

1 A bill to be entitled
2 An act relating to motor vehicle dealers; amending s.
3 320.60, F.S.; defining the term "motor vehicle dealer
4 association"; amending s. 320.67, F.S.; requiring the
5 Department of Highway Safety and Motor Vehicles to
6 conduct investigations of licensees and inspect
7 specified materials relating to written complaints
8 made against licensees by motor vehicle dealers and
9 motor vehicle dealer associations; revising the
10 department's authority relating to conducting
11 investigations and examinations; authorizing the
12 department to petition a court if a licensee or any
13 person refuses to testify, produce materials, or obey
14 a subpoena or subpoena duces tecum; requiring the
15 court to issue an order; requiring the subpoenaed
16 licensee or person to pay certain costs; providing a
17 penalty for a licensee or person who fails to comply
18 with the court's order; authorizing the department to
19 designate agents for specified purposes; providing
20 that subpoenaed witnesses are entitled to witness
21 fees; providing exceptions; prohibiting the use of
22 information obtained pursuant to certain
23 investigations and examinations as the basis for
24 criminal prosecution; requiring the department to take
25 appropriate action against a licensee if the

26 department determines the licensee has violated
 27 specified provisions of law; authorizing the
 28 department to adopt rules; amending s. 320.695, F.S.;
 29 authorizing motor vehicle dealer associations to make
 30 application to any circuit court for certain remedies;
 31 amending s. 320.699, F.S.; revising procedures for
 32 administrative hearings and adjudications to include
 33 motor vehicle dealer associations; amending s.
 34 320.642, F.S.; conforming cross-references; providing
 35 an effective date.

36

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

38

39 Section 1. Present subsections (12) through (16) of
 40 section 320.60, Florida Statutes, are redesignated as
 41 subsections (13) through (17), respectively, and a new
 42 subsection (12) is added to that section, to read:

43 320.60 Definitions for ss. 320.61-320.70.—Whenever used in
 44 ss. 320.61-320.70, unless the context otherwise requires, the
 45 following words and terms have the following meanings:

46 (12) "Motor vehicle dealer association" means a not-for-
 47 profit entity organized under the laws of this state and
 48 qualified as tax exempt pursuant to s. 501(c)(6) of the Internal
 49 Revenue Code which acts as a trade association and maintains a
 50 membership of at least 30 motor vehicle dealers.

51 Section 2. Section 320.67, Florida Statutes, is amended to
 52 read:

53 320.67 Inspection of books or other documents of
 54 licensee.—

55 (1) The department shall conduct an investigation of a
 56 licensee relating to, and ~~may~~ inspect the pertinent books,
 57 records, letters, and contracts of a licensee relating to, any
 58 written complaint made to it against such licensee by any motor
 59 vehicle dealer or motor vehicle dealer association.

60 (2) For purposes of any investigation or examination
 61 conducted under this section ~~In the exercise of its duties under~~
 62 ~~this section,~~ the department is granted and authorized to
 63 exercise the power of subpoena to administer oaths or
 64 affirmations, examine witnesses, require affidavits, take
 65 depositions, and compel the attendance of witnesses and the
 66 production of books, papers, documents, records, and other
 67 evidence. An authorized representative of the department may
 68 serve such subpoenas ~~for the attendance of witnesses and the~~
 69 ~~production of any documentary evidence necessary to the~~
 70 ~~disposition by it of any written complaint under this section.~~

71 (3) If a licensee, or any person, refuses to testify;
 72 produce books, papers, documents, or records; or otherwise obey
 73 the subpoena or subpoena duces tecum, the department may
 74 petition a court of competent jurisdiction in any county in
 75 which an action may be maintained against such licensee or

76 person pursuant to s. 47.011 or s. 47.051, whereupon the court
77 shall issue an order requiring such licensee or person to obey
78 the subpoena or show cause for failing to obey the subpoena.
79 Unless the licensee or person shows sufficient cause for failing
80 to obey the subpoena, the court shall direct the licensee or
81 person to obey the subpoena. Costs incurred by the department to
82 obtain an order granting, in whole or in part, its petition
83 shall be paid by the subpoenaed licensee or person, and failure
84 to comply with such order shall constitute contempt of court.

85 (4) For purposes of any investigation, examination, or
86 proceeding initiated by the department under this chapter, the
87 department may designate agents to serve subpoenas and other
88 process and administer oaths or affirmations. The department
89 shall exercise this power on its own initiative in accordance
90 with ss. 320.615 and 320.71.

91 (5) Witnesses subpoenaed under this section are entitled
92 to witness fees at the same rate established by s. 92.142 for
93 witnesses in a civil case, except that witness fees are not
94 payable for appearance at the witness' place of business during
95 regular business hours or at the witness' residence.

96 (6) Any information obtained pursuant to any investigation
97 or examination conducted under this section may not be used
98 against the licensee as the basis for a criminal prosecution
99 under the laws of this state.

100 (7) If, as the result of an investigation or examination

101 conducted pursuant to this section, the department determines
102 that a licensee has violated any provision of ss. 320.60-320.70,
103 the department shall take appropriate action against the
104 licensee, which may include license suspension or revocation;
105 denial of a license renewal application; assessment, imposition,
106 levy, and collection of an appropriate civil fine; or
107 instituting a civil action for issuance of an injunction
108 pursuant to s. 320.695.

109 (8) The department may adopt rules to administer this
110 section.

111 Section 3. Section 320.695, Florida Statutes, is amended
112 to read:

113 320.695 Injunction.—In addition to the remedies provided
114 in this chapter, and notwithstanding the existence of any
115 adequate remedy at law, the department, ~~or any motor vehicle~~
116 ~~dealer, or any motor vehicle dealer association in the name of~~
117 ~~the department and state and for the use and benefit of the~~
118 ~~motor vehicle dealer,~~ is authorized to make application to any
119 circuit court of the state for the grant, upon a hearing and for
120 cause shown, of a temporary or permanent injunction, or both,
121 restraining any person from acting as a licensee under the terms
122 of ss. 320.60-320.70 without being properly licensed hereunder,
123 or from violating or continuing to violate any of the provisions
124 of ss. 320.60-320.70, or from failing or refusing to comply with
125 the requirements of this law or any rule or regulation adopted

126 hereunder. Such injunction shall be issued without bond. A
127 single act in violation of the provisions of ss. 320.60-320.70
128 shall be sufficient to authorize the issuance of an injunction.
129 However, this statutory remedy shall not be applicable to any
130 motor vehicle dealer after final determination by the department
131 under s. 320.641(3).

132 Section 4. Section 320.699, Florida Statutes, is amended
133 to read:

134 320.699 Administrative hearings and adjudications;
135 procedure.—

136 (1) A motor vehicle dealer, or person with entitlements to
137 or in a motor vehicle dealer, who is directly and adversely
138 affected by the action or conduct of an applicant or licensee
139 which is alleged to be in violation of any provision of ss.
140 320.60-320.70, or a motor vehicle dealer association with a
141 member who is directly and adversely affected by the action or
142 conduct of an applicant or a licensee which is alleged to be in
143 violation of any provision of ss. 320.60-320.70, may seek a
144 declaration and adjudication of its rights with respect to the
145 alleged action or conduct of the applicant or licensee by:

146 ~~(a)~~ filing with the department a request for a proceeding
147 and an administrative hearing which conforms substantially with
148 the requirements of ss. 120.569 and 120.57. ~~or~~

149 ~~(2)~~ ~~(b)~~ A motor vehicle dealer with standing under s.
150 320.642(3) may file ~~Filing~~ with the department a written

151 objection or notice of protest pursuant to s. 320.642.

152 (3)~~(2)~~ If a written objection or notice of protest is
153 filed with the department under subsection (2) ~~paragraph (1)(b)~~,
154 a hearing shall be held not sooner than 180 days nor later than
155 240 days from the date of filing of the first objection or
156 notice of protest, unless the time is extended by the
157 administrative law judge for good cause shown. This subsection
158 shall govern the schedule of hearings in lieu of any other
159 provision of law with respect to administrative hearings
160 conducted by the Department of Highway Safety and Motor Vehicles
161 or the Division of Administrative Hearings, including
162 performance standards of state agencies, which may be included
163 in current and future appropriations acts.

164 Section 5. Subsection (6) of section 320.642, Florida
165 Statutes, is amended to read:

166 320.642 Dealer licenses in areas previously served;
167 procedure.—

168 (6) When a proposed addition or relocation concerns a
169 dealership that performs or is to perform only service, as
170 defined in s. 320.60(17) ~~s. 320.60(16)~~, and will not or does not
171 sell or lease new motor vehicles, as defined in s. 320.60(16) ~~s.~~
172 ~~320.60(15)~~, the proposal shall be subject to notice and protest
173 pursuant to the provisions of this section.

174 (a) Standing to protest the addition or relocation of a
175 service-only dealership shall be limited to those instances in

176 | which the applicable mileage requirement established in
 177 | subparagraphs (3) (a)2. and (3) (b)1. is met.

178 | (b) The addition or relocation of a service-only
 179 | dealership shall not be subject to protest if:

180 | 1. The applicant for the service-only dealership location
 181 | is an existing motor vehicle dealer of the same line-make as the
 182 | proposed additional or relocated service-only dealership;

183 | 2. There is no existing dealer of the same line-make
 184 | closer than the applicant to the proposed location of the
 185 | additional or relocated service-only dealership; and

186 | 3. The proposed location of the additional or relocated
 187 | service-only dealership is at least 7 miles from all existing
 188 | motor vehicle dealerships of the same line-make, other than
 189 | motor vehicle dealerships owned by the applicant.

190 | (c) In determining whether existing franchised motor
 191 | vehicle dealers are providing adequate representations in the
 192 | community or territory for the line-make in question in a
 193 | protest of the proposed addition or relocation of a service-only
 194 | dealership, the department may consider the elements set forth
 195 | in paragraph (2) (b), provided:

196 | 1. With respect to subparagraph (2) (b)1., only the impact
 197 | as it relates to service may be considered;

198 | 2. Subparagraph (2) (b)3. shall not be considered;

199 | 3. With respect to subparagraph (2) (b)9., only service
 200 | facilities shall be considered; and

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201 4. With respect to subparagraph (2)(b)11., only the volume
202 of service business transacted shall be considered.

203 (d) If an application for a service-only dealership is
204 granted, the department shall issue a license which permits only
205 service, as defined in s. 320.60(17) ~~s. 320.60(16)~~, and does not
206 permit the selling or leasing of new motor vehicles, as defined
207 in s. 320.60(16) ~~s. 320.60(15)~~. If a service-only dealership
208 subsequently seeks to sell new motor vehicles at its location,
209 the notice and protest provisions of this section shall apply.

210 Section 6. This act shall take effect July 1, 2021.