

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee  
 2 Representative Shoaf offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

6 Section 1. Subsections (2) and (15) of section 320.60,  
 7 Florida Statutes, are amended, and subsection (17) is added to  
 8 that section, to read:

9 320.60 Definitions for ss. 320.61-320.70.—Whenever used in  
 10 ss. 320.61-320.70, unless the context otherwise requires, the  
 11 following words and terms have the following meanings:

12 (2) "Common entity" means a person:

13 (a) Who is directly or indirectly either controlled by or  
 14 has more than 30 percent of its equity interest directly or  
 15 indirectly owned, beneficially or of record, through any form of

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16 ownership structure, by a manufacturer, an importer, a  
17 distributor, or a licensee, or an affiliate thereof;

18 (b) Who has more than 30 percent of its equity interest  
19 directly or indirectly controlled or owned, beneficially or of  
20 record, through any form of ownership structure, by one or more  
21 persons who also directly or indirectly control or own,  
22 beneficially or of record, more than 30 40 percent of the voting  
23 equity interests of a manufacturer, an importer, a distributor,  
24 or a licensee, or an affiliate thereof; or Who shares directors  
25 or officers or partners with a manufacturer.

26 (15) "Sell," "selling," "sold," "exchange," "retail sales,"  
27 and "leases" includes:

28 (a) Accepting a deposit or receiving a payment for the  
29 purchase, lease, or other use of a motor vehicle, except that  
30 this definition shall not include facilitating a motor vehicle  
31 dealer's acceptance or a deposit or receipt of a payment from a  
32 customer;

33 (b) Accepting a reservation from a retail consumer for a  
34 specific motor vehicle identified by a vehicle identification  
35 number or other product identifier;

36 (c) Setting the retail price for the purchase, lease, or  
37 other use of a motor vehicle;

38 (d) Offering or negotiating with a retail consumer terms  
39 for the purchase, lease, financing, or other use of a motor  
40 vehicle;

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41 (e) Offering or negotiating with a retail consumer a value  
42 for a motor vehicle being traded in as part of the purchase,  
43 lease, or other use of a motor vehicle, provided that this  
44 definition shall not include a website or other means of  
45 electronic communication that identifies to a consumer a  
46 conditional trade-in value that contains language informing the  
47 consumer that the trade-in value is not binding on any motor  
48 vehicle dealer;

49 (f) Offering or negotiating with a retail consumer any  
50 service contract, extended warranty, vehicle maintenance  
51 contract, guaranteed asset protection agreement, or any other  
52 vehicle-related products or services in connection with the  
53 purchase or lease of a motor vehicle;

54 (g) Any transaction where the title of a motor vehicle or a  
55 used motor vehicle is transferred to a retail consumer; ~~or, and~~  
56 also

57 (h) Any retail lease transaction where a retail consumer  
58 ~~customer~~ leases a vehicle for a period of at least 12 months,  
59 but does not include administering lease agreements, taking  
60 assignments of leases, performing required actions pursuant to  
61 such leases, or receiving payments under a lease agreement that  
62 was originated by a motor vehicle dealer. ~~Establishing a price~~  
63 ~~for sale pursuant to s. 320.64(24) does not constitute a sale or~~  
64 lease.

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65           (17) "Motor vehicle dealer association" means a not-for-  
66 profit entity organized under the laws of this state and  
67 qualified as tax -exempt under s. 501(c) (6) of the Internal  
68 Revenue Code which acts as a trade association that primarily  
69 represents the interests of franchised motor vehicle dealers and  
70 has a membership of at least 500 franchised motor vehicle  
71 dealers as defined in s. 320.27(1)(c)1.

72           Section 2. Subsections (18), (23), and (24) of section  
73 320.64, Florida Statutes, are amended to read:

74           320.64 Denial, suspension, or revocation of license;  
75 grounds.—A license of a licensee under s. 320.61 may be denied,  
76 suspended, or revoked within the entire state or at any specific  
77 location or locations within the state at which the applicant or  
78 licensee engages or proposes to engage in business, upon proof  
79 that the section was violated with sufficient frequency to  
80 establish a pattern of wrongdoing, and a licensee or applicant  
81 shall be liable for claims and remedies provided in ss. 320.695  
82 and 320.697 for any violation of any of the following  
83 provisions. A licensee is prohibited from committing the  
84 following acts:

85           (18) The applicant or licensee has established a system of  
86 motor vehicle allocation or distribution or has implemented a  
87 system of allocation or distribution of motor vehicles to one or  
88 more of its franchised motor vehicle dealers which:

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89        (a) Reduces or alters allocations or supplies of new motor  
90 vehicles to the dealer to achieve, directly or indirectly, a  
91 purpose that is prohibited by ss. 320.60-320.70;

92        (b) Conditionally or unconditionally reserves a specific  
93 motor vehicle identified by vehicle identification number or  
94 other unique identifier for a specifically named person, except  
95 for purposes of replacing a consumer's vehicle pursuant to  
96 chapter 681;

97        (c) Requires or incentivizes motor vehicle dealers to sell  
98 or lease, or to negotiate the sale or lease of, a specific motor  
99 vehicle identified by vehicle identification number or other  
100 unique identifier to a specifically named person;

101        (d) Requires or incentivizes motor vehicle dealers to sell  
102 or lease a motor vehicle at a specified price or profit margin,  
103 or restricts the price at which a motor vehicle dealer may sell  
104 or lease a motor vehicle; or

105        (e) Is, ~~or which otherwise is~~ unfair, inequitable,  
106 unreasonably discriminatory, or not supportable by reason and  
107 good cause after considering the equities of the affected motor  
108 vehicles dealer or dealers. As used in this paragraph, "unfair"  
109 includes, but is not limited to refusing or failing to offer to  
110 any dealer an equitable supply of new vehicles under its  
111 franchise, by model, mix, or color as the licensee offers or  
112 allocates to its other same line-make dealers in this state or  
113 using the number of motor vehicles pre-ordered or reserved by

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114 consumers as a factor in determining the allocation of motor  
115 vehicles to motor vehicle dealers.

116  
117 An applicant or licensee shall maintain for 3 years records that  
118 describe its methods or formula of allocation and distribution  
119 of its motor vehicles and records of its actual allocation and  
120 distribution of motor vehicles to its motor vehicle dealers in  
121 this state. ~~As used in this subsection, "unfair" includes,~~  
122 ~~without limitation, the refusal or failure to offer to any~~  
123 ~~dealer an equitable supply of new vehicles under its franchise,~~  
124 ~~by model, mix, or colors as the licensee offers or allocates to~~  
125 ~~its other same line-make dealers in the state.~~

126 (23) The applicant or licensee has engaged in any of the  
127 activities of a motor vehicle dealer as defined in s.  
128 320.60(11) (a) or s. 320.60(15) or has competed or is competing  
129 with respect to any activity covered by the franchise agreement  
130 with a motor vehicle dealer of the same line-make located in  
131 this state with whom the applicant or licensee has entered into  
132 a franchise agreement, except as permitted in s. 320.645 or in  
133 subsestion (24) with respect to the remote electronic  
134 transmission of a motor vehicle accessory, option, add-on,  
135 feature, improvement, or upgrade.

136 (24) The applicant or licensee, or common entity thereof,  
137 has sold or leased a motor vehicle of a line-make manufactured,  
138 imported, or distributed by the applicant or licensee to any

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139 retail consumer in this state, or has for a motor vehicle of  
140 such line-make sold or activated for a fee any permanent or  
141 temporary motor vehicle accessory, option, add-on, feature,  
142 improvement, or upgrade, to any retail consumer for a motor  
143 vehicle the consumer purchased from a motor vehicle dealer in  
144 this state, except through a motor vehicle dealer properly  
145 licensed pursuant to s. 320.27 and holding a franchise agreement  
146 for the line-make that includes the motor vehicle.  
147 Notwithstanding this subsection, an applicant, licensee, or  
148 their common entity, may sell or activate for a fee a permanent  
149 or temporary motor vehicle accessory, option, add-on, feature,  
150 improvement, or upgrade for a motor vehicle of a line-make  
151 manufactured, imported, or distributed by the applicant or  
152 licensee and registered in Florida if and only if the accessory,  
153 option, add-on, feature, improvement, or upgrade is provided  
154 directly to the motor vehicle through remote electronic  
155 transmission, provided that if such motor vehicle was sold or  
156 leased as new by a Florida franchised motor vehicle dealer  
157 within the 3-year period preceding such remote electronic  
158 transmission, then the applicant or licensee must pay such  
159 Florida franchised motor vehicle dealer a percentage of the  
160 gross sale price for the accessory, option, add-on, feature,  
161 improvement, or upgrade that is at least commensurate with the  
162 dealer margin structure established by the applicant or licensee  
163 for the sale of the vehicle to which the accessory, option, add-

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164 on, feature, improvement, or upgrade was remotely transmitted.  
165 To calculate the "dealer margin structure" as used in this  
166 Subsection 320.64(24), the applicant or licensee must subtract  
167 the invoiced vehicle wholesale price from the Manufacturer's  
168 Suggested Retail Price, then add to that figure all monetary  
169 per-vehicle incentives offered by the applicant or licensee  
170 whether or not received by the motor vehicle dealer, and then  
171 divide that sum by the invoiced vehicle wholesale price. This  
172 section does not apply to sales by the applicant or licensee of  
173 motor vehicles to its current employees, employees of companies  
174 affiliated by common ownership, charitable not-for-profit  
175 organizations, and the federal government.

176  
177 A motor vehicle dealer who can demonstrate that a violation of,  
178 or failure to comply with, any of the preceding provisions by an  
179 applicant or licensee will or may adversely and pecuniarily  
180 affect the complaining dealer, shall be entitled to pursue all  
181 of the remedies, procedures, and rights of recovery available  
182 under ss. 320.695 and 320.697.

183 Section 3. Subsections (1) and (2) of section 320.645,  
184 Florida Statutes, is amended to read:

185 320.645 Restriction upon ownership of dealership by  
186 licensee.—

187 (1) No licensee, manufacturer, importer, or distributor,  
188 ~~manufacturer,~~ or agent of the licensee, a manufacturer,

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189 importer, or distributor, or any parent, subsidiary, common  
190 entity, or officer, or employed representative of the licensee,  
191 manufacturer, importer, or distributor shall directly or  
192 indirectly shall own, or operate, or control by contract,  
193 agreement, or otherwise either directly or indirectly, a motor  
194 vehicle dealership for any line-make in this state if the  
195 licensee, manufacturer, importer, or distributor has  
196 manufactured, imported, or distributed for the sale or service  
197 of motor vehicles of any line-make which have been or are  
198 offered for sale under a franchise agreement with a motor  
199 vehicle dealer in this state with an independent person. Any  
200 person who is not prohibited by this section from owning,  
201 operating, or controlling a motor vehicle dealership may be  
202 issued a license pursuant to s. 320.27. Any person prohibited by  
203 this section from owning, operating, or controlling a motor  
204 vehicle dealership. A licensee may not be issued a motor vehicle  
205 dealer license pursuant to s. 320.27. However, no such licensee  
206 subject to the prohibition in this section will be deemed to be  
207 in violation of this section:

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

211 (b) When operating a motor vehicle dealership temporarily  
212 for a reasonable period for the exclusive purpose of broadening  
213 the diversity of its dealer body and enhancing opportunities for

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214 qualified persons who are part of a group that has historically  
215 been underrepresented in its dealer body, or for other qualified  
216 persons who the licensee deems lack the resources to purchase or  
217 capitalize the dealership outright, in a bona fide relationship  
218 with an independent person, other than a licensee or its agent  
219 or affiliate, who has made a significant investment that is  
220 subject to loss in the dealership within the dealership's first  
221 year of operation and who can reasonably expect to acquire full  
222 ownership of the dealership on reasonable terms and conditions;  
223 or

224 (c) If the department determines, after a hearing on the  
225 matter, pursuant to chapter 120, at the request of any person,  
226 that there is no independent person available in the community  
227 or territory to own and operate the motor vehicle dealership in  
228 a manner consistent with the public interest. This subsection  
229 shall only apply if the motor vehicle dealership at issue sells  
230 motor vehicles of a line-make which, at the time of the hearing,  
231 are offered for sale by at least one other existing motor  
232 vehicle dealership not owned, operated, or controlled by the  
233 licensee, an officer or employed representative of the licensee,  
234 a parent, subsidiary, or common entity of the licensee, or a  
235 manufacturer, importer, or distributor. A motor vehicle dealer  
236 association shall have standing to intervene in any hearing held  
237 pursuant to this subsection.  
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239 In ~~the any such~~ case of a, ~~the licensee must continue to make~~  
240 ~~the motor vehicle dealership~~ owned or operated pursuant to  
241 paragraph (a), paragraph (b), or paragraph (c), the dealership  
242 must be continually made available for sale to an independent  
243 person at a fair and reasonable price. Approval of the sale of  
244 such a motor vehicle dealership to a proposed motor vehicle  
245 dealer shall not be unreasonably withheld.

246 (2) As used in this chapter ~~section~~, the term:

247 (a) "Independent person" is a person who is not an agent,  
248 parent, subsidiary, common entity, officer, ~~director, or~~  
249 ~~employee of the licensee~~ or employed representative of a  
250 licensee, manufacturer, importer, or distributor.

251 (b) "Reasonable terms and conditions" requires that profits  
252 from the dealership are reasonably expected to be sufficient to  
253 allow full ownership of the dealership by the independent person  
254 within a reasonable time period not to exceed 10 years, which  
255 time period may be extended if there is a reasonable basis to do  
256 so and is not being sought to evade the purpose of this section;  
257 that the independent person has sufficient control to permit  
258 acquisition of ownership; and that the relationship cannot be  
259 terminated solely to avoid full ownership. The terms and  
260 conditions are not reasonable if they preclude the independent  
261 person from an expedited purchase of the dealership using a  
262 monetary source other than profits from the dealership's  
263 operation; provided, however, that the independent person must

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264 pay or make an agreement to pay to the licensee any and all  
265 reasonable prepayment charges and costs, including all  
266 unrecouped restored losses, associated with the expedited  
267 purchase of the dealership. For the purpose of this section,  
268 unrecouped restored losses are moneys that the manufacturer has  
269 provided to the dealership to restore losses of the dealership  
270 that the manufacturer has not been paid back through profits of  
271 the dealership.

272 (c) "Significant investment" means a reasonable amount,  
273 considering the reasonable capital requirements of the  
274 dealership, acquired and obtained from sources other than the  
275 licensee or any of its affiliates and not encumbered by the  
276 person's interest in the dealership.

277 Section 4. Section 320.67, Florida Statutes, is amended to  
278 read:

279 320.67 Investigation and Inspection of books or other  
280 documents of license.-

281 (1) The department shall conduct an inquiry of a licensee  
282 ~~may inspect the pertinent books, records, letters, and contracts~~  
283 ~~of a licensee~~ relating to any written complaint alleging a  
284 violation of any provision of ss. 320.60-.70 made to it against  
285 such licensee made by a motor vehicle dealer with a current  
286 franchise agreement issued by the licensee or motor vehicle  
287 dealer association with at least one member with a current  
288 franchise agreement issued by the licensee.

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289 (2) In the exercise of its duties under this section, the  
290 department is granted and authorized to exercise the power of  
291 subpoena for the purposes of compelling production of and  
292 inspecting pertinent books, records, letters, and contracts of a  
293 licensee and compelling the attendance of witnesses at  
294 deposition. The inquiry required by this section must be  
295 commenced within 30 days of the date of the written complaint  
296 and the department must obtain a written response from the  
297 licensee to the allegations contained in the complaint within 60  
298 days of the Department inquiry and must respond to the inquiring  
299 party within 30 days of the response from the licensee. Any  
300 information obtained may not be used against the licensee as the  
301 basis for a criminal prosecution under the laws of this state.

302 (3) If any investigation or examination conducted pursuant  
303 to this inquiry results in a determination that the licensee has  
304 violated any provision of ss. 320.60-70, the department shall  
305 take appropriate action against the licensee, which may include  
306 license suspension or revocation; denial of a license renewal  
307 application; assessment, imposition, levy, and collection of an  
308 appropriate civil fine; or instituting a civil action for  
309 issuance of an injunction pursuant to s.320.695.

310 (4) Nothing in this section shall alter or affect the  
311 rights of a motor vehicle dealer to bring a claim or action  
312 against a licensee pursuant to any other provision of ss.  
313 320.60-.70.

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314 Section 5. This act shall take effect July 1, 2023.

315 -----  
316 -----

317 **T I T L E A M E N D M E N T**

318 Remove everything before the enacting clause and insert:

319 An act relating to motor vehicle dealers, manufacturers,  
320 importers, and distributors; amending s. 320.60, F.S.; revising  
321 and providing definitions; amending s. 320.64, F.S.; prohibiting  
322 a motor vehicle manufacturer, distributor, or importer from  
323 certain actions in the allocation or distribution of motor  
324 vehicles to franchised motor vehicle dealers; revising the  
325 definition of the term "unfair"; authorizing a motor vehicle  
326 manufacturer, distributor, or importer to sell or activate  
327 certain motor vehicle accessories or features through remote  
328 electronic transmission; providing for revenue-sharing after  
329 such a sale or activation; amending s. 320.645, F.S.; revising  
330 provisions prohibiting a motor vehicle manufacturer,  
331 distributor, or importer from owning, operating, or controlling  
332 a motor vehicle dealership in this state; providing for the  
333 application of provisions relating to certain hearings; revising  
334 the definition of the term "independent person"; amending s.  
335 320.67, F.S.; authorizing a motor vehicle dealer or motor  
336 vehicle dealer association to file a written complaint with the  
337 department alleging a motor vehicle dealer, manufacturer,  
338 importer, or distributor has violated a provision of ss. 320.60-

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339 | .70, F.S.; requiring the department to review such a complaint  
340 | and make a specified report to the complainant; providing that,  
341 | if the department determines not to pursue action against a  
342 | licensee as a result of a complaint filed by a motor vehicle  
343 | dealer association, the motor vehicle dealer association may  
344 | bring an administrative action challenging the actions of the  
345 | licensee; providing an effective date.