

1 A bill to be entitled
2 An act relating to motor vehicle dealers,
3 manufacturers, importers, and distributors; amending
4 s. 320.60, F.S.; revising and providing definitions;
5 amending s. 320.64, F.S.; prohibiting a motor vehicle
6 manufacturer, distributor, or importer from certain
7 actions in the allocation or distribution of motor
8 vehicles to franchised motor vehicle dealers; revising
9 the definition of the term "unfair"; authorizing such
10 manufacturer, distributor, or importer to sell or
11 activate certain motor vehicle accessories or features
12 through remote electronic transmission; providing
13 revenue-sharing and reporting requirements regarding
14 such sale or activation; amending s. 320.642, F.S.;
15 conforming cross-references; amending s. 320.645,
16 F.S.; revising provisions prohibiting a manufacturer,
17 distributor, or importer from owning, operating, or
18 controlling a motor vehicle dealership in this state;
19 providing application of provisions relating to
20 certain hearings; revising the definition of the term
21 "independent person"; amending s. 320.695, F.S.;
22 authorizing a motor vehicle dealer or motor vehicle
23 dealer association to apply for the grant of a certain
24 injunction without establishing irreparable harm;
25 prohibiting a motor vehicle association from seeking

26 such injunction under certain circumstances; amending
 27 s. 320.699, F.S.; authorizing a motor vehicle dealer
 28 association to seek a declaration and adjudication of
 29 its members' rights with respect to certain violations
 30 by a manufacturer, distributor, or importer;
 31 prohibiting a motor vehicle dealer association from
 32 seeking such declaration or adjudication under certain
 33 circumstances; providing an effective date.

34

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

36

37 Section 1. Subsections (12) through (16) of section
 38 320.60, Florida Statutes, are renumbered as subsections (13)
 39 through (17), respectively, subsection (2) and present
 40 subsection (15) are amended, and a new subsection (12) is added
 41 to that section, to read:

42 320.60 Definitions for ss. 320.61-320.70.—Whenever used in
 43 ss. 320.61-320.70, unless the context otherwise requires, the
 44 following words and terms have the following meanings:

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

46 (a) Who is directly or indirectly ~~either~~ controlled, or
 47 has more than 30 percent of his or her equity interest directly
 48 or indirectly owned, beneficially or of record, through any form
 49 of ownership structure, by a manufacturer, an importer, a
 50 distributor, or a licensee, or an affiliate thereof; or

51 (b) Who has more than 30 percent of his or her equity
 52 interest directly or indirectly controlled or owned,
 53 beneficially or of record, through any form of ownership
 54 structure, by one or more persons who also directly or
 55 indirectly control or own, beneficially or of record, more than
 56 30 40 percent of the voting equity interests of a manufacturer,
 57 an importer, a distributor, or a licensee, or an affiliate
 58 thereof; or

59 ~~(b) Who shares directors or officers or partners with a~~
 60 ~~manufacturer.~~

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

68 ~~(16)-(15)~~ "Sell," "selling," "sold," "exchange," "retail
 69 sales," and "leases" includes:

70 (a) Accepting a deposit or receiving a payment for the
 71 purchase, lease, exchange, subscription, or use of a motor
 72 vehicle;

73 (b) Accepting a reservation from a retail consumer for a
 74 specific motor vehicle identified by a vehicle identification
 75 number or other product identifier;

76 (c) Setting the retail price for the purchase, lease, or
 77 exchange of a motor vehicle;

78 (d) Offering or negotiating with a retail consumer the
 79 terms for the purchase, lease, financing, or exchange of a motor
 80 vehicle;

81 (e) Negotiating directly with a retail consumer the value
 82 of a motor vehicle being traded in as part of the purchase,
 83 lease, exchange, subscription, or use of a motor vehicle;

84 (f) Offering or negotiating directly with a retail
 85 consumer any service contract, extended warranty, vehicle
 86 maintenance contract, or guaranteed asset protection agreement
 87 or any other vehicle-related products or services in connection
 88 with the purchase, lease, or exchange of a motor vehicle;

89 (g) Any transaction in which ~~where~~ the title of a motor
 90 vehicle or a used motor vehicle is transferred to a retail
 91 consumer; ~~or, and also~~

92 (h) Any retail lease transaction in which ~~where~~ a retail
 93 consumer ~~customer~~ leases a motor vehicle for a ~~period of~~ at
 94 least 12 months,

95
 96 but does not include administering lease agreements, taking
 97 assignments of leases, or receiving payments under a lease
 98 agreement that was originated by a motor vehicle dealer.

99 ~~Establishing a price for sale pursuant to s. 320.64(24) does not~~
 100 ~~constitute a sale or lease.~~

101 Section 2. Subsections (18), (23), and (24) of section
 102 320.64, Florida Statutes, are amended to read:

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

114 (18) The applicant or licensee has established a system of
 115 motor vehicle allocation or distribution or has implemented a
 116 system of allocation or distribution of motor vehicles to one or
 117 more of its franchised motor vehicle dealers which:

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

121 (b) Conditionally or unconditionally reserves a specific
 122 motor vehicle identified by a vehicle identification number or
 123 other unique identifier for a specifically named person;

124 (c) Requires or incentivizes a motor vehicle dealer to
 125 sell or lease, or to negotiate the sale or lease of, a specific

126 motor vehicle identified by a vehicle identification number or
 127 other unique identifier to a specifically named person;

128 (d) Requires or incentivizes a motor vehicle dealer to
 129 sell or lease a motor vehicle at a specified price or profit
 130 margin; or

131 (e) ~~which~~ Otherwise is unfair, inequitable, unreasonably
 132 discriminatory, or not supportable by reason and good cause
 133 after considering the equities of the affected motor vehicle
 134 ~~vehicles~~ dealer ~~or~~ dealers. As used in this paragraph, the term
 135 "unfair" includes, but is not limited to:

136 1. Refusing or failing to offer to any dealer an equitable
 137 supply of new vehicles under its franchise, by model, mix, or
 138 color as the licensee offers or allocates to its other same
 139 line-make dealers in this state; or

140 2. Using the number of motor vehicles pre-ordered or
 141 reserved by consumers as a factor in determining the allocation
 142 of motor vehicles to motor vehicle dealers.

143
 144 An applicant or licensee shall maintain for 3 years records that
 145 describe its methods or formula of allocation and distribution
 146 of its motor vehicles and records of its actual allocation and
 147 distribution of motor vehicles to its motor vehicle dealers in
 148 this state. ~~As used in this subsection, "unfair" includes,~~
 149 ~~without limitation, the refusal or failure to offer to any~~
 150 ~~dealer an equitable supply of new vehicles under its franchise,~~

151 ~~by model, mix, or colors as the licensee offers or allocates to~~
 152 ~~its other same line-make dealers in the state.~~

153 (23) The applicant or licensee has engaged in any of the
 154 activities of a motor vehicle dealer as defined in s.
 155 320.60(11) (a) or (15) or has competed or is competing with
 156 respect to any activity covered by the franchise agreement with
 157 a motor vehicle dealer of the same line-make located in this
 158 state with whom the applicant or licensee has entered into a
 159 franchise agreement, except as permitted in s. 320.645 or in
 160 subsection (24) with respect to the remote electronic
 161 transmission of a motor vehicle accessory, option, add-on,
 162 feature, improvement, or upgrade.

163 (24) The applicant or licensee, or a common entity
 164 thereof, has sold or leased a motor vehicle of a line-make
 165 manufactured, imported, or distributed by the applicant or
 166 licensee, or has for a motor vehicle of such line-make activated
 167 for a fee or sold any permanent or temporary motor vehicle
 168 accessory, option, add-on, feature, improvement, or upgrade, to
 169 any retail consumer in the state except through a motor vehicle
 170 dealer properly licensed under s. 320.27 and holding a franchise
 171 agreement for the line-make that includes the motor vehicle.
 172 However, an applicant or licensee, or a common entity thereof,
 173 may activate for a fee or sell a permanent or temporary motor
 174 vehicle accessory, option, add-on, feature, improvement, or
 175 upgrade for a motor vehicle of a line-make manufactured,

176 imported, or distributed by the applicant or licensee and
177 registered in this state if the accessory, option, add-on,
178 feature, improvement, or upgrade is provided directly to the
179 motor vehicle through remote electronic transmission. If such
180 motor vehicle was sold or leased as new by a franchised motor
181 vehicle dealer in this state within 3 years before such remote
182 electronic transmission, the applicant or licensee must pay such
183 franchised motor vehicle dealer at least 10 percent of the gross
184 revenue received by the applicant, licensee, or common entity
185 for such sale or activation and renewals during such 3-year
186 period. The applicant or licensee must provide each of its
187 franchised motor vehicle dealers with a quarterly statement of
188 the revenue received by the applicant, the licensee, or its
189 common entity during that quarter for such sales or activations
190 and renewals relating to those motor vehicles sold or leased by
191 the dealer during the preceding 3 years. This section does not
192 apply to sales by the applicant or licensee of motor vehicles to
193 its current employees, employees of companies affiliated by
194 common ownership, charitable not-for-profit organizations, and
195 the Federal Government.

196
197 A motor vehicle dealer who can demonstrate that a violation of,
198 or failure to comply with, any of the preceding provisions by an
199 applicant or licensee will or may adversely and pecuniarily
200 affect the complaining dealer, shall be entitled to pursue all

201 of the remedies, procedures, and rights of recovery available
 202 under ss. 320.695 and 320.697.

203 Section 3. Subsection (6) of section 320.642, Florida
 204 Statutes, is amended to read:

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

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

213 (a) Standing to protest the addition or relocation of a
 214 service-only dealership shall be limited to those instances in
 215 which the applicable mileage requirement established in
 216 subparagraphs (3) (a)2. and (3) (b)1. is met.

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

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

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

225 3. The proposed location of the additional or relocated

226 service-only dealership is at least 7 miles from all existing
227 motor vehicle dealerships of the same line-make, other than
228 motor vehicle dealerships owned by the applicant.

229 (c) In determining whether existing franchised motor
230 vehicle dealers are providing adequate representations in the
231 community or territory for the line-make in question in a
232 protest of the proposed addition or relocation of a service-only
233 dealership, the department may consider the elements set forth
234 in paragraph (2)(b), provided:

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

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

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

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

242 (d) If an application for a service-only dealership is
243 granted, the department shall issue a license that ~~which~~ permits
244 only service, as defined in s. 320.60(17) ~~s. 320.60(16)~~, and
245 does not permit the selling or leasing, as defined in s.
246 320.60(16), of new motor vehicles, ~~as defined in s. 320.60(15)~~.
247 If a service-only dealership subsequently seeks to sell new
248 motor vehicles at its location, the notice and protest
249 provisions of this section shall apply.

250 Section 4. Subsection (1) and paragraph (a) of subsection

251 (2) of section 320.645, Florida Statutes, are amended to read:

252 320.645 Restriction upon ownership of dealership by
 253 licensee.—

254 (1) A ~~No~~ licensee, a manufacturer, an importer, or a
 255 distributor, an manufacturer, or agent of a licensee, a
 256 manufacturer, an importer, or a distributor, or a any parent, a
 257 subsidiary, a common entity, an or officer, or an employed
 258 representative of a the licensee, a manufacturer, an importer,
 259 or a distributor may not directly or indirectly shall own, or
 260 operate, or control by contract, agreement, or otherwise either
 261 directly or indirectly, a motor vehicle dealership for any line-
 262 make in this state if the licensee, manufacturer, importer, or
 263 distributor has manufactured, imported, or distributed for the
 264 sale or service of motor vehicles of any line-make which have
 265 been or are offered for sale under a franchise agreement with a
 266 motor vehicle dealer in this state with an independent person. A
 267 person not prohibited by this section from owning, operating, or
 268 controlling a motor vehicle dealership may be issued a license
 269 pursuant to s. 320.27. A person prohibited by this section from
 270 owning, operating, or controlling a motor vehicle dealership
 271 licensee may not be issued a motor vehicle dealer license
 272 pursuant to s. 320.27. However, a no such licensee subject to
 273 the prohibition in this section will not be deemed to be in
 274 violation of this section:

275 (a) When operating a motor vehicle dealership for a

276 temporary period, not to exceed 1 year, during the transition
 277 from one owner of the motor vehicle dealership to another;

278 (b) When operating a motor vehicle dealership temporarily
 279 for a reasonable period for the exclusive purpose of broadening
 280 the diversity of its dealer body and enhancing opportunities for
 281 qualified persons who are part of a group that has historically
 282 been underrepresented in its dealer body, or for other qualified
 283 persons who the licensee deems lack the resources to purchase or
 284 capitalize the dealership outright, in a bona fide relationship
 285 with an independent person, other than a licensee or its agent
 286 or affiliate, who has made a significant investment that is
 287 subject to loss in the dealership within the dealership's first
 288 year of operation and who can reasonably expect to acquire full
 289 ownership of the dealership on reasonable terms and conditions;
 290 or

291 (c) If the department determines, after a hearing on the
 292 matter, ~~pursuant to chapter 120,~~ at the request of any person,
 293 that there is no independent person available in the community
 294 or territory to own and operate the motor vehicle dealership in
 295 a manner consistent with the public interest. This paragraph
 296 applies only if the motor vehicle dealership sells motor
 297 vehicles of a line-make which, at the time of the hearing, are
 298 offered for sale by at least one other existing motor vehicle
 299 dealership not owned, operated, or controlled by the licensee,
 300 an officer or employed representative of the licensee, a parent,

301 subsidiary, or common entity of the licensee, or a manufacturer,
 302 an importer, or a distributor. A motor vehicle dealer
 303 association shall have standing to intervene in any hearing held
 304 under this paragraph.

305
 306 In the any such case of a, ~~the licensee must continue to make~~
 307 ~~the~~ motor vehicle dealership owned or operated pursuant to
 308 paragraph (a), paragraph (b), or paragraph (c), the dealership
 309 must be continually made available for sale to an independent
 310 person at a fair and reasonable price. Approval of the sale of
 311 such a motor vehicle dealership to a proposed motor vehicle
 312 dealer shall not be unreasonably withheld.

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

314 (a) "Independent person" is a person who is not an agent,
 315 parent, subsidiary, common entity, officer, ~~director,~~ or
 316 employed representative of a ~~employee of the licensee,~~
 317 manufacturer, importer, or distributor.

318 Section 5. Section 320.695, Florida Statutes, is amended
 319 to read:

320 320.695 Injunction.—In addition to the remedies provided
 321 in this chapter, and notwithstanding the existence of any
 322 adequate remedy at law, the department, or any motor vehicle
 323 dealer or motor vehicle dealer association in the name of the
 324 department and state, and for the use and benefit of the motor
 325 vehicle dealer or motor vehicle dealer association, ~~may is~~

326 ~~authorized to~~ make application to any ~~circuit~~ court of competent
 327 jurisdiction ~~the state~~ for the grant, upon a hearing and for
 328 cause shown, of a temporary or permanent injunction, or both,
 329 restraining any person from acting as a licensee under the terms
 330 of ss. 320.60-320.70 without being properly licensed hereunder,
 331 or from violating or continuing to violate any of the provisions
 332 of ss. 320.60-320.70, or from failing or refusing to comply with
 333 the requirements of this law or any rule or regulation adopted
 334 hereunder. Such injunction shall be issued without bond. A
 335 single act in violation of the provisions of ss. 320.60-320.70
 336 shall be sufficient to authorize the issuance of an injunction
 337 without the necessity of establishing irreparable harm
 338 therefrom. However, this statutory remedy shall not be
 339 applicable to any motor vehicle dealer after final determination
 340 by the department under s. 320.641(3). Also, a motor vehicle
 341 dealer association may not seek an injunction under this section
 342 for a violation of any provision of ss. 320.60-320.70 against an
 343 applicant, licensee, manufacturer, importer, or distributor that
 344 has never, and has no common entity that has ever, manufactured,
 345 imported, or distributed motor vehicles that were offered for
 346 sale pursuant to a franchise agreement in this state with an
 347 independent person.

348 Section 6. Section 320.699, Florida Statutes, is amended
 349 to read:

350 320.699 Administrative hearings and adjudications;

351 procedure.—

352 (1) A motor vehicle dealer, or a person with entitlements
 353 to or in a motor vehicle dealer, who is directly and adversely
 354 affected, or a motor vehicle dealer association with one or more
 355 members who are directly and adversely affected, by the action
 356 or conduct of an applicant or licensee which is alleged to be in
 357 violation of any provision of ss. 320.60-320.70~~7~~ may seek a
 358 declaration and adjudication of its rights or the rights of such
 359 members with respect to the alleged action or conduct of the
 360 applicant or licensee by:

361 ~~(a)~~ filing with the department a request for a proceeding
 362 and an administrative hearing which conforms substantially with
 363 the requirements of ss. 120.569 and 120.57. However, a motor
 364 vehicle dealer association may not seek a declaration or
 365 adjudication under this section for a violation of any provision
 366 of ss. 320.60-320.70 against an applicant or licensee that has
 367 never, and has no common entity that has ever, manufactured,
 368 imported, or distributed motor vehicles that were offered for
 369 sale pursuant to a franchise agreement in this state with an
 370 independent person.~~;~~ ~~or~~

371 ~~(2)(b)~~ A motor vehicle dealer with standing under s.
 372 320.642(3) may file Filing with the department a written
 373 objection or notice of protest pursuant to s. 320.642.

374 ~~(3)(2)~~ If a written objection or notice of protest is
 375 filed with the department under subsection (2) ~~paragraph (1)(b),~~

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376 a hearing shall be held not sooner than 180 days nor later than
377 240 days from the date of filing of the first objection or
378 notice of protest, unless the time is extended by the
379 administrative law judge for good cause shown. This subsection
380 shall govern the schedule of hearings in lieu of any other
381 provision of law with respect to administrative hearings
382 conducted by the Department of Highway Safety and Motor Vehicles
383 or the Division of Administrative Hearings, including
384 performance standards of state agencies, which may be included
385 in current and future appropriations acts.

386 Section 7. This act shall take effect July 1, 2023.