

By Senator Gruters

23-00576A-19

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1                                   A bill to be entitled  
2       An act relating to franchised motor vehicle dealers;  
3       amending s. 320.64, F.S.; prohibiting an applicant or  
4       licensee from establishing or implementing additional  
5       criteria for measuring the sales or service  
6       performance of franchised motor vehicle dealers;  
7       requiring an applicant, licensee, or common entity, or  
8       an affiliate thereof, which attempts to enforce any  
9       performance measurement criteria against a motor  
10      vehicle dealer to describe in writing to the dealer  
11      how the criteria were designed, calculated,  
12      established, and uniformly applied; requiring an  
13      applicant or licensee to provide in writing to each  
14      dealer of the same line-make certain performance  
15      requirements, sales goals, or sales objectives for any  
16      sales incentive or reimbursement program, subject to  
17      certain requirements; authorizing a dealer that  
18      contends that an assigned performance requirement,  
19      sales goal, or sales objective violates certain  
20      prohibited activities of licensees to maintain certain  
21      injunctive and administrative actions; requiring the  
22      applicant or licensee to have the burden of proving by  
23      a preponderance of the evidence that the criteria for  
24      measuring the performance, goal, or objective comply  
25      with a provision that prohibits certain activities of  
26      licensees; providing an effective date.

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28   Be It Enacted by the Legislature of the State of Florida:  
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30 Section 1. Subsection (42) of section 320.64, Florida  
31 Statutes, is amended to read:

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

43 (42) (a) The applicant or licensee has established,  
44 implemented, or enforced criteria for measuring the sales or  
45 service performance of any of its franchised motor vehicle  
46 dealers in this state, including a performance requirement,  
47 goal, or objective for any such dealer, which have or may have a  
48 material or adverse effect on any motor vehicle dealer,  
49 including the dealer's right to payment under any incentive or  
50 reimbursement program, and which:

51 1. Are unfair, unreasonable, arbitrary, ~~or~~ inequitable, or  
52 not applied uniformly to other same line-make dealers of  
53 comparable size in comparable markets; or

54 2. Do not include all relevant and material local and  
55 regional criteria, data, and facts. Relevant and material  
56 criteria, data, or facts include, but are not limited to, those  
57 of motor vehicle dealerships of comparable size in comparable  
58 markets. If such performance measurement criteria are based, in

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59 whole or in part, on a survey, such survey must be based on a  
60 statistically significant and valid random sample.

61 (b) An applicant, licensee, or common entity, or an  
62 affiliate thereof, which enforces or attempts to enforce against  
63 any motor vehicle dealer any ~~such~~ performance measurement  
64 criteria, including a performance requirement, goal, or  
65 objective, shall, upon the request of the motor vehicle dealer,  
66 describe in writing to the motor vehicle dealer, in detail, how  
67 the performance measurement criteria were designed, calculated,  
68 established, and uniformly applied.

69 (c) Before implementing any sales incentive or  
70 reimbursement program, the applicant or licensee shall provide  
71 in writing to each dealer of the same line-make the dealer's  
72 performance requirement, sales goal, or sales objective for the  
73 program, which shall include a detailed explanation of the  
74 methodology, criteria, and calculations used to establish the  
75 requirement, sales goal, or sales objective. The applicant or  
76 licensee shall also provide each dealer with the performance  
77 requirement, sales goal, or sales objective for the program of  
78 all other same line-make dealers within this state. Any dealer  
79 that contends that an assigned performance requirement, sales  
80 goal, or sales objective violates this subsection may maintain  
81 an action pursuant to s. 320.695 to enjoin application of the  
82 incentive or reimbursement program in this state or may maintain  
83 an action pursuant to s. 320.699 to seek a declaration that the  
84 incentive or reimbursement program violates this subsection,  
85 notwithstanding the fact that the applicant or licensee has not  
86 yet implemented the program.

87 (d) In any proceeding asserting that an applicant or

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88 licensee has violated this subsection, the applicant or licensee  
89 has the burden of proving by a preponderance of the evidence  
90 that the criteria for measuring the performance, goal, or  
91 objective comply with this subsection.

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

99 Section 2. This act shall take effect July 1, 2019.