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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2014	.	
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	.	
	.	

The Committee on Judiciary (Gardiner) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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
wholesale distributor through common ownership, officers,



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12 directors, or management; or

13 (b) Has a contractual agreement with a manufacturer or
14 wholesale distributor to finance, via sale or lease, motor
15 vehicles produced or distributed by such manufacturer or
16 wholesale distributor.

17 (2) "Automotive-related product" means a motor vehicle
18 service agreement, as defined in s. 634.011, or a guaranteed
19 asset protection product, as defined in s. 520.02, or other non-
20 tangible ancillary product that is purchased or otherwise
21 provided as part of the sale or lease of a motor vehicle by a
22 dealer.

23 ~~(6)(1) The term "Person" as used in this chapter means an~~
24 ~~any individual, firm, corporation, partnership, limited~~
25 ~~liability company, association, trustee, receiver, or assignee~~
26 ~~for the benefit of creditors.~~

27 ~~(7)(2) The terms "Sell," "sold," "buy," or and "purchase,"~~
28 ~~includes as used in this chapter, include an exchange, barter,~~
29 ~~gift, or and offer to contract to sell or buy.~~

30 ~~(5)(3) The term "Manufacturer" means a any person engaged,~~
31 ~~directly or indirectly, in the manufacture of motor vehicles.~~

32 ~~(10)(4) The term "Wholesale distributor" means a any person~~
33 ~~engaged, directly or indirectly, in the sale or distribution of~~
34 ~~motor vehicles to agents or to dealers.~~

35 ~~(3)(5) The term "Dealer" means a franchised motor vehicle~~
36 ~~dealer, as defined in s. 320.27(1)(c)1. any person who is~~
37 ~~engaged in, or who intends to engage in the business of selling~~
38 ~~motor vehicles at retail in this state. The term "dealer" shall~~
39 ~~also include "retail agent."~~

40 ~~(4)(6) The term "Finance company" means a any person~~



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41 engaged in the business of financing the sale or lease of motor
42 vehicles, or engaged in the business of purchasing or acquiring
43 vehicle contracts ~~conditional bills of sale, or promissory~~
44 ~~notes, either secured by vendor's lien or chattel mortgages, or~~
45 ~~arising from the sale of motor vehicles~~ in this state.

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

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

53 Section 2. Section 545.045, Florida Statutes, is created to
54 read:

55 545.045 Purchase or assignment of third-party financing.—

56 (1) When a vehicle contract contains a third-party
57 provider's automotive-related product that is of similar nature,
58 scope, and quality to an automotive-related product offered for
59 sale by an affiliated finance company or its related
60 manufacturer or wholesale distributor, that affiliated finance
61 company may not, solely because the vehicle contract contains a
62 third party's automotive-related product:

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

65 (b) Charge a dealer an additional fee or surcharge for the
66 purchase of, or acceptance of the assignment of, the vehicle
67 contract.

68 (2) Factors in determining whether an automotive-related
69 product is similar in nature, scope, and quality include, but



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70 are not limited to, the financial capacity of the third-party
71 provider to meet all of its obligations, inclusive of any
72 contractual liability insurance policies, and the third-party
73 provider's history of compliance with any applicable state and
74 federal regulations.

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

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

79 320.27 Motor vehicle dealers.—

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

84 (c) "Motor vehicle dealer" means any person engaged in the
85 business of buying, selling, or dealing in motor vehicles or
86 offering or displaying motor vehicles for sale at wholesale or
87 retail, or who may service and repair motor vehicles pursuant to
88 an agreement as defined in s. 320.60(1). Any person who buys,
89 sells, or deals in three or more motor vehicles in any 12-month
90 period or who offers or displays for sale three or more motor
91 vehicles in any 12-month period shall be prima facie presumed to
92 be engaged in such business. The terms "selling" and "sale"
93 include lease-purchase transactions. A motor vehicle dealer may,
94 at retail or wholesale, sell a recreational vehicle as described
95 in s. 320.01(1)(b)1.-6. and 8., acquired in exchange for the
96 sale of a motor vehicle, provided such acquisition is incidental
97 to the principal business of being a motor vehicle dealer.
98 However, a motor vehicle dealer may not buy a recreational



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99 vehicle for the purpose of resale unless licensed as a
100 recreational vehicle dealer pursuant to s. 320.771. A motor
101 vehicle dealer may apply for a certificate of title to a motor
102 vehicle required to be registered under s. 320.08(2)(b), (c),
103 and (d), using a manufacturer's statement of origin as permitted
104 by s. 319.23(1), only if such dealer is authorized by a
105 franchised agreement as defined in s. 320.60(1), to buy, sell,
106 or deal in such vehicle and is authorized by such agreement to
107 perform delivery and preparation obligations and warranty defect
108 adjustments on the motor vehicle; provided this limitation shall
109 not apply to recreational vehicles, van conversions, or any
110 other motor vehicle manufactured on a truck chassis. The
111 transfer of a motor vehicle by a dealer not meeting these
112 qualifications shall be titled as a used vehicle. The
113 classifications of motor vehicle dealers are defined as follows:

114 1. "Franchised motor vehicle dealer" means any person who
115 engages in the business of repairing, servicing, buying,
116 selling, or dealing in motor vehicles pursuant to an agreement
117 as defined in s. 320.60(1).

118 2. "Independent motor vehicle dealer" means any person
119 other than a franchised or wholesale motor vehicle dealer who
120 engages in the business of buying, selling, or dealing in motor
121 vehicles, and who may service and repair motor vehicles.

122 3. "Wholesale motor vehicle dealer" means any person who
123 engages exclusively in the business of buying, selling, or
124 dealing in motor vehicles at wholesale or with motor vehicle
125 auctions. Such person shall be licensed to do business in this
126 state, may ~~shall~~ not sell or auction a vehicle to any person who
127 is not a licensed dealer, and may ~~shall~~ not have the privilege



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128 of the use of dealer license plates. Any person who buys, sells,
129 or deals in motor vehicles at wholesale or with motor vehicle
130 auctions on behalf of a licensed motor vehicle dealer and as a
131 bona fide employee of such licensed motor vehicle dealer is not
132 required to be licensed as a wholesale motor vehicle dealer. In
133 such cases it shall be prima facie presumed that a bona fide
134 employer-employee relationship exists. A wholesale motor vehicle
135 dealer shall be exempt from the display provisions of this
136 section but shall maintain an office wherein records are kept in
137 order that those records may be inspected.

138 4. "Motor vehicle auction" means any person offering motor
139 vehicles or recreational vehicles for sale to the highest bidder
140 where buyers are licensed motor vehicle dealers. Such person may
141 ~~shall~~ not sell a vehicle to anyone other than a licensed motor
142 vehicle dealer.

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

146
147 The term "motor vehicle dealer" does not include persons not
148 engaged in the purchase or sale of motor vehicles as a business
149 who are disposing of vehicles acquired for their own use or for
150 use in their business or acquired by foreclosure or by operation
151 of law, provided such vehicles are acquired and sold in good
152 faith and not for the purpose of avoiding the provisions of this
153 law; persons engaged in the business of manufacturing, selling,
154 or offering or displaying for sale at wholesale or retail no
155 more than 25 trailers in a 12-month period; public officers
156 while performing their official duties; receivers; trustees,



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157 administrators, executors, guardians, or other persons appointed
158 by, or acting under the judgment or order of, any court; banks,
159 finance companies, or other loan agencies that acquire motor
160 vehicles as an incident to their regular business; ~~motor vehicle~~
161 ~~brokers;~~ and motor vehicle rental and leasing companies that
162 sell motor vehicles to motor vehicle dealers licensed under this
163 section. Vehicles owned under circumstances described in this
164 paragraph may be disposed of at retail, wholesale, or auction,
165 unless otherwise restricted. A manufacturer of fire trucks,
166 ambulances, or school buses may sell such vehicles directly to
167 governmental agencies or to persons who contract to perform or
168 provide firefighting, ambulance, or school transportation
169 services exclusively to governmental agencies without processing
170 such sales through dealers if such fire trucks, ambulances,
171 school buses, or similar vehicles are not presently available
172 through motor vehicle dealers licensed by the department.

173 ~~(d) "Motor vehicle broker" means any person engaged in the~~
174 ~~business of offering to procure or procuring motor vehicles for~~
175 ~~the general public, or who holds himself or herself out through~~
176 ~~solicitation, advertisement, or otherwise as one who offers to~~
177 ~~procure or procures motor vehicles for the general public, and~~
178 ~~who does not store, display, or take ownership of any vehicles~~
179 ~~for the purpose of selling such vehicles.~~

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

181
182 ===== T I T L E A M E N D M E N T =====

183 And the title is amended as follows:

184 Delete everything before the enacting clause
185 and insert:



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186 A bill to be entitled
187 An act relating to motor vehicle sales; amending s.
188 545.01, F.S.; revising and reordering definitions;
189 defining terms; creating s. 545.045, F.S.; prohibiting
190 an affiliated finance company from taking specified
191 actions relating to certain finance obligations
192 arising from a vehicle contract that contains a third-
193 party provider's specified automotive-related product;
194 providing factors to determine whether an automotive-
195 related product is similar in nature, scope, and
196 quality to an automotive-related product offered for
197 sale by an affiliated finance company or its related
198 manufacturer or wholesale distributor; providing that
199 a violation does not constitute a criminal offense;
200 amending s. 320.27, F.S.; deleting the definition of
201 the term "motor vehicle broker"; conforming a
202 reference; providing an effective date.