

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 requirements for the establishment of performance
16 measurement criteria; 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.
20

21 Be It Enacted by the Legislature of the State of Florida:
22

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.

66
67 This paragraph does not obviate, affect, alter, or diminish the
68 provisions of subsection (38).

69 (41) 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 |
 92 | A motor vehicle dealer who can demonstrate that a violation of,
 93 | or failure to comply with, any of the preceding provisions by an
 94 | applicant or licensee will or can adversely and pecuniarily
 95 | affect the complaining dealer, shall be entitled to pursue all
 96 | of the remedies, procedures, and rights of recovery available
 97 | under ss. 320.695 and 320.697.

98 | Section 2. Section 320.648, Florida Statutes, is created
 99 | to read:

100 | 320.648 Discrimination prohibited.—

101 (1) For the purpose of eliminating discrimination by an
102 applicant or licensee against any motor vehicle dealer in this
103 state, and to avoid competitive disadvantages of a motor vehicle
104 dealer by reason of differences in dealer cost of any motor
105 vehicle, an applicant or licensee may not sell or offer to sell
106 a new motor vehicle to a motor vehicle dealer at a lower actual,
107 effective cost, including the cost of the vehicle
108 transportation, than the actual, effective cost at which the
109 same model similarly equipped is offered or available to another
110 same line-make dealer in this state during a similar time
111 period.

112 (2) An applicant or licensee may not discriminate among
113 its same line-make dealers in this state by the use of a
114 promotional, incentive, or bonus plan, program, device, or other
115 benefit, whether received by the motor vehicle dealer at or
116 later than the time of sale of the new motor vehicle to the
117 dealer, which results in the sale or offer to sell a new motor
118 vehicle to a motor vehicle dealer at a lower actual, effective
119 cost, including the cost of the vehicle transportation, than the
120 actual, effective cost at which the same model similarly
121 equipped is offered or available to another same line-make
122 dealer in this state during a similar time period. This
123 subsection does not prohibit an applicant or licensee from
124 offering a promotional, incentive, or bonus plan, program,
125 device, or other benefit that, in effect, does not discriminate

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126 | against and is functionally available to all competing dealers
127 | of the same line-make in this state on substantially comparable
128 | terms and that contains fair and reasonably achievable sales or
129 | service objectives.

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

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