

A bill to be entitled

An act relating to motor vehicle sales; amending s. 545.01, F.S.; revising and reordering definitions; defining terms; creating s. 545.045, F.S.; prohibiting an affiliated finance company from taking specified actions relating to certain finance obligations arising from a vehicle contract that contains a third-party provider's specified automotive related product; providing factors to determine whether an automotive related product is similar in nature, scope, and quality to an automotive related product offered for sale by an affiliated finance company or its related manufacturer or wholesale distributor; providing that a violation does not constitute a criminal offense; amending s. 320.27, F.S.; deleting the definition of the term "motor vehicle broker"; conforming a reference; providing an effective date.

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

Section 1. Section 545.01, Florida Statutes, is reordered and amended to read:

545.01 Definitions.—As used in this chapter, the term:

(1) "Affiliated finance company" means a finance company which:

(a) Is affiliated with or controlled by a manufacturer or

27 wholesale distributor through common ownership, officers,
 28 directors, or management; or

29 (b) Has a contractual agreement with a manufacturer or
 30 wholesale distributor to finance, via sale or lease, motor
 31 vehicles produced or distributed by such manufacturer or
 32 wholesale distributor.

33 (2) "Automotive related product" means a motor vehicle
 34 service agreement, as defined in s. 634.011, or a guaranteed
 35 asset protection product, as defined in s. 520.02, or other non-
 36 tangible ancillary product that is purchased or otherwise
 37 provided as part of the sale or lease of a motor vehicle by a
 38 dealer.

39 ~~(6)(1) The term "Person" as used in this chapter means an~~
 40 ~~any individual, firm, corporation, partnership, limited~~
 41 ~~liability company, association, trustee, receiver, or assignee~~
 42 ~~for the benefit of creditors.~~

43 ~~(7)(2) The terms "Sell," "sold," "buy," or and "purchase,"~~
 44 ~~includes as used in this chapter, include an exchange, barter,~~
 45 ~~gift, or and offer to contract to sell or buy.~~

46 ~~(5)(3) The term "Manufacturer" means a any person engaged,~~
 47 ~~directly or indirectly, in the manufacture of motor vehicles.~~

48 ~~(10)(4) The term "Wholesale distributor" means a any~~
 49 ~~person engaged, directly or indirectly, in the sale or~~
 50 ~~distribution of motor vehicles to agents or to dealers.~~

51 ~~(3)(5) The term "Dealer" means a franchised motor vehicle~~
 52 ~~dealer, as defined in s. 320.27(1)(c)1. any person who is~~

53 ~~engaged in, or who intends to engage in the business of selling~~
 54 ~~motor vehicles at retail in this state. The term "dealer" shall~~
 55 ~~also include "retail agent."~~

56 (4) (6) ~~The term "Finance company" means a~~ any person
 57 engaged in the business of financing the sale or lease of motor
 58 vehicles, or engaged in the business of purchasing or acquiring
 59 vehicle contracts conditional bills of sale, or promissory
 60 notes, either secured by vendor's lien or chattel mortgages, or
 61 arising from the sale of motor vehicles in this state.

62 (8) "Third-party provider" means a provider of an
 63 automotive related product that is not an affiliated finance
 64 company, manufacturer, or wholesale distributor.

65 (9) "Vehicle contract" means a conditional sales contract,
 66 retail installment sales contract, chattel mortgage, lease
 67 agreement, promissory note, or any other financial obligation
 68 arising from the retail sale or lease of a motor vehicle.

69 Section 2. Section 545.045, Florida Statutes, is created
 70 to read:

71 545.045 Purchase or assignment of third-party financing.-

72 (1) When a vehicle contract contains a third-party
 73 provider's automotive related product that is of similar nature,
 74 scope, and quality to an automotive related product offered for
 75 sale by an affiliated finance company or its related
 76 manufacturer or wholesale distributor, that affiliated finance
 77 company may not, solely because the vehicle contract contains a
 78 third party's automotive related product:

79 (a) Refuse to purchase or accept the assignment of the
 80 vehicle contract from a dealer; or

81 (b) Charge a dealer an additional fee or surcharge for the
 82 purchase of, or acceptance of the assignment of, the vehicle
 83 contract.

84 (2) Factors in determining whether an automotive related
 85 product is similar in nature, scope, and quality include, but
 86 are not limited to, the financial capacity of the third-party
 87 provider to meet all of its obligations, inclusive of any
 88 contractual liability insurance policies, and the third-party
 89 provider's history of compliance with any applicable state and
 90 federal regulations.

91 (3) A violation of this section does not constitute a
 92 criminal offense pursuant to s. 545.12.

93 Section 3. Paragraphs (c) and (d) of subsection (1) of
 94 section 320.27, Florida Statutes, are amended to read:

95 320.27 Motor vehicle dealers.—

96 (1) DEFINITIONS.—The following words, terms, and phrases
 97 when used in this section have the meanings respectively
 98 ascribed to them in this subsection, except where the context
 99 clearly indicates a different meaning:

100 (c) "Motor vehicle dealer" means any person engaged in the
 101 business of buying, selling, or dealing in motor vehicles or
 102 offering or displaying motor vehicles for sale at wholesale or
 103 retail, or who may service and repair motor vehicles pursuant to
 104 an agreement as defined in s. 320.60(1). Any person who buys,

105 | sells, or deals in three or more motor vehicles in any 12-month
106 | period or who offers or displays for sale three or more motor
107 | vehicles in any 12-month period shall be prima facie presumed to
108 | be engaged in such business. The terms "selling" and "sale"
109 | include lease-purchase transactions. A motor vehicle dealer may,
110 | at retail or wholesale, sell a recreational vehicle as described
111 | in s. 320.01(1)(b)1.-6. and 8., acquired in exchange for the
112 | sale of a motor vehicle, provided such acquisition is incidental
113 | to the principal business of being a motor vehicle dealer.
114 | However, a motor vehicle dealer may not buy a recreational
115 | vehicle for the purpose of resale unless licensed as a
116 | recreational vehicle dealer pursuant to s. 320.771. A motor
117 | vehicle dealer may apply for a certificate of title to a motor
118 | vehicle required to be registered under s. 320.08(2)(b), (c),
119 | and (d), using a manufacturer's statement of origin as permitted
120 | by s. 319.23(1), only if such dealer is authorized by a
121 | franchised agreement as defined in s. 320.60(1), to buy, sell,
122 | or deal in such vehicle and is authorized by such agreement to
123 | perform delivery and preparation obligations and warranty defect
124 | adjustments on the motor vehicle; provided this limitation shall
125 | not apply to recreational vehicles, van conversions, or any
126 | other motor vehicle manufactured on a truck chassis. The
127 | transfer of a motor vehicle by a dealer not meeting these
128 | qualifications shall be titled as a used vehicle. The
129 | classifications of motor vehicle dealers are defined as follows:

130 | 1. "Franchised motor vehicle dealer" means any person who

131 engages in the business of repairing, servicing, buying,
132 selling, or dealing in motor vehicles pursuant to an agreement
133 as defined in s. 320.60(1).

134 2. "Independent motor vehicle dealer" means any person
135 other than a franchised or wholesale motor vehicle dealer who
136 engages in the business of buying, selling, or dealing in motor
137 vehicles, and who may service and repair motor vehicles.

138 3. "Wholesale motor vehicle dealer" means any person who
139 engages exclusively in the business of buying, selling, or
140 dealing in motor vehicles at wholesale or with motor vehicle
141 auctions. Such person shall be licensed to do business in this
142 state, shall not sell or auction a vehicle to any person who is
143 not a licensed dealer, and shall not have the privilege of the
144 use of dealer license plates. Any person who buys, sells, or
145 deals in motor vehicles at wholesale or with motor vehicle
146 auctions on behalf of a licensed motor vehicle dealer and as a
147 bona fide employee of such licensed motor vehicle dealer is not
148 required to be licensed as a wholesale motor vehicle dealer. In
149 such cases it shall be prima facie presumed that a bona fide
150 employer-employee relationship exists. A wholesale motor vehicle
151 dealer shall be exempt from the display provisions of this
152 section but shall maintain an office wherein records are kept in
153 order that those records may be inspected.

154 4. "Motor vehicle auction" means any person offering motor
155 vehicles or recreational vehicles for sale to the highest bidder
156 where buyers are licensed motor vehicle dealers. Such person

157 shall not sell a vehicle to anyone other than a licensed motor
158 vehicle dealer.

159 5. "Salvage motor vehicle dealer" means any person who
160 engages in the business of acquiring salvaged or wrecked motor
161 vehicles for the purpose of reselling them and their parts.

162
163 The term "motor vehicle dealer" does not include persons not
164 engaged in the purchase or sale of motor vehicles as a business
165 who are disposing of vehicles acquired for their own use or for
166 use in their business or acquired by foreclosure or by operation
167 of law, provided such vehicles are acquired and sold in good
168 faith and not for the purpose of avoiding the provisions of this
169 law; persons engaged in the business of manufacturing, selling,
170 or offering or displaying for sale at wholesale or retail no
171 more than 25 trailers in a 12-month period; public officers
172 while performing their official duties; receivers; trustees,
173 administrators, executors, guardians, or other persons appointed
174 by, or acting under the judgment or order of, any court; banks,
175 finance companies, or other loan agencies that acquire motor
176 vehicles as an incident to their regular business; ~~motor vehicle~~
177 ~~brokers;~~ and motor vehicle rental and leasing companies that
178 sell motor vehicles to motor vehicle dealers licensed under this
179 section. Vehicles owned under circumstances described in this
180 paragraph may be disposed of at retail, wholesale, or auction,
181 unless otherwise restricted. A manufacturer of fire trucks,
182 ambulances, or school buses may sell such vehicles directly to

183 governmental agencies or to persons who contract to perform or
184 provide firefighting, ambulance, or school transportation
185 services exclusively to governmental agencies without processing
186 such sales through dealers if such fire trucks, ambulances,
187 school buses, or similar vehicles are not presently available
188 through motor vehicle dealers licensed by the department.

189 ~~(d) "Motor vehicle broker" means any person engaged in the~~
190 ~~business of offering to procure or procuring motor vehicles for~~
191 ~~the general public, or who holds himself or herself out through~~
192 ~~solicitation, advertisement, or otherwise as one who offers to~~
193 ~~procure or procures motor vehicles for the general public, and~~
194 ~~who does not store, display, or take ownership of any vehicles~~
195 ~~for the purpose of selling such vehicles.~~

196 Section 4. This act shall take effect July 1, 2014.