

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Careers & Competition
 2 Subcommittee

3 Representative Diaz, M. offered the following:

4
 5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraph (i) is added to subsection (10) of
 8 section 320.64, Florida Statutes, and subsection (41) is added
 9 to that section, to read:

10 320.64 Denial, suspension, or revocation of license;
 11 grounds.—A license of a licensee under s. 320.61 may be denied,
 12 suspended, or revoked within the entire state or at any specific
 13 location or locations within the state at which the applicant or
 14 licensee engages or proposes to engage in business, upon proof
 15 that the section was violated with sufficient frequency to
 16 establish a pattern of wrongdoing, and a licensee or applicant

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17 shall be liable for claims and remedies provided in ss. 320.695
18 and 320.697 for any violation of any of the following
19 provisions. A licensee is prohibited from committing the
20 following acts:

21 (10)

22 (i)1. If an applicant or licensee establishes a program,
23 standard, or policy or in any manner offers a bonus, incentive,
24 rebate, or other benefit to a motor vehicle dealer that is
25 based, in whole or in part, on the construction of new sales or
26 service facilities or the remodeling, improvement, renovation,
27 expansion, replacement, or other alteration of the motor vehicle
28 dealer's existing sales or service facilities, including
29 installation of signs or other image elements, a motor vehicle
30 dealer who completes such construction, alteration, or
31 installation in reliance upon such program, standard, policy,
32 bonus, incentive, rebate, or other benefit is deemed to be in
33 full compliance with all of the applicant's or licensee's
34 requirements for facilities, signs, and image elements for 10
35 years after such completion.

36 2. If, during such 10-year period, the applicant or
37 licensee revises, or establishes a new, program, standard,
38 policy, bonus, incentive, rebate, or other benefit described in
39 subparagraph 1., a motor vehicle dealer who completed a facility
40 in reliance upon a prior program, standard, policy, bonus,
41 incentive, rebate, or other benefit and elects not to comply

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42 with the applicant's or licensee's requirements for facilities,
43 signs, or image elements under the revised or new program,
44 standard, policy, bonus, incentive, rebate, or other benefit
45 will not be eligible for any benefit under the revised or new
46 program but shall remain entitled to all benefits under the
47 prior program, plus any increase in benefits between the prior
48 and revised or new programs, during the remainder of the 10-year
49 period.

50

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

53 (41) The applicant or licensee has established,
54 implemented, or enforced criteria for measuring the sales or
55 service performance of any of its franchised motor vehicle
56 dealers in this state which may have a material or adverse
57 effect on any motor vehicle dealer; which are unfair,
58 unreasonable, arbitrary, or inequitable; or which do not include
59 all local and regional criteria, data, and facts. Relevant and
60 material national or state criteria, data, or facts may be
61 considered, but comparison to such data shall not outweigh the
62 local and regional criteria, data and facts. Relevant and
63 material national or state criteria, data, or facts include, but
64 are not limited to, motor vehicle dealerships of comparable size
65 in comparable markets with comparable buyer profiles. If such
66 performance measurement criteria are based, in whole or in part,

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67 on a survey, such survey shall be based on a statistically
68 significant and valid random sample. An applicant, licensee, or
69 common entity, or an affiliate thereof, that seeks to establish,
70 implement, or enforce against any motor vehicle dealer any such
71 performance measurement criteria shall, upon the request of the
72 motor vehicle dealer, describe in writing to the motor vehicle
73 dealer, in detail, how the performance measurement criteria were
74 designed, calculated, established, and applied.

75
76 A motor vehicle dealer who can demonstrate that a violation of,
77 or failure to comply with, any of the preceding provisions by an
78 applicant or licensee will or can adversely and pecuniarily
79 affect the complaining dealer, shall be entitled to pursue all
80 of the remedies, procedures, and rights of recovery available
81 under ss. 320.695 and 320.697.

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

84 320.648 Discrimination prohibited.—

85 (1) For the purpose of eliminating discrimination by an
86 applicant or licensee against any motor vehicle dealer in this
87 state, and to avoid competitive disadvantages of a motor vehicle
88 dealer by reason of differences in dealer cost of any motor
89 vehicle, an applicant or licensee may not sell or offer to sell
90 a new motor vehicle to a motor vehicle dealer at a lower actual,
91 effective cost, including the cost of the vehicle

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92 transportation, than the actual, effective cost at which the
93 same model similarly equipped is offered or available to another
94 same line-make dealer in this state during a similar time
95 period.

96 (2) An applicant or licensee may not discriminate among
97 its same line-make dealers in this state by the use of a
98 promotional, incentive, or bonus plan, program, device, or other
99 benefit, whether received by the motor vehicle dealer at or
100 later than the time of sale of the new motor vehicle to the
101 dealer, which results in the sale or offer to sell a new motor
102 vehicle to a motor vehicle dealer at a lower actual, effective
103 cost, including the cost of the vehicle transportation, than the
104 actual, effective cost at which the same model similarly
105 equipped is offered or available to another same line-make
106 dealer in this state during a similar time period. This
107 subsection does not prohibit an applicant or licensee from
108 offering a promotional, incentive, or bonus plan, program,
109 device, or other benefit that, in effect, does not discriminate
110 against and is functionally available to all competing dealers
111 of the same line-make in this state on substantially comparable
112 terms and that contains fair and reasonably achievable sales or
113 service objectives.

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

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

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T I T L E A M E N D M E N T

Remove everything before the enacting clause and insert:
An act relating to motor vehicle manufacturers and dealers;
amending s. 320.64, F.S.; providing that a motor vehicle dealer
who constructs or alters sales or service facilities in reliance
upon a program or incentive offered by a motor vehicle
manufacturer is deemed to be in compliance with certain
manufacturer requirements for a specified period; specifying
eligibility for benefits under a new or revised program or
incentive; providing construction; authorizing denial,
suspension, or revocation of the license of a motor vehicle
manufacturer who establishes certain performance measurement
criteria that adversely affect motor vehicle dealers; creating
s. 320.648, F.S.; prohibiting certain discriminatory acts by a
motor vehicle manufacturer against a motor vehicle dealer;
providing construction; providing an effective date.