

By Senator Hooper

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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

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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 section
40 320.60, Florida Statutes, are redesignated as subsections (13)
41 through (17), respectively, and a new subsection (12) is added
42 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 licensee.—

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

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

70 (3) If a licensee, or any person, refuses to testify;
71 produce books, papers, documents, or records; or otherwise obey
72 the subpoena or subpoena duces tecum, the department may
73 petition a court of competent jurisdiction in any county in
74 which an action may be maintained against such licensee or
75 person pursuant to s. 47.011 or s. 47.051, whereupon the court
76 shall issue an order requiring such licensee or person to obey
77 the subpoena or show cause for failing to obey the subpoena.
78 Unless the licensee or person shows sufficient cause for failing
79 to obey the subpoena, the court shall direct the licensee or
80 person to obey the subpoena. Costs incurred by the department to
81 obtain an order granting, in whole or in part, its petition
82 shall be paid by the subpoenaed licensee or person, and failure
83 to comply with such order shall constitute contempt of court.

84 (4) For purposes of any investigation, examination, or
85 proceeding initiated by the department under this chapter, the
86 department may designate agents to serve subpoenas and other
87 process and administer oaths or affirmations. The department

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88 shall exercise this power on its own initiative in accordance
89 with ss. 320.615 and 320.71.

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

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

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

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

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

112 320.695 Injunction.—In addition to the remedies provided in
113 this chapter, and notwithstanding the existence of any adequate
114 remedy at law, the department, ~~or any motor vehicle dealer, or~~
115 any motor vehicle dealer association ~~in the name of the~~
116 ~~department and state and for the use and benefit of the motor~~

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117 ~~vehicle dealer,~~ is authorized to make application to any circuit
118 court of the state for the grant, upon a hearing and for cause
119 shown, of a temporary or permanent injunction, or both,
120 restraining any person from acting as a licensee under the terms
121 of ss. 320.60-320.70 without being properly licensed hereunder,
122 or from violating or continuing to violate any of the provisions
123 of ss. 320.60-320.70, or from failing or refusing to comply with
124 the requirements of this law or any rule or regulation adopted
125 hereunder. Such injunction shall be issued without bond. A
126 single act in violation of the provisions of ss. 320.60-320.70
127 shall be sufficient to authorize the issuance of an injunction.
128 However, this statutory remedy shall not be applicable to any
129 motor vehicle dealer after final determination by the department
130 under s. 320.641(3).

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

133 320.699 Administrative hearings and adjudications;
134 procedure.—

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

145 ~~(a)~~ filing with the department a request for a proceeding

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146 and an administrative hearing which conforms substantially with
 147 the requirements of ss. 120.569 and 120.57.~~7~~~~or~~

148 (2)(b) A motor vehicle dealer with standing under s.
 149 320.642(3) may file ~~Filing~~ with the department a written
 150 objection or notice of protest pursuant to s. 320.642.

151 (3)(2) If a written objection or notice of protest is filed
 152 with the department under subsection (2) ~~paragraph (1)(b)~~, a
 153 hearing shall be held not sooner than 180 days nor later than
 154 240 days from the date of filing of the first objection or
 155 notice of protest, unless the time is extended by the
 156 administrative law judge for good cause shown. This subsection
 157 shall govern the schedule of hearings in lieu of any other
 158 provision of law with respect to administrative hearings
 159 conducted by the Department of Highway Safety and Motor Vehicles
 160 or the Division of Administrative Hearings, including
 161 performance standards of state agencies, which may be included
 162 in current and future appropriations acts.

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

165 320.642 Dealer licenses in areas previously served;
 166 procedure.—

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

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

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

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

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

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

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

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

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

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

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

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

202 (d) If an application for a service-only dealership is
203 granted, the department shall issue a license which permits only

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204 service, as defined in s. 320.60(17) ~~s. 320.60(16)~~, and does not
205 permit the selling or leasing of new motor vehicles, as defined
206 in s. 320.60(16) ~~s. 320.60(15)~~. If a service-only dealership
207 subsequently seeks to sell new motor vehicles at its location,
208 the notice and protest provisions of this section shall apply.

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