

1 A bill to be entitled

2 An act relating to motor vehicle manufacturers and
3 dealers; amending s. 320.60, F.S.; revising
4 definitions; amending s. 320.64, F.S.; revising
5 certain prohibited actions of a licensee; providing an
6 exception; prohibiting a licensee from committing
7 certain acts relating to franchise agreements and
8 bonus, incentive, or other benefit programs; amending
9 s. 320.6405, F.S.; revising actions a common entity is
10 authorized to take on behalf of a manufacturer,
11 distributor, or importer; providing that a common
12 entity is subject to certain provisions of law;
13 providing that importers and distributors of line-make
14 motor vehicles are bound by the franchise agreement;
15 amending s. 320.6415, F.S.; providing that the
16 rebadging of, or any changes to, certain motor
17 vehicles does not invalidate a franchise agreement;
18 amending s. 320.642, F.S.; conforming provisions to
19 changes made by the act; amending s. 320.645, F.S.;
20 revising restrictions for when a licensee,
21 manufacturer, or distributor may own, operate, or
22 control a dealership; providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:
25

26 Section 1. Subsections (2), (9), and (14) of section
 27 320.60, Florida Statutes, are amended to read:

28 320.60 Definitions for ss. 320.61-320.70.—Whenever used in
 29 ss. 320.61-320.70, unless the context otherwise requires, the
 30 following words and terms have the following meanings:

31 (2) "Common entity" of a manufacturer, distributor,
 32 importer, licensee, or applicant means a person or entity:

33 (a) That is a parent or wholly or partially owned
 34 subsidiary, division, or affiliate of the manufacturer,
 35 distributor, importer, licensee, or applicant; ~~Who is either~~
 36 ~~controlled or owned, beneficially or of record, by one or more~~
 37 ~~persons who also control or own more than 40 percent of the~~
 38 ~~voting equity interests of a manufacturer; or~~

39 (b) That either owns or is owned, beneficially or of
 40 record, or controls or is controlled by one or more persons or
 41 entities that also owns, beneficially or of record, or controls
 42 at least 10 percent of the voting or equity interests of the
 43 manufacturer, distributor, importer, licensee, or applicant; or
 44 ~~Who shares directors or officers or partners with a~~
 45 ~~manufacturer.~~

46 (c) That shares a common entity with the manufacturer,
 47 distributor, importer, licensee, or applicant.

48 (9) "Manufacturer" means any person, whether a resident or
 49 nonresident of this state, who manufactures or assembles motor
 50 vehicles or who manufactures or installs on previously assembled

51 truck chassis special bodies or equipment which, when installed,
52 form an integral part of the motor vehicle and which constitute
53 a major manufacturing alteration. The term "manufacturer"
54 includes:

55 (a) A central or principal sales corporation or other
56 entity through which, by contractual agreement or otherwise, it
57 distributes its products.

58 (b) A common entity that offers, markets, implements, or
59 administers a motor vehicle warranty, certified pre-owned
60 warranty, service contract, or maintenance plan that bears or
61 uses, in whole or in part, the name, brand, trademark, service
62 mark, or logo of any line-make that is the subject of a
63 franchise agreement.

64 (14) "Line-make ~~vehicles~~" includes ~~are~~ those motor
65 vehicles, regardless of model, kind of engine, power plant,
66 drive train, design, intended use, or classification, which are
67 marketed or offered for retail sale, lease, license,
68 subscription, or any other method of distribution under a common
69 name, trademark, service mark, or brand name of the manufacturer
70 of same. However, motor vehicles sold or leased under multiple
71 brand names or marks shall constitute a single line-make when
72 they are included in a single franchise agreement and every
73 motor vehicle dealer in this state authorized to sell or lease
74 any such vehicles has been offered the right to sell or lease
75 all of the multiple brand names or marks covered by the single

76 franchise agreement. Except, such multiple brand names or marks
 77 shall be considered individual franchises for purposes of s.
 78 320.64(36).

79 Section 2. Subsections (23) and (24) of section 320.64,
 80 Florida Statutes, are amended, and subsections (43) and (44) are
 81 added to that section, to read:

82 320.64 Denial, suspension, or revocation of license;
 83 grounds.—A license of a licensee under s. 320.61 may be denied,
 84 suspended, or revoked within the entire state or at any specific
 85 location or locations within the state at which the applicant or
 86 licensee engages or proposes to engage in business, upon proof
 87 that the section was violated with sufficient frequency to
 88 establish a pattern of wrongdoing, and a licensee or applicant
 89 shall be liable for claims and remedies provided in ss. 320.695
 90 and 320.697 for any violation of any of the following
 91 provisions. A licensee is prohibited from committing the
 92 following acts:

93 (23) The applicant or licensee has competed or is
 94 competing with respect to any activity covered by the franchise
 95 agreement with a motor vehicle dealer of the same line-make
 96 located in this state with whom the applicant or licensee has
 97 entered into a franchise agreement, except as permitted in
 98 subsection (24) or s. 320.645.

99 (24) The applicant or licensee, or a contractor, common
 100 entity, or other agent thereof, has sold, leased, or otherwise

101 provided title, possession, or use of a motor vehicle; a
102 conditional or unconditional right to purchase or lease a motor
103 vehicle; or any permanent or temporary motor vehicle accessory,
104 option, add-on, feature, improvement, or upgrade to any retail
105 consumer in the state except through a motor vehicle dealer
106 holding a franchise agreement for the line-make that includes
107 the motor vehicle. However, an applicant or licensee, or a
108 contractor, common entity, or other agent thereof, may sell a
109 permanent or temporary motor vehicle accessory, option, add-on,
110 feature, improvement, or upgrade through electronic or other
111 means of remote transmission for a motor vehicle that is first
112 sold or leased by a franchised motor vehicle dealer in the
113 state, if the applicant or licensee pays or credits such dealer
114 an amount not less than 25 percent of the gross price charged
115 for the accessory, option, add-on, feature, improvement, or
116 upgrade. This section does not apply to sales by the applicant
117 or licensee of motor vehicles to its current employees,
118 employees of companies affiliated by common ownership,
119 charitable not-for-profit organizations, and the federal
120 government.

121 (43) The applicant or licensee has entered into, or has
122 offered to enter into, a franchise agreement that does not
123 include all existing and subsequent motor vehicle models and
124 types of the line-make that is the subject of the franchise
125 agreement.

126 (44) The applicant or licensee, or common entity thereof,
 127 has failed or refused to offer or provide to a dealer in the
 128 state a bonus program, incentive program, or other benefit
 129 program, in whole or in part, which the applicant or licensee
 130 offers or provides to one or more other same line-make dealers
 131 in the state, unless the failure or refusal to offer or provide
 132 the program is reasonably supported by substantially different
 133 economic or market considerations. An applicant or a licensee,
 134 or a common entity thereof, may not offer or provide a bonus
 135 program, incentive program, or other benefit program to any
 136 dealer in the state if such program is subject to any condition
 137 that is unlawful as to the other same line-make dealers in the
 138 state, unless the program is offered or provided to such same-
 139 line dealer without condition.

140
 141 A motor vehicle dealer who can demonstrate that a violation of,
 142 or failure to comply with, any of the preceding provisions by an
 143 applicant or licensee will or may adversely and pecuniarily
 144 affect the complaining dealer, shall be entitled to pursue all
 145 of the remedies, procedures, and rights of recovery available
 146 under ss. 320.695 and 320.697.

147 Section 3. Section 320.6405, Florida Statutes, is amended
 148 to read:

149 320.6405 Franchise agreements; obligations of manufacturer
 150 and its agent.—

151 (1) Any parent, subsidiary, or common entity that of a
152 manufacturer; distributor; importer; or other entity, which by
153 contractual arrangement, ownership interest, or otherwise is
154 authorized to engage pursuant to the direction of the
155 manufacturer, engages in the manufacture, distribution, or
156 issuance in this state of line-make motor vehicles, motor
157 vehicle parts, motor vehicle warranties, motor vehicle service
158 contracts, motor vehicle maintenance plans, or other products
159 for or on behalf of the manufacturer, distributor, or importer
160 in the state, is manufactured or substantially manufactured by
161 such manufacturer, shall be deemed to be the agent of the
162 manufacturer, distributor, importer, and common entities
163 thereof, for the purposes of any franchise agreement entered
164 into between such manufacturer, distributor, or importer agent
165 and a motor vehicle dealer engaged in business in this state and
166 is subject to all restrictions, limitations, requirements,
167 obligations, remedies, and penalties of ss. 320.60-320.70, and
168 shall be bound by the terms and provisions of such franchise
169 agreement as if it were the principal.

170 (2) A manufacturer, distributor, or importer of line-make
171 motor vehicles which are offered for sale, ~~or~~ lease, license, or
172 subscription in this state under any franchise agreement
173 executed by an agent or common entity of such manufacturer,
174 distributor, or importer is bound by the terms and provisions of
175 such franchise agreement as if it and not the agent or common

176 | entity had executed the franchise agreement and, notwithstanding
 177 | whether it is licensed under ~~pursuant to~~ s. 320.61, said
 178 | manufacturer, distributor, or importer ~~is shall be~~ subject to
 179 | all of the restrictions, limitations, requirements, obligations,
 180 | remedies, and penalties of ss. 320.60-320.70 related to such
 181 | franchise agreement, the performance thereof, or any cause of
 182 | action pertaining thereto. The agency relationship established
 183 | in this section is not intended to apply to a person or entity
 184 | that engages in the distribution of motor vehicles in this state
 185 | under its own brand name which are substantially manufactured by
 186 | another person or entity, provided the distributing person or
 187 | entity is substantially engaged in the manufacture of other
 188 | line-make motor vehicles and is licensed in this state as a
 189 | manufacturer.

190 | Section 4. Subsection (1) of section 320.6415, Florida
 191 | Statutes, is amended to read:

192 | 320.6415 Changes in plan or system of distribution.—

193 | (1) A motor vehicle dealer franchise agreement shall
 194 | continue in full force and operation notwithstanding a change,
 195 | in whole or in part, of an established plan or system of
 196 | distribution of the motor vehicles offered for sale under such
 197 | franchise agreement, despite any rebadging of or changes to such
 198 | motor vehicles. The appointment of a new importer or distributor
 199 | for motor vehicles offered for sale under such franchise
 200 | agreement shall be deemed to be a change of an established plan

201 or system of distribution.

202 Section 5. Subsections (1), (2), and (3) of section
 203 320.642, Florida Statutes, are amended to read:

204 320.642 Dealer licenses in areas previously served;
 205 procedure.—

206 (1) Any licensee who proposes to establish an additional
 207 motor vehicle dealership or permit the relocation of an existing
 208 dealer to a location within a community or territory where the
 209 same line-make ~~vehicle~~ is presently represented by a franchised
 210 motor vehicle dealer or dealers shall give written notice of its
 211 intention to the department. The notice must state:

212 (a) The specific location at which the additional or
 213 relocated motor vehicle dealership will be established.

214 (b) The date on or after which the licensee intends to be
 215 engaged in business with the additional or relocated motor
 216 vehicle dealer at the proposed location.

217 (c) The identity of all motor vehicle dealers who are
 218 franchised to sell the same line-make ~~vehicle~~ with licensed
 219 locations in the county and any contiguous county to the county
 220 where the additional or relocated motor vehicle dealer is
 221 proposed to be located.

222 (d) The names and addresses of the dealer-operator and
 223 principal investors in the proposed additional or relocated
 224 motor vehicle dealership.

225

226 Immediately upon receipt of the notice the department publish
 227 notice ~~shall cause a notice to be published~~ in the Florida
 228 Administrative Register. The published notice must state that a
 229 petition or complaint by any dealer with standing to protest
 230 under ~~pursuant to~~ subsection (3) must be filed within 30 days
 231 following the date of publication of the notice in the Florida
 232 Administrative Register. The published notice must describe and
 233 identify the proposed dealership sought to be licensed, and the
 234 department shall mail ~~cause a copy of the notice to be mailed to~~
 235 those dealers identified in the licensee's notice under
 236 paragraph (c). The licensee shall pay a fee of \$75 and a service
 237 charge of \$2.50 for each publication. Proceeds from the fee and
 238 service charge shall be deposited into the Highway Safety
 239 Operating Trust Fund.

240 (2) (a) An application for a motor vehicle dealer license
 241 in any community or territory shall be denied when:

242 1. A timely protest is filed by a presently existing
 243 franchised motor vehicle dealer with standing to protest as
 244 defined in subsection (3) ~~and~~

245 2. The licensee fails to show that the existing franchised
 246 dealer or dealers who register new motor vehicle retail sales or
 247 retail leases of the same line-make in the community or
 248 territory of the proposed dealership are not providing adequate
 249 representation of such line-make ~~motor vehicles~~ in such
 250 community or territory. The licensee has the burden of proof to

251 establish ~~in establishing~~ inadequate representation ~~shall be on~~
252 ~~the licensee.~~

253 (b) In determining whether the existing franchised motor
254 vehicle dealer or dealers are providing adequate representation
255 in the community or territory for the line-make, the department
256 may consider evidence which includes ~~may include~~, but is not
257 limited to:

258 1. The impact of the establishment of the proposed or
259 relocated dealer on the consumers, public interest, existing
260 dealers, and the licensee; provided, however, that financial
261 impact may only be considered with respect to the protesting
262 dealer or dealers.

263 2. The size and permanency of investment reasonably made
264 and reasonable obligations incurred by the existing dealer or
265 dealers to perform their obligations under the dealer agreement.

266 3. The reasonably expected market penetration of the line-
267 make ~~motor vehicle~~ for the community or territory involved,
268 after consideration of all factors which may affect said
269 penetration, including, but not limited to, demographic factors
270 such as age, income, education, size class preference, product
271 popularity, retail lease transactions, or other factors
272 affecting sales to consumers of the community or territory.

273 4. Any actions by the licensees in denying its existing
274 dealer or dealers of the same line-make the opportunity for
275 reasonable growth, market expansion, or relocation, including

276 the availability of motor vehicles of the same line-make
277 ~~vehicles~~ in keeping with the reasonable expectations of the
278 licensee in providing an adequate number of dealers in the
279 community or territory.

280 5. Any attempts by the licensee to coerce the existing
281 dealer or dealers into consenting to additional or relocated
282 franchises of the same line-make in the community or territory.

283 6. Distance, travel time, traffic patterns, and
284 accessibility between the existing dealer or dealers of the same
285 line-make and the location of the proposed additional or
286 relocated dealer.

287 7. Whether benefits to consumers will likely occur from
288 the establishment or relocation of the dealership which cannot
289 be obtained by other geographic or demographic changes or
290 expected changes in the community or territory.

291 8. Whether the protesting dealer or dealers are in
292 substantial compliance with their dealer agreement.

293 9. Whether there is adequate interbrand and intrabrand
294 competition with respect to said line-make in the community or
295 territory and adequately convenient consumer care for the motor
296 vehicles of the line-make, including the adequacy of sales and
297 service facilities.

298 10. Whether the establishment or relocation of the
299 proposed dealership appears to be warranted and justified based
300 on economic and marketing conditions pertinent to dealers

301 competing in the community or territory, including anticipated
302 future changes.

303 11. The volume of registrations and service business
304 transacted by the existing dealer or dealers of the same line-
305 make in the relevant community or territory of the proposed
306 dealership.

307 (3) An existing franchised motor vehicle dealer or dealers
308 have ~~shall have~~ standing to protest a proposed additional or
309 relocated motor vehicle dealer when the existing motor vehicle
310 dealer or dealers have a franchise agreement for the same line-
311 make ~~vehicle~~ to be sold or serviced by the proposed additional
312 or relocated motor vehicle dealer and are physically located so
313 as to meet or satisfy any of the following requirements or
314 conditions:

315 (a) If the proposed additional or relocated motor vehicle
316 dealer is to be located in a county with a population of less
317 than 300,000 according to the most recent data of the United
318 States Census Bureau or the data of the Bureau of Economic and
319 Business Research of the University of Florida:

320 1. The proposed additional or relocated motor vehicle
321 dealer is to be located in the area designated or described as
322 the area of responsibility, or such similarly designated area,
323 including the entire area designated as a multiple-point area,
324 in the franchise agreement or in any related document or
325 commitment with the existing motor vehicle dealer or dealers of

326 the same line-make as such agreement existed upon October 1,
327 1988;

328 2. The existing motor vehicle dealer or dealers of the
329 same line-make have a licensed franchise location within a
330 radius of 20 miles of the location of the proposed additional or
331 relocated motor vehicle dealer; or

332 3. Any existing motor vehicle dealer or dealers of the
333 same line-make can establish that during any 12-month period of
334 the 36-month period preceding the filing of the licensee's
335 application for the proposed dealership, the dealer or its
336 predecessor made 25 percent of its retail sales of new motor
337 vehicles to persons whose registered household addresses were
338 located within a radius of 20 miles of the location of the
339 proposed additional or relocated motor vehicle dealer; provided
340 the existing dealer is located in the same county or any county
341 contiguous to the county where the additional or relocated
342 dealer is proposed to be located.

343 (b) If the proposed additional or relocated motor vehicle
344 dealer is to be located in a county with a population of more
345 than 300,000 according to the most recent data of the United
346 States Census Bureau or the data of the Bureau of Economic and
347 Business Research of the University of Florida:

348 1. Any existing motor vehicle dealer or dealers of the
349 same line-make have a licensed franchise location within a
350 radius of 12.5 miles of the location of the proposed additional

351 or relocated motor vehicle dealer; or

352 2. Any existing motor vehicle dealer or dealers of the
 353 same line-make can establish that during any 12-month period of
 354 the 36-month period preceding the filing of the licensee's
 355 application for the proposed dealership, such dealer or its
 356 predecessor made 25 percent of its retail sales of new motor
 357 vehicles to persons whose registered household addresses were
 358 located within a radius of 12.5 miles of the location of the
 359 proposed additional or relocated motor vehicle dealer; provided
 360 such existing dealer is located in the same county or any county
 361 contiguous to the county where the additional or relocated
 362 dealer is proposed to be located.

363 Section 6. Subsection (1) of section 320.645, Florida
 364 Statutes, is amended to read:

365 320.645 Restriction upon ownership of dealership by
 366 licensee.—

367 (1) A ~~No~~ licensee, a manufacturer, a distributor,
 368 ~~manufacturer,~~ or an agent of a manufacturer or distributor, or
 369 any parent, subsidiary, common entity, ~~or~~ officer, or
 370 representative of the licensee, manufacturer, or distributor may
 371 not shall own, or operate, or control, either directly or
 372 indirectly, a motor vehicle dealership in this state if the
 373 licensee, manufacturer, or distributor has manufactured or
 374 distributed ~~for the sale or service of~~ motor vehicles that ~~which~~
 375 have been or are offered for sale under a franchise agreement

376 | with a motor vehicle dealer in this state that is not directly
 377 | or indirectly owned, operated, or controlled by the licensee,
 378 | manufacturer, or distributor. A ~~licensee may not be issued a~~
 379 | motor vehicle dealer license under pursuant to s. 320.27 may not
 380 | be issued to any licensee, manufacturer, or distributor; the
 381 | agent of a manufacturer or distributor or any parent,
 382 | subsidiary, common entity, officer, or representative of the
 383 | licensee, manufacturer, or distributor, if the licensee,
 384 | manufacturer, or distributor has manufactured or distributed
 385 | motor vehicles that have been or are offered for sale under a
 386 | franchise agreement with a motor vehicle dealer in this state
 387 | that is not directly or indirectly owned, operated, or
 388 | controlled by the licensee, manufacturer, or distributor.
 389 | However, a ~~no such~~ licensee, a manufacturer, a distributor, or
 390 | an agent of a manufacturer or distributor, or any parent,
 391 | subsidiary, common entity, officer, or representative of the
 392 | licensee, manufacturer, or distributor is not ~~will be deemed to~~
 393 | ~~be~~ in violation of this section:

- 394 | (a) When operating a motor vehicle dealership for a
- 395 | temporary period, not to exceed 1 year, during the transition
- 396 | from one owner of the motor vehicle dealership to another;
- 397 | (b) When operating a motor vehicle dealership temporarily
- 398 | for a reasonable period for the exclusive purpose of broadening
- 399 | the diversity of its dealer body and enhancing opportunities for
- 400 | qualified persons who are part of a group that has historically

401 | been underrepresented in its dealer body, or for other qualified
402 | persons who the licensee deems lack the resources to purchase or
403 | capitalize the dealership outright, in a bona fide relationship
404 | with an independent person, other than a licensee or its agent
405 | or affiliate, who has made a significant investment that is
406 | subject to loss in the dealership within the dealership's first
407 | year of operation and who can reasonably expect to acquire full
408 | ownership of the dealership on reasonable terms and conditions;
409 | or

410 | (c) If the department determines, after a hearing on the
411 | matter under, ~~pursuant to~~ chapter 120, at the request of any
412 | person, that there is no independent person available in the
413 | community or territory to own and operate the motor vehicle
414 | dealership in a manner consistent with the public interest.

415 |

416 | In any such case, the licensee must continue to make the motor
417 | vehicle dealership available for sale to an independent person
418 | at a fair and reasonable price. Approval of the sale of such a
419 | motor vehicle dealership to a proposed motor vehicle dealer may
420 | ~~shall~~ not be unreasonably withheld.

421 | Section 7. This act shall take effect July 1, 2021.