

By Senator Diaz

36-01650-21

20211430__

1 A bill to be entitled
2 An act relating to motor vehicles; amending s. 320.60,
3 F.S.; revising definitions; amending s. 320.64, F.S.;
4 revising prohibitions on applicants or licensees that
5 are manufacturers, distributors, or importers of motor
6 vehicles; prohibiting such applicants and licensees
7 from offering to enter into, or entering into, a
8 franchise agreement that does not meet certain
9 requirements; prohibiting such applicants and
10 licensees from failing or refusing to offer specified
11 programs; amending s. 320.6405, F.S.; conforming a
12 provision to changes made by the act; authorizing a
13 common entity to engage in the manufacture,
14 distribution, or issuance in this state of motor
15 vehicles, motor vehicle parts, motor vehicle
16 warranties, motor vehicle service contracts, motor
17 vehicle maintenance plans, or other products for or on
18 behalf of its respective manufacturer, distributor, or
19 importer; providing that common entities are agents of
20 the manufacturer, distributor, importer, or common
21 entities thereof for certain purposes; providing that
22 common entities are subject to specified provisions of
23 law; providing that manufacturers, importers, and
24 distributors of certain line-make motor vehicles
25 offered under a franchise agreement executed by an
26 agent or common entity are bound by terms and
27 provisions of the agreement and specified provisions
28 of law; amending s. 320.6415, F.S.; clarifying that
29 motor vehicle dealer franchise agreements continue in

36-01650-21

20211430__

30 full force and operation despite any rebadging of or
31 changes to motor vehicles offered for sale under such
32 franchise agreement; amending s. 320.645, F.S.;
33 revising a restriction on ownership of a dealership by
34 certain individuals and entities; prohibiting motor
35 vehicle dealer licenses from being issued to a
36 licensee, manufacturer, or distributor or any parent,
37 subsidiary, common entity, or officer or
38 representative of the licensee, manufacturer, or
39 distributor under certain conditions; reenacting s.
40 320.698(2), F.S., relating to civil fines, to
41 incorporate the amendment made to s. 320.64, F.S., in
42 a reference thereto; providing an effective date.
43

44 Be It Enacted by the Legislature of the State of Florida:
45

46 Section 1. Subsections (2), (9), and (14) of section
47 320.60, Florida Statutes, are amended to read:

48 320.60 Definitions for ss. 320.61-320.70.—Whenever used in
49 ss. 320.61-320.70, unless the context otherwise requires, the
50 following words and terms have the following meanings:

51 (2) "Common entity" of a manufacturer, importer,
52 distributor, licensee, or applicant means a person or an entity:

53 (a) That is a parent or wholly or partially owned
54 subsidiary, division, or affiliate of the manufacturer,
55 importer, distributor, licensee, or applicant;

56 (b) That either owns or is owned beneficially or of record,
57 or controls or is controlled by, one or more persons or entities
58 that also own beneficially or are of record, or control or are

36-01650-21

20211430__

59 controlled by, at least 10 percent of the voting or equity
60 interests of the manufacturer, importer, distributor, licensee,
61 or applicant; or

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

64 ~~(a) Who is either controlled or owned, beneficially or of~~
65 ~~record, by one or more persons who also control or own more than~~
66 ~~40 percent of the voting equity interests of a manufacturer; or~~

67 ~~(b) Who shares directors or officers or partners with a~~
68 ~~manufacturer.~~

69 (9) "Manufacturer" means any person, whether a resident or
70 nonresident of this state, who manufactures or assembles motor
71 vehicles or who manufactures or installs on previously assembled
72 truck chassis special bodies or equipment which, when installed,
73 form an integral part of the motor vehicle and which constitute
74 a major manufacturing alteration. The term ~~"manufacturer"~~
75 includes a central or principal sales corporation or other
76 entity through which, by contractual agreement or otherwise, it
77 distributes its products. The term also includes any common
78 entity of a manufacturer which offers, markets, implements, or
79 administers a motor vehicle warranty, certified pre-owned
80 warranty, service contract, or maintenance plan that bears or
81 uses in whole or in part the name, brand, trademark, service
82 mark, or logo of any line-make that is the subject of a
83 franchise agreement.

84 (14) "Line-make" includes ~~"Line-make vehicles"~~ are those
85 motor vehicles, regardless of model, kind of engine, power
86 plant, drive train, design, intended use, or classification,
87 which are marketed or offered for retail sale, lease, license,

36-01650-21

20211430__

88 subscription, or any other method of distribution under a common
89 name, trademark, service mark, or brand name of the manufacturer
90 of same. However, motor vehicles sold or leased under multiple
91 brand names or marks shall constitute a single line-make when
92 they are included in a single franchise agreement and every
93 motor vehicle dealer in this state authorized to sell or lease
94 any such vehicles has been offered the right to sell or lease
95 all of the multiple brand names or marks covered by the single
96 franchise agreement. Except, such multiple brand names or marks
97 shall be considered individual franchises for purposes of s.
98 320.64(36).

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

102 320.64 Denial, suspension, or revocation of license;
103 grounds.—A license of a licensee under s. 320.61 may be denied,
104 suspended, or revoked within the entire state or at any specific
105 location or locations within the state at which the applicant or
106 licensee engages or proposes to engage in business, upon proof
107 that the section was violated with sufficient frequency to
108 establish a pattern of wrongdoing, and a licensee or applicant
109 shall be liable for claims and remedies provided in ss. 320.695
110 and 320.697 for any violation of any of the following
111 provisions. A licensee is prohibited from committing the
112 following acts:

113 (23) The applicant or licensee has competed or is competing
114 with respect to any activity covered by the franchise agreement
115 with a motor vehicle dealer of the same line-make located in
116 this state with whom the applicant or licensee has entered into

36-01650-21

20211430__

117 a franchise agreement, except as permitted in s. 320.645 or in
118 subsection (24) with respect to the remote transmission of a
119 motor vehicle accessory, option, add-on, feature, improvement,
120 or upgrade.

121 (24) The applicant or licensee, or a common entity thereof,
122 has sold, leased, or otherwise provided title, possession, or
123 use of a motor vehicle or a conditional or unconditional right
124 to purchase or lease a motor vehicle, or has sold any permanent
125 or temporary motor vehicle accessory, option, add-on, feature,
126 improvement, or upgrade, to any retail consumer in the state
127 except through a motor vehicle dealer holding a franchise
128 agreement for the line-make that includes the motor vehicle.
129 Notwithstanding the foregoing, an applicant or a licensee, or a
130 contractor, common entity, or other agent thereof, may sell a
131 permanent or temporary motor vehicle accessory, option, add-on,
132 feature, improvement, or upgrade through electronic or other
133 mode of remote transmission to a motor vehicle first sold or
134 leased by a dealer in this state, but only if the applicant or
135 licensee pays or credits the Florida-franchised motor vehicle
136 dealer that first sold or leased such motor vehicle an amount
137 not less than 25 percent of the gross price charged for such
138 remotely transmitted accessory, option, add-on, feature,
139 improvement, or upgrade. This section does not apply to sales by
140 the applicant or licensee of motor vehicles to its current
141 employees, employees of companies affiliated by common
142 ownership, charitable not-for-profit organizations, and the
143 federal government.

144 (43) The applicant or licensee has offered to enter into,
145 or has entered into, a franchise agreement that does not include

36-01650-21

20211430__

146 all currently existing and subsequent vehicle models and types
147 of the line-make that is the subject of the franchise agreement.

148 (44) The applicant or licensee, or a common entity thereof,
149 has failed or refused to offer or provide a bonus program,
150 incentive program, or other benefit program in whole or in part
151 to any dealer in this state which it offers or provides to one
152 or more other same line-make dealers in this state, unless the
153 failure or refusal to offer or provide the bonus program,
154 incentive program, or other benefit program to any dealer in
155 this state is reasonably supported by substantially different
156 economic or market considerations. An applicant or licensee, or
157 a common entity thereof, may not offer or provide a bonus
158 program, incentive program, or other benefit program to any
159 dealer in this state if such program is subject to any condition
160 that is unlawful as to any same line-make dealer in this state,
161 unless such program is offered or provided to such same line-
162 make dealer without condition.

163
164 A motor vehicle dealer who can demonstrate that a violation of,
165 or failure to comply with, any of the preceding provisions by an
166 applicant or licensee will or may adversely and pecuniarily
167 affect the complaining dealer, shall be entitled to pursue all
168 of the remedies, procedures, and rights of recovery available
169 under ss. 320.695 and 320.697.

170 Section 3. Section 320.6405, Florida Statutes, is amended
171 to read:

172 320.6405 Franchise agreements; obligations of manufacturer
173 and its agent.—

174 (1) Any parent, subsidiary, or common entity of a

36-01650-21

20211430__

175 manufacturer, ~~or distributor, or importer,~~ or other entity, which
176 by contractual arrangement, ownership interest, or otherwise,
177 may engage pursuant to the direction of the manufacturer,
178 ~~engages~~ in the manufacture, distribution, or issuance in this
179 state of ~~line-make~~ motor vehicles, motor vehicle parts, motor
180 vehicle warranties, motor vehicle service contracts, motor
181 vehicle maintenance plans, or other products for or on behalf of
182 such manufacturer, distributor, or importer. The common entity
183 ~~manufactured or substantially manufactured by such manufacturer,~~
184 shall be deemed to be the agent of the manufacturer,
185 distributor, importer, or common entities thereof for the
186 purposes of any franchise agreement entered into between such
187 manufacturer, distributor, or importer agent and a motor vehicle
188 dealer engaged in business in this state, and the common entity
189 is subject to all restrictions, limitations, requirements,
190 obligations, remedies, and penalties of ss. 320.60-320.70 and
191 ~~shall be bound by~~ the terms and provisions of such franchise
192 agreement as if it were the principal.

193 (2) A manufacturer, an importer, or a distributor of line-
194 make motor vehicles that ~~which~~ are offered for sale, or lease,
195 license, or subscription in this state under any franchise
196 agreement executed by an agent or a common entity of such
197 manufacturer, importer, or distributor is bound by the terms and
198 provisions of such franchise agreement as if it and not the
199 agent or common entity had executed the franchise agreement and,
200 notwithstanding whether it is licensed pursuant to s. 320.61,
201 said manufacturer, importer, or distributor shall be subject to
202 all of the restrictions, limitations, requirements, obligations,
203 remedies, and penalties of ss. 320.60-320.70 related to such

36-01650-21

20211430__

204 franchise agreement, the performance thereof, or any cause of
205 action pertaining thereto. The agency relationship established
206 in this section is not intended to apply to a person or entity
207 that engages in the distribution of motor vehicles in this state
208 under its own brand name which are substantially manufactured by
209 another unrelated person or entity, provided the distributing
210 person or entity is substantially engaged in the manufacture of
211 other line-make motor vehicles and is licensed in this state as
212 a manufacturer.

213 Section 4. Subsection (1) of section 320.6415, Florida
214 Statutes, is amended to read:

215 320.6415 Changes in plan or system of distribution.—

216 (1) A motor vehicle dealer franchise agreement shall
217 continue in full force and operation notwithstanding a change,
218 in whole or in part, of an established plan or system of
219 distribution of the motor vehicles offered for sale under such
220 franchise agreement and despite any rebadging of or changes to
221 such motor vehicles. The appointment of a new importer or
222 distributor for such motor vehicles offered for sale under such
223 franchise agreement shall be deemed to be a change of an
224 established plan or system of distribution.

225 Section 5. Subsection (1) of section 320.645, Florida
226 Statutes, is amended, and subsection (4) of that section is
227 reenacted, to read:

228 320.645 Restriction upon ownership of dealership by
229 licensee.—

230 (1) A ~~No~~ licensee, distributor, manufacturer, or agent of a
231 manufacturer or distributor, or any parent, subsidiary, common
232 entity, ~~or~~ officer, or representative of the licensee,

36-01650-21

20211430__

233 manufacturer, or distributor, may not own, operate, or control
234 ~~shall own or operate,~~ either directly or indirectly, a motor
235 vehicle dealership in this state if the licensee, manufacturer,
236 or distributor has manufactured or distributed ~~for the sale or~~
237 ~~service of~~ motor vehicles that ~~which~~ have been or are offered
238 for sale under a franchise agreement with a motor vehicle dealer
239 in this state which is not directly or indirectly owned or
240 controlled by the license, manufacturer, or distributor. A
241 ~~licensee may not be issued a motor vehicle dealer license~~
242 pursuant to s. 320.27 may not be issued to any licensee,
243 manufacturer, or distributor or any parent, subsidiary, common
244 entity, or officer or representative of the licensee,
245 manufacturer, or distributor if the licensee, manufacturer, or
246 distributor has manufactured or distributed motor vehicles that
247 have been or are offered for sale under a franchise agreement
248 with a motor vehicle dealer in this state which is not directly
249 or indirectly owned or controlled by the licensee, manufacturer,
250 or distributor. However, no such licensee will be deemed to be
251 in violation of this section:

252 (a) When operating a motor vehicle dealership for a
253 temporary period, not to exceed 1 year, during the transition
254 from one owner of the motor vehicle dealership to another;

255 (b) When operating a motor vehicle dealership temporarily
256 for a reasonable period for the exclusive purpose of broadening
257 the diversity of its dealer body and enhancing opportunities for
258 qualified persons who are part of a group that has historically
259 been underrepresented in its dealer body, or for other qualified
260 persons who the licensee deems lack the resources to purchase or
261 capitalize the dealership outright, in a bona fide relationship

36-01650-21

20211430__

262 with an independent person, other than a licensee or its agent
263 or affiliate, who has made a significant investment that is
264 subject to loss in the dealership within the dealership's first
265 year of operation and who can reasonably expect to acquire full
266 ownership of the dealership on reasonable terms and conditions;
267 or

268 (c) If the department determines, after a hearing on the
269 matter, pursuant to chapter 120, at the request of any person,
270 that there is no independent person available in the community
271 or territory to own and operate the motor vehicle dealership in
272 a manner consistent with the public interest.

273
274 In any such case, the licensee must continue to make the motor
275 vehicle dealership available for sale to an independent person
276 at a fair and reasonable price. Approval of the sale of such a
277 motor vehicle dealership to a proposed motor vehicle dealer
278 shall not be unreasonably withheld.

279 (4) Nothing in this chapter shall prohibit a distributor as
280 defined in s. 320.60(5) or common entity that is not a
281 manufacturer, a division of a manufacturer, an entity that is
282 controlled by a manufacturer, or a common entity of a
283 manufacturer, and that is not owned, in whole or in part,
284 directly or indirectly, by a manufacturer, as defined in s.
285 320.60(9), from receiving a license or licenses as defined in s.
286 320.27 and owning and operating a motor vehicle dealership or
287 dealerships that sell or service motor vehicles other than any
288 line-make of motor vehicles distributed by the distributor.

289 Section 6. For the purpose of incorporating the amendment
290 made by this act to section 320.64, Florida Statutes, in a

36-01650-21

20211430__

291 reference thereto, subsection (2) of section 320.698, Florida
292 Statutes, is reenacted to read:

293 320.698 Civil fines; procedure.—In addition to the exercise
294 of other powers under ss. 320.60-320.70, the department is
295 authorized to assess, impose, levy, and collect by legal process
296 civil fines against licensees as follows:

297 (2) The department may fine any licensee a sum not
298 exceeding \$5,000 when such licensee, or an agent or employee
299 thereof, is adjudged by the department to be guilty of a
300 violation of s. 320.64, and the fine may be levied for each and
301 every such violation.

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