

1 A bill to be entitled

2 An act relating to motor vehicle manufacturers and  
3 dealers; amending s. 320.64, F.S.; providing that a  
4 motor vehicle dealer who constructs or alters sales or  
5 service facilities in reliance upon a program or  
6 incentive offered by a motor vehicle manufacturer is  
7 deemed to be in compliance with certain manufacturer  
8 requirements for a specified period; specifying  
9 eligibility for benefits under a new or revised  
10 program or incentive; providing construction;  
11 authorizing denial, suspension, or revocation of the  
12 license of a motor vehicle manufacturer who  
13 establishes certain performance measurement criteria  
14 that adversely affect motor vehicle dealers; providing  
15 for complaint proceedings and the award of damages;  
16 specifying burden of proof; creating s. 320.648, F.S.;  
17 prohibiting certain discriminatory acts by a motor  
18 vehicle manufacturer against a motor vehicle dealer;  
19 providing construction; providing an effective date.

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

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23 Section 1. Paragraph (i) is added to subsection (10) of  
24 section 320.64, Florida Statutes, and subsection (41) is added  
25 to that section, to read:

26           320.64 Denial, suspension, or revocation of license;  
27 grounds.—A license of a licensee under s. 320.61 may be denied,  
28 suspended, or revoked within the entire state or at any specific  
29 location or locations within the state at which the applicant or  
30 licensee engages or proposes to engage in business, upon proof  
31 that the section was violated with sufficient frequency to  
32 establish a pattern of wrongdoing, and a licensee or applicant  
33 shall be liable for claims and remedies provided in ss. 320.695  
34 and 320.697 for any violation of any of the following  
35 provisions. A licensee is prohibited from committing the  
36 following acts:

37           (10)

38           (i)1. If an applicant or licensee establishes a program,  
39 standard, or policy or in any manner offers a bonus, incentive,  
40 rebate, or other benefit to a motor vehicle dealer that is  
41 based, in whole or in part, on the construction of new sales or  
42 service facilities or the remodeling, improvement, renovation,  
43 expansion, replacement, or other alteration of the motor vehicle  
44 dealer's existing sales or service facilities, including  
45 installation of signs or other image elements, a motor vehicle  
46 dealer who completes such construction, alteration, or  
47 installation in reliance upon such program, standard, policy,  
48 bonus, incentive, rebate, or other benefit is deemed to be in  
49 full compliance with all of the applicant's or licensee's  
50 requirements for facilities, signs, and image elements for 10

51 years after such completion.

52 2. If, during such 10-year period, the applicant or  
53 licensee revises, or establishes a new, program, standard,  
54 policy, bonus, incentive, rebate, or other benefit described in  
55 subparagraph 1., a motor vehicle dealer who completed a facility  
56 in reliance upon a prior program, standard, policy, bonus,  
57 incentive, rebate, or other benefit and elects not to comply  
58 with the applicant's or licensee's requirements for facilities,  
59 signs, or image elements under the revised or new program,  
60 standard, policy, bonus, incentive, rebate, or other benefit  
61 will not be eligible for any benefit under the revised or new  
62 program but shall remain entitled to all benefits under the  
63 prior program, plus any increase in benefits between the prior  
64 and revised or new programs, during the remainder of the 10-year  
65 period.

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67 This paragraph does not obviate, affect, alter, or diminish the  
68 provisions of subsection (38).

69 (41)(a) The applicant or licensee has established,  
70 implemented, or enforced criteria for measuring the sales or  
71 service performance of any of its franchised motor vehicle  
72 dealers in this state which may have a material or adverse  
73 effect on any motor vehicle dealer; which are unfair,  
74 unreasonable, arbitrary, or inequitable; or which do not include  
75 all local and regional criteria, data, and facts. Relevant and

76 material national or state criteria, data, or facts may be  
77 considered, but comparison to such data shall not outweigh the  
78 local and regional criteria, data and facts. Relevant and  
79 material national or state criteria, data, or facts include, but  
80 are not limited to, motor vehicle dealerships of comparable size  
81 in comparable markets with comparable buyer profiles. If such  
82 performance measurement criteria are based, in whole or in part,  
83 on a survey, such survey shall be based on a statistically  
84 significant and valid random sample. An applicant, licensee, or  
85 common entity, or an affiliate thereof, that seeks to establish,  
86 implement, or enforce against any motor vehicle dealer any such  
87 performance measurement criteria shall, upon the request of the  
88 motor vehicle dealer, describe in writing to the motor vehicle  
89 dealer, in detail, how the performance measurement criteria were  
90 designed, calculated, established, and applied.

91 (b) A motor vehicle dealer against whom such performance  
92 measurement criteria are sought to be used for any purpose  
93 adverse to the motor vehicle dealer may file a complaint in any  
94 court of competent jurisdiction alleging that such performance  
95 measurement criteria are in violation of paragraph (a) and, if  
96 successful, is entitled to damages pursuant to s. 320.695 plus  
97 attorney fees and injunctive relief. The court may order  
98 temporary, preliminary, and permanent injunctive relief without  
99 regard to the existence of an adequate remedy at law or  
100 irreparable harm and without requiring a bond of any

101 complainant.

102 (c) In any proceeding brought under paragraph (b), the  
 103 applicant or licensee bears the ultimate burden of proof that  
 104 the performance measurement criteria comply with this subsection  
 105 and have been implemented and enforced uniformly by the  
 106 applicant or licensee among its dealers in this state.

107  
 108 A motor vehicle dealer who can demonstrate that a violation of,  
 109 or failure to comply with, any of the preceding provisions by an  
 110 applicant or licensee will or can adversely and pecuniarily  
 111 affect the complaining dealer, shall be entitled to pursue all  
 112 of the remedies, procedures, and rights of recovery available  
 113 under ss. 320.695 and 320.697.

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

116 320.648 Discrimination prohibited.—

117 (1) For the purpose of eliminating discrimination by an  
 118 applicant or licensee against any motor vehicle dealer in this  
 119 state, and to avoid competitive disadvantages of a motor vehicle  
 120 dealer by reason of differences in dealer cost of any motor  
 121 vehicle, an applicant or licensee may not sell or offer to sell  
 122 a new motor vehicle to a motor vehicle dealer at a lower actual,  
 123 effective cost, including the cost of the vehicle  
 124 transportation, than the actual, effective cost at which the  
 125 same model similarly equipped is offered or available to another

126 same line-make dealer in this state during a similar time  
127 period.

128 (2) An applicant or licensee may not discriminate among  
129 its same line-make dealers in this state by the use of a  
130 promotional, incentive, or bonus plan, program, device, or other  
131 benefit, whether received by the motor vehicle dealer at or  
132 later than the time of sale of the new motor vehicle to the  
133 dealer, which results in the sale or offer to sell a new motor  
134 vehicle to a motor vehicle dealer at a lower actual, effective  
135 cost, including the cost of the vehicle transportation, than the  
136 actual, effective cost at which the same model similarly  
137 equipped is offered or available to another same line-make  
138 dealer in this state during a similar time period. This  
139 subsection does not prohibit an applicant or licensee from  
140 offering a promotional, incentive, or bonus plan, program,  
141 device, or other benefit that, in effect, does not discriminate  
142 against and is functionally available to all competing dealers  
143 of the same line-make in this state on substantially comparable  
144 terms and that contains fair and reasonably achievable sales or  
145 service objectives.

146 (3) This section does not obviate, affect, alter, or  
147 diminish the provisions of s. 320.64(38).

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