11. ~~The volume of registrations and service business transacted by the existing dealer or~~
21 ~~dealers of the same line make in the relevant community or territory of the proposed dealership.~~

22 (3) ~~An existing franchised motor vehicle dealer or dealers shall have standing to protest a~~
23 ~~proposed additional or relocated motor vehicle dealer where the existing motor vehicle dealer or~~

1 ~~dealers have a franchise agreement for the same line make vehicle to be sold or serviced by the~~
2 ~~proposed additional or relocated motor vehicle dealer and are physically located so as to meet or~~
3 ~~satisfy any of the following requirements or conditions:~~

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

8 ~~1. The proposed additional or relocated motor vehicle dealer is to be located in the area~~
9 ~~designated or described as the area of responsibility, or such similarly designated area, including~~
10 ~~the entire area designated as a multiple point area, in the franchise agreement or in any related~~
11 ~~document or commitment with the existing motor vehicle dealer or dealers of the same line make~~
12 ~~as such agreement existed upon October 1, 1988;~~

13 ~~2. The existing motor vehicle dealer or dealers of the same line make have a licensed~~
14 ~~franchise location within a radius of 20 miles of the location of the proposed additional or~~
15 ~~relocated motor vehicle dealer; or~~

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

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

5 ~~1. Any existing motor vehicle dealer or dealers of the same line-make have a licensed~~
6 ~~franchise location within a radius of 12.5 miles of the location of the proposed additional or~~
7 ~~relocated motor vehicle dealer; or~~

8 ~~2. Any existing motor vehicle dealer or dealers of the same line-make can establish that~~
9 ~~during any 12-month period of the 36-month period preceding the filing of the licensee's~~
10 ~~application for the proposed dealership, such dealer or its predecessor made 25 percent of its~~
11 ~~retail sales of new motor vehicles to persons whose registered household addresses were located~~
12 ~~within a radius of 12.5 miles of the location of the proposed additional or relocated motor vehicle~~
13 ~~dealer; provided such existing dealer is located in the same county or any county contiguous to~~
14 ~~the county where the additional or relocated dealer is proposed to be located.~~

15 ~~(4) The department's decision to deny issuance of a license under this section shall~~
16 ~~remain in effect for a period of 12 months. The department shall not issue a license for the~~
17 ~~proposed additional or relocated motor vehicle dealer until a final decision by the department is~~
18 ~~rendered determining that the application for the motor vehicle dealer's license should be~~
19 ~~granted.~~

20 ~~(5)(a) The opening or reopening of the same or a successor motor vehicle dealer within~~
21 ~~12 months is not considered an additional motor vehicle dealer subject to protest within the~~
22 ~~meaning of this section, if:~~

1 1. ~~The opening or reopening is within the same or an adjacent county and is within 2~~
2 ~~miles of the former motor vehicle dealer location;~~

3 2. ~~There is no dealer within 25 miles of the proposed location or the proposed location is~~
4 ~~further from each existing dealer of the same line make than the prior location is from each~~
5 ~~dealer of the same line make within 25 miles of the new location;~~

6 3. ~~The opening or reopening is within 6 miles of the prior location and, if any existing~~
7 ~~motor vehicle dealer of the same line make is located within 15 miles of the former location, the~~
8 ~~proposed location is no closer to any existing dealer of the same line make within 15 miles of the~~
9 ~~proposed location; or~~

10 4. ~~The opening or reopening is within 6 miles of the prior location and, if all existing~~
11 ~~motor vehicle dealers of the same line make are beyond 15 miles of the former location, the~~
12 ~~proposed location is further than 15 miles from any existing motor vehicle dealer of the same~~
13 ~~line make.~~

14 (b) ~~Any other such opening or reopening shall constitute an additional motor vehicle~~
15 ~~dealer within the meaning of this section.~~

16 (c) ~~If a motor vehicle dealer has been opened or reopened pursuant to this subsection, the~~
17 ~~licensee may not propose a motor vehicle dealer of the same line make to be located within 4~~
18 ~~miles of the previous location of such dealer for 2 years after the date the relocated dealership~~
19 ~~opens.~~

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

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

4 ~~(b) The addition or relocation of a service only dealership shall not be subject to protest~~
5 ~~if:~~

6 ~~1. The applicant for the service only dealership location is an existing motor vehicle~~
7 ~~dealer of the same line make as the proposed additional or relocated service only dealership;~~

8 ~~2. There is no existing dealer of the same line make closer than the applicant to the~~
9 ~~proposed location of the additional or relocated service only dealership; and~~

10 ~~3. The proposed location of the additional or relocated service only dealership is at least~~
11 ~~7 miles from all existing motor vehicle dealerships of the same line make, other than motor~~
12 ~~vehicle dealerships owned by the applicant.~~

13 ~~(c) In determining whether existing franchised motor vehicle dealers are providing~~
14 ~~adequate representations in the community or territory for the line make in question in a protest~~
15 ~~of the proposed addition or relocation of a service only dealership, the department may consider~~
16 ~~the elements set forth in paragraph (2)(b), provided:~~

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

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

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

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

1 ~~(d) If an application for a service only dealership is granted, the department shall issue a~~
2 ~~license which permits only service, as defined in s. 320.60(16), and does not permit the selling or~~
3 ~~leasing of new motor vehicles, as defined in s. 320.60(15). If a service only dealership~~
4 ~~subsequently seeks to sell new motor vehicles at its location, the notice and protest provisions of~~
5 ~~this section shall apply.~~

6 ~~(7) Measurements of the distance between proposed or existing dealer locations required~~
7 ~~by this section shall be taken from the geometric centroid of the property that encompasses all of~~
8 ~~the existing or proposed motor vehicle dealer operations.~~

9 ~~(8) The department shall not be obligated to determine the accuracy of any distance~~
10 ~~asserted by any party in a notice submitted to it. Any dispute concerning a distance measurement~~
11 ~~asserted by a party shall be resolved by a hearing conducted in accordance with ss. 120.569 and~~
12 ~~120.57.~~

13 Section 320.643, Florida Statutes, is repealed.

14 Section 320.645, Florida Statutes, is repealed.

15 Section 320.696, Florida Statutes, is repealed.

16 Section 320.6975, Florida Statutes, is repealed.

17 Section 320.699 Florida Statutes, is repealed.

18 Section 320.69915, Florida Statutes, is repealed.