

By the Committees on Judiciary; and Banking and Insurance; and
Senators Flores and Diaz de la Portilla

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1 A bill to be entitled
2 An act relating to motor vehicle sales; amending s.
3 545.01, F.S.; revising and reordering definitions;
4 defining terms; creating s. 545.045, F.S.; prohibiting
5 an affiliated finance company from taking specified
6 actions relating to certain finance obligations
7 arising from a vehicle contract that contains a third-
8 party provider's specified automotive-related product;
9 providing factors to determine whether an automotive-
10 related product is similar in nature, scope, and
11 quality to an automotive-related product offered for
12 sale by an affiliated finance company or its related
13 manufacturer or wholesale distributor; providing that
14 a violation does not constitute a criminal offense;
15 amending s. 320.27, F.S.; deleting the definition of
16 the term "motor vehicle broker"; conforming a
17 reference; providing an effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Section 545.01, Florida Statutes, is reordered
22 and amended to read:

23 545.01 Definitions.—As used in this chapter, the term:

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

26 (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

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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 person~~
49 ~~engaged, directly or indirectly, in the sale or distribution of~~
50 ~~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~~

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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 to
70 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

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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

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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, may ~~shall~~ not sell or auction a vehicle to any person who
143 is not a licensed dealer, and may ~~shall~~ not have the privilege
144 of the use of dealer license plates. Any person who buys, sells,
145 or deals in motor vehicles at wholesale or with motor vehicle

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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 may
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,

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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.