

1                   A bill to be entitled  
2           An act relating to protection of motor vehicle  
3           dealers' consumer data; creating s. 320.646, F.S.;  
4           defining the terms "consumer data" and "data  
5           management system"; requiring that a licensee or a  
6           third party comply with certain restrictions on reuse  
7           or disclosure of consumer data received from a motor  
8           vehicle dealer; requiring that such person provide a  
9           written statement to the motor vehicle dealer  
10          delineating the established procedures adopted by the  
11          person which meet or exceed certain requirements to  
12          safeguard consumer data; requiring that upon request  
13          of a motor vehicle dealer a licensee provide a list of  
14          the consumer data obtained and all persons to whom any  
15          of the data has been disclosed, subject to certain  
16          requirements; prohibiting a licensee from requiring a  
17          motor vehicle dealer to grant the licensee or third  
18          party access to the dealer's data management system;  
19          requiring a licensee to permit a motor vehicle dealer  
20          to furnish consumer data in a widely accepted file  
21          format and through a third-party vendor selected by  
22          the motor vehicle dealer; authorizing a licensee to  
23          access or obtain consumer data from a motor vehicle  
24          dealer's data management system with the dealer's  
25          express written consent, subject to certain  
26          requirements; requiring the licensee to indemnify the

27 | motor vehicle dealer for certain claims or damages;  
 28 | providing that a person bringing a specified cause of  
 29 | action for certain violations must meet certain  
 30 | requirements; reenacting s. 320.6992, F.S., relating  
 31 | to the provisions that apply to established systems of  
 32 | distribution of motor vehicles in this state, to  
 33 | incorporate s. 320.646, F.S., as created by the act,  
 34 | in a reference thereto; providing an effective date.  
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36 | Be It Enacted by the Legislature of the State of Florida:  
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38 | Section 1. Section 320.646, Florida Statutes, is created  
 39 | to read:

40 | 320.646 Consumer data protection.—

41 | (1) As used in this section, the term:

42 | (a) "Consumer data" means "nonpublic personal information"  
 43 | as such term is defined in 15 U.S.C. s. 6809(4) collected by a  
 44 | motor vehicle dealer and which is provided by the motor vehicle  
 45 | dealer directly to a licensee or third party acting on behalf of  
 46 | a licensee. Consumer data does not include the same or similar  
 47 | data which is obtained by a licensee from any other source.

48 | (b) "Data management system" means a computer hardware or  
 49 | software system that is owned, leased, or licensed by a motor  
 50 | vehicle dealer, including a system of web-based applications,  
 51 | computer software, or computer hardware, whether located at the  
 52 | motor vehicle dealership or hosted remotely, and that stores and

53 provides access to consumer data collected or stored by a motor  
54 vehicle dealer. The term includes, but is not limited to,  
55 dealership management systems and customer relations management  
56 systems.

57 (2) Notwithstanding the provisions of any franchise  
58 agreement, with respect to consumer data a licensee or a third  
59 party acting on behalf of a licensee:

60 (a) Shall comply with all, and not knowingly cause a motor  
61 vehicle dealer to violate any, applicable restrictions on reuse  
62 or disclosure of the consumer data established by federal or  
63 state law and must provide a written statement to the motor  
64 vehicle dealer upon request describing the established  
65 procedures adopted by the licensee or third party acting on  
66 behalf of the licensee which meet or exceed any federal or state  
67 requirements to safeguard the consumer data, including, but not  
68 limited to, those established in the Gramm-Leach-Bliley Act, 15  
69 U.S.C. ss. 6801 et seq.

70 (b) Shall, upon the written request of the motor vehicle  
71 dealer, provide a written list of the consumer data obtained  
72 from the motor vehicle dealer and all persons to whom any  
73 consumer data has been provided by the licensee or a third party  
74 acting on behalf of a licensee during the preceding 6 months.  
75 The dealer may make such a request no more than once every 6  
76 months. The list must indicate the specific fields of consumer  
77 data which were provided to each person. Notwithstanding the  
78 foregoing, such a list need not include:

79 1. A person to whom consumer data was provided, or the  
80 specific consumer data provided to such person, if the person  
81 was, at the time the consumer data was provided, one of the  
82 licensee's service providers, subcontractors or consultants  
83 acting in the course of such person's performance of services on  
84 behalf of or for the benefit of the licensee or motor vehicle  
85 dealer, provided that the licensee has entered into an agreement  
86 with such person requiring that the person comply with the  
87 safeguard requirements of applicable state and federal law,  
88 including, but not limited to, those established in the Gramm-  
89 Leach-Bliley Act, 15 U.S.C. ss. 6801 et seq.; or

90 2. A person to whom consumer data was provided, or the  
91 specific consumer data provided to such person, if the motor  
92 vehicle dealer has previously consented in writing to such  
93 person receiving the consumer data provided and the motor  
94 vehicle dealer has not withdrawn such consent in writing.

95 (c) May not require that a motor vehicle dealer grant the  
96 licensee or a third party direct or indirect access to the  
97 dealer's data management system to obtain consumer data. A  
98 licensee must permit a motor vehicle dealer to furnish consumer  
99 data in a widely accepted file format, such as comma delimited,  
100 and through a third-party vendor selected by the motor vehicle  
101 dealer. However, a licensee may access or obtain consumer data  
102 directly from a motor vehicle dealer's data management system  
103 with the express consent of the dealer. The consent must be in  
104 the form of a written document that is separate from the

105 parties' franchise agreement, is executed by the motor vehicle  
 106 dealer, and may be withdrawn by the dealer upon 30 days' written  
 107 notice to the licensee.

108 (d) Must indemnify the motor vehicle dealer for any third-  
 109 party claims asserted against or damages incurred by the motor  
 110 vehicle dealer to the extent caused by access to, use of, or  
 111 disclosure of consumer data in violation of this section by the  
 112 licensee, a third party acting on behalf of the licensee, or a  
 113 third party to whom the licensee has provided consumer data.

114 (3) In any cause of action against a licensee pursuant to  
 115 s. 320.697 for a violation of paragraph (2) (a), paragraph  
 116 (2) (b), or paragraph (2) (c), the person bringing the action has  
 117 the burden of proving that the violation was willful or with  
 118 sufficient frequency to establish a pattern of wrongdoing with  
 119 respect to such person's consumer data.

120 Section 2. For the purpose of incorporating section  
 121 320.646, Florida Statutes, as created by this act, in a  
 122 reference thereto, section 320.6992, Florida Statutes, is  
 123 reenacted to read:

124 320.6992 Application.—Sections 320.60–320.70, including  
 125 amendments to ss. 320.60–320.70, apply to all presently existing  
 126 or hereafter established systems of distribution of motor  
 127 vehicles in this state, except to the extent that such  
 128 application would impair valid contractual agreements in  
 129 violation of the State Constitution or Federal Constitution.  
 130 Sections 320.60–320.70 do not apply to any judicial or

131 administrative proceeding pending as of October 1, 1988. All  
132 agreements renewed, amended, or entered into subsequent to  
133 October 1, 1988, shall be governed by ss. 320.60-320.70,  
134 including any amendments to ss. 320.60-320.70 which have been or  
135 may be from time to time adopted, unless the amendment  
136 specifically provides otherwise, and except to the extent that  
137 such application would impair valid contractual agreements in  
138 violation of the State Constitution or Federal Constitution.

139 Section 3. This act shall take effect upon becoming a law.