



224252

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/04/2023	.	
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The Committee on Commerce and Tourism (Avila) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Present subsections (8), (9), (10), (11), (12), (13), (14), (15), and (16) of section 320.60, Florida Statutes, are redesignated as subsections (9), (11), (12), (13), (14), (18), (10), (16), and (17), respectively, new subsections (8) and (14) are added to that section, and subsections (2) and present subsection (15) of that section are amended, to read:



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

14 (2) “Common entity” means a person:

15 (a) Who is directly or indirectly either ~~either~~ controlled by or
16 has more than 30 percent of its equity interest directly or
17 indirectly owned, beneficially or of record, through any form of
18 ownership structure, by a manufacturer, an importer, a
19 distributor, or a licensee, or an affiliate thereof.

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

27 ~~(b) Who shares directors or officers or partners with a~~
28 ~~manufacturer.~~

29 (c) Notwithstanding the foregoing, an entity that would
30 otherwise be considered a common entity of a distributor under
31 paragraph (a) or paragraph (b) because of its relation to a
32 distributor is not considered a common entity of that
33 distributor if:

34 1. The distributor that the entity is related to was a
35 licensed distributor on March 1, 2023;

36 2. The entity is not a common entity of a manufacturer or
37 importer; and

38 3. The distributor that the entity is related to is not,
39 and has never been, a common entity of a manufacturer or



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40 importer.

41 (8) "Independent person" means a person who is not an
42 agent, parent, subsidiary, common entity, officer, director, or
43 an employed representative of a licensee, manufacturer,
44 importer, or distributor.

45 (14) "Motor vehicle dealer association" means a not-for-
46 profit entity organized under the laws of this state and
47 qualified as tax-exempt under s. 501(c)(6) of the Internal
48 Revenue Code which acts as a trade association that primarily
49 represents the interests of franchised motor vehicle dealers and
50 has a membership of at least 500 franchised motor vehicle
51 dealers as defined in s. 320.27(1)(c)1.

52 (16)~~(15)~~ "Sell," "selling," "sold," "exchange," "retail
53 sales," and "leases" includes:

54 (a) Accepting a deposit or receiving a payment for the
55 retail purchase, lease, or other use of a motor vehicle, but
56 does not include facilitating a motor vehicle dealer's
57 acceptance of a deposit or receipt of a payment from a consumer
58 and does not include receiving payment under a retail
59 installment sale contract;

60 (b) Accepting a reservation from a retail consumer for a
61 specific motor vehicle identified by a vehicle identification
62 number or other product identifier;

63 (c) Setting the retail price for the purchase, lease, or
64 other use of a motor vehicle, but does not include setting a
65 manufacturer's suggested retail price;

66 (d) Offering or negotiating with a retail consumer terms
67 for the purchase, lease, or other use of a motor vehicle;

68 (e) Offering or negotiating with a retail consumer a value



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69 for a motor vehicle being traded in as part of the purchase,
70 lease, or other use of a motor vehicle, but does not include a
71 website or other means of electronic communication that
72 identifies to a consumer a conditional trade-in value and that
73 contains language informing the consumer that the trade-in value
74 is not binding on any motor vehicle dealer;

75 (f) Any transaction where the title of a motor vehicle or a
76 used motor vehicle is transferred to a retail consumer; ~~or, and~~
77 also

78 (g) Any retail lease transaction where a retail consumer
79 ~~customer~~ leases a vehicle for a period of at least 12 months,
80 but does not include administering lease agreements, taking
81 assignments of leases, performing required actions pursuant to
82 such leases, or receiving payments under a lease agreement that
83 was originated by a motor vehicle dealer. ~~Establishing a price~~
84 ~~for sale pursuant to s. 320.64(24) does not constitute a sale or~~
85 ~~lease.~~

86 Section 2. Section 320.605, Florida Statutes, is amended to
87 read:

88 320.605 Legislative intent.—It is the intent of the
89 Legislature to protect the public health, safety, and welfare of
90 the citizens of the state by regulating the licensing of motor
91 vehicle dealers and manufacturers, maintaining competition,
92 providing consumer protection and fair trade and providing
93 minorities with opportunities for full participation as motor
94 vehicle dealers. Sections 320.61-320.70 are intended to apply
95 solely to the licensing of manufacturers, factory branches,
96 distributors, and importers and do not apply to non-motor-
97 vehicle-related businesses.



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98 Section 3. Subsections (18), (23), and (24) of section
99 320.64, Florida Statutes, are amended to read:

100 320.64 Denial, suspension, or revocation of license;
101 grounds.—A license of a licensee under s. 320.61 may be denied,
102 suspended, or revoked within the entire state or at any specific
103 location or locations within the state at which the applicant or
104 licensee engages or proposes to engage in business, upon proof
105 that the section was violated with sufficient frequency to
106 establish a pattern of wrongdoing, and a licensee or applicant
107 shall be liable for claims and remedies provided in ss. 320.695
108 and 320.697 for any violation of any of the following
109 provisions. A licensee is prohibited from committing the
110 following acts:

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

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

118 (b) Conditionally or unconditionally reserves a specific
119 motor vehicle identified by vehicle identification number or
120 other unique identifier for a specifically named person, except
121 for purposes of replacing a consumer's vehicle pursuant to
122 chapter 681;

123 (c) Requires or incentivizes motor vehicle dealers to sell
124 or lease, or to negotiate the sale or lease of, a specific motor
125 vehicle identified by vehicle identification number or other
126 unique identifier to a specifically named person;



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127 (d) Requires or incentivizes motor vehicle dealers to sell
128 or lease a motor vehicle at a specified price or profit margin
129 or restricts the price at which a motor vehicle dealer may sell
130 or lease a motor vehicle; or

131 (e) Is, ~~or which~~ otherwise ~~is~~ unfair, inequitable,
132 unreasonably discriminatory, or not supportable by reason and
133 good cause after considering the equities of the affected motor
134 vehicles dealer or dealers. As used in this paragraph, "unfair"
135 includes, but is not limited to, refusing or failing to offer to
136 any dealer an equitable supply of new vehicles under its
137 franchise, by model, mix, or color, as the licensee offers or
138 allocates to its other same line-make dealers in this state or
139 using the number of motor vehicles preordered or reserved by
140 consumers as a factor in determining the allocation of motor
141 vehicles to motor vehicle dealers.

142
143 An applicant or licensee shall maintain for 3 years records that
144 describe its methods or formula of allocation and distribution
145 of its motor vehicles and records of its actual allocation and
146 distribution of motor vehicles to its motor vehicle dealers in
147 this state. ~~As used in this subsection, "unfair" includes,~~
148 ~~without limitation, the refusal or failure to offer to any~~
149 ~~dealer an equitable supply of new vehicles under its franchise,~~
150 ~~by model, mix, or colors as the licensee offers or allocates to~~
151 ~~its other same line make dealers in the state.~~

152 (23) The applicant or licensee has engaged in any of the
153 activities of a motor vehicle dealer as defined in s.
154 320.60(13) (a) and (16) or has competed or is competing with
155 respect to any activity covered by the franchise agreement with



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156 a motor vehicle dealer of the same line-make located in this
157 state with whom the applicant or licensee has entered into a
158 franchise agreement, except as permitted in s. 320.645 or in
159 subsection (24) with respect to the remote electronic
160 transmission of a permanent or temporary feature or improvement
161 of a motor vehicle.

162 (24) (a) Except as provided in paragraph (b), the applicant
163 or licensee, or common entity thereof, has sold or leased a
164 motor vehicle to any retail consumer in the state, or has sold
165 or activated for a fee to any retail consumer in this state any
166 permanent or temporary motor vehicle feature or improvement that
167 functions through hardware or components installed on the motor
168 vehicle, except through a motor vehicle dealer properly licensed
169 pursuant to s. 320.27 and holding a franchise agreement for the
170 line-make that includes the motor vehicle. Notwithstanding this
171 subsection, an applicant or a licensee, or common entity
172 thereof, may sell or activate for a fee a permanent or temporary
173 motor vehicle feature or improvement to a retail consumer in
174 this state only if the feature or improvement is provided
175 directly to the motor vehicle through remote electronic
176 transmission, provided that if such motor vehicle was sold or
177 leased as new by a motor vehicle dealer in this state within the
178 3-year period preceding such remote electronic transmission,
179 then the applicant or licensee must pay the such motor vehicle
180 dealer a minimum of 8 percent of the payment received by the
181 applicant, licensee, or common entity from the sale of the
182 feature or improvement. As used in this subsection, the term
183 "feature or improvement" includes the activation or use of motor
184 vehicle components or hardware, but does not include services



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185 that require the transmission of data or information to or from
186 the motor vehicle while the service is being used. Payments
187 required under this subsection shall be made within 30 days of
188 the date of sale of the feature or improvement.

189 (b) For motorcycle dealers, manufacturers, factory
190 branches, distributors, or importers, such applicant or licensee
191 has sold a motorcycle to any retail consumer in the state except
192 through a dealer holding a franchise agreement for the line-make
193 that includes the motorcycle.

194 (c) This subsection ~~section~~ does not apply to sales by the
195 applicant or licensee of motor vehicles to its current
196 employees, employees of companies affiliated by common
197 ownership, charitable not-for-profit organizations, and the
198 Federal Government.

199
200 A motor vehicle dealer who can demonstrate that a violation of,
201 or failure to comply with, any of the preceding provisions by an
202 applicant or licensee will or may adversely and pecuniarily
203 affect the complaining dealer, shall be entitled to pursue all
204 of the remedies, procedures, and rights of recovery available
205 under ss. 320.695 and 320.697.

206 Section 4. Subsection (6) of section 320.642, Florida
207 Statutes, is amended to read:

208 320.642 Dealer licenses in areas previously served;
209 procedure.—

210 (6) When a proposed addition or relocation concerns a
211 dealership that performs or is to perform only service, as
212 defined in s. 320.60 ~~s. 320.60(16)~~, and will not or does not
213 sell or lease new motor vehicles, as defined in s. 320.60 ~~s.~~



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214 ~~320.60(15)~~, the proposal shall be subject to notice and protest
215 pursuant to the provisions of this section.

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

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

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

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

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

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

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

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

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



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

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

252 Section 5. Subsection (1), paragraph (a) of subsection (2),
253 and subsection (4) of section 320.645, Florida Statutes, are
254 amended to read:

255 320.645 Restriction upon ownership of dealership by
256 licensee.—

257 (1) A ~~No~~ licensee, manufacturer, importer, or distributor,
258 ~~manufacturer,~~ or agent of the licensee, a manufacturer,
259 importer, or distributor, or ~~any~~ parent, subsidiary, common
260 entity, ~~or~~ officer, or employed representative of the licensee,
261 manufacturer, importer, or distributor may not directly or
262 indirectly shall own, or operate, or control, by contract,
263 agreement, or otherwise either directly or indirectly, a motor
264 vehicle dealership for any line-make in this state if the
265 licensee, manufacturer, importer, or distributor has
266 manufactured, imported, or distributed for the sale or service
267 of motor vehicles of any line-make which have been or are
268 offered for sale under a franchise agreement ~~with a motor~~
269 ~~vehicle dealer~~ in this state with an independent person. Any
270 person who is not prohibited by this section from owning,
271 operating, or controlling a motor vehicle dealership may be



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272 issued a license pursuant to s. 320.27. Any person prohibited by
273 this section from owning, operating, or controlling a motor
274 vehicle dealership. A licensee may not be issued a motor vehicle
275 dealer license pursuant to s. 320.27. However, a no-such
276 licensee subject to the prohibition in this section is not will
277 be deemed to be in violation of this section:

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

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

294 (c) If the department determines, after a hearing on the
295 matter, pursuant to chapter 120, at the request of any person,
296 that there is no independent person available in the community
297 or territory to own and operate the motor vehicle dealership in
298 a manner consistent with the public interest. This paragraph
299 shall apply only if the motor vehicle dealership at issue sells
300 motor vehicles of a line-make that, at the time of the hearing,



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301 is offered for sale by at least one other existing motor vehicle
302 dealership not owned, operated, or controlled by the licensee,
303 an officer or employed representative of the licensee, a parent,
304 subsidiary, or common entity of the licensee, or a manufacturer,
305 importer, or distributor.

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

314 (2) As used in this section, the term:

315 ~~(a) "Independent person" is a person who is not an officer,~~
316 ~~director, or employee of the licensee.~~

317 (4) Nothing in this chapter shall prohibit a distributor as
318 defined in s. 320.60 ~~s. 320.60(5)~~ or ~~common entity~~ an affiliate
319 thereof that is not a manufacturer or importer, a division of a
320 manufacturer or importer, an entity that is controlled by a
321 manufacturer or importer, or a common entity of a manufacturer
322 or importer, and that is not owned, in whole or in part,
323 directly or indirectly, by a manufacturer or importer, as
324 defined in s. 320.60 ~~s. 320.60(9)~~, from receiving a license or
325 licenses as defined in s. 320.27 and owning and operating a
326 motor vehicle dealership or dealerships that sell or service
327 motor vehicles other than any line-make of motor vehicles
328 distributed by the distributor. Neither a distributor nor an
329 affiliate thereof may receive a license pursuant to s. 320.27



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330 for a motor vehicle dealership, or own or operate a motor
331 vehicle dealership, that sells or services motor vehicles of the
332 line-make of motor vehicles distributed by the distributor.

333 Section 6. Section 320.67, Florida Statutes, is amended to
334 read:

335 320.67 Inquiry and inspection of books or other documents
336 of licensee.-

337 (1) The department shall conduct an inquiry of a licensee
338 ~~may inspect the pertinent books, records, letters, and contracts~~
339 ~~of a licensee~~ relating to any written complaint alleging a
340 violation of any provision of ss. 320.60-320.70 made to it
341 against such licensee made by a motor vehicle dealer with a
342 current franchise agreement issued by the licensee, or a motor
343 vehicle dealer association with at least one member with a
344 current franchise agreement issued by the licensee.

345 (2) In the exercise of its duties under this section, the
346 department is granted and authorized to exercise the power of
347 subpoena for the purposes of compelling production of and
348 inspecting pertinent books, records, letters, and contracts of a
349 licensee and compelling the attendance of witnesses at
350 deposition ~~and the production of any documentary evidence~~
351 ~~necessary to the disposition by it of any written complaint~~
352 ~~under this section.~~ The inquiry required by this section must be
353 commenced within 30 days after receipt of the written complaint.
354 The department may allow the licensee that is the subject of the
355 complaint no more than 60 days from commencement of the inquiry
356 to provide a written response. Within 30 days after the deadline
357 for a written response by the licensee, the department must
358 provide a written response to the complainant stating whether



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359 the department intends to take action against the licensee under
360 subsection (3) and, if so, what action the department intends to
361 take. Any information obtained may not be used against the
362 licensee as the basis for a criminal prosecution under the laws
363 of this state.

364 (3) If, as the result of an inquiry conducted under this
365 section, the department determines that a licensee has violated
366 ss. 320.60-320.70, the department must take appropriate action
367 against the licensee, which may include license suspension or
368 revocation; denial of a license renewal application; assessment,
369 imposition, levy, and collection of an appropriate civil fine;
370 or instituting a civil action for issuance of an injunction
371 pursuant to s. 320.695.

372 (4) This section does not alter or affect the rights of a
373 motor vehicle dealer to bring a claim or action against a
374 licensee pursuant to any other provision of ss. 320.60-320.70.

375 Section 7. Subsection (13) of section 681.102, Florida
376 Statutes, is amended to read:

377 681.102 Definitions.—As used in this chapter, the term:

378 (13) "Manufacturer" means any person, whether a resident or
379 nonresident of this state, who manufactures or assembles motor
380 vehicles, or who manufactures or assembles chassis for
381 recreational vehicles, or who manufactures or installs on
382 previously assembled truck or recreational vehicle chassis
383 special bodies or equipment which, when installed, forms an
384 integral part of the motor vehicle, or a distributor or an
385 importer as those terms are defined in s. 320.60 s. 320.60(5),
386 ~~or an importer as defined in s. 320.60(7).~~ A dealer as defined
387 in s. 320.60 s. 320.60(11)(a) shall not be deemed to be a



388 manufacturer, distributor, or importer as provided in this
389 section.

390 Section 8. Section 681.113, Florida Statutes, is amended to
391 read:

392 681.113 Dealer liability.—Except as provided in ss.
393 681.103(3) and 681.114(2), nothing in this chapter imposes any
394 liability on a dealer as defined in s. 320.60 ~~s. 320.60(11)(a)~~
395 or creates a cause of action by a consumer against a dealer,
396 except for written express warranties made by the dealer apart
397 from the manufacturer's warranties. A dealer may not be made a
398 party defendant in any action involving or relating to this
399 chapter, except as provided in this section. The manufacturer
400 shall not charge back or require reimbursement by the dealer for
401 any costs, including, but not limited to, any refunds or vehicle
402 replacements, incurred by the manufacturer arising out of this
403 chapter, in the absence of evidence that the related repairs had
404 been carried out by the dealer in a manner substantially
405 inconsistent with the manufacturer's published instructions.

406 Section 9. This act shall take effect July 1, 2023.

407
408 ===== T I T L E A M E N D M E N T =====

409 And the title is amended as follows:

410 Delete everything before the enacting clause
411 and insert:

412 A bill to be entitled
413 An act relating to motor vehicle sales; amending s.
414 320.60, F.S.; revising and providing definitions;
415 amending s. 320.605, F.S.; providing legislative
416 intent; amending s. 320.64, F.S.; prohibiting an



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417 applicant or a licensee from certain actions in the
418 allocation or distribution of motor vehicles to
419 franchised motor vehicle dealers; revising the
420 definition of the term "unfair"; prohibiting
421 applicants and licensees from engaging in certain
422 activities of motor vehicle dealers; authorizing an
423 applicant or licensee, or common entity thereof, to
424 sell or activate certain motor vehicle features or
425 improvements through remote electronic transmission;
426 providing for a payment of the percentage of such sale
427 or activation to a motor vehicle dealer; providing
428 applicability; amending s. 320.642, F.S.; conforming
429 cross-references; amending s. 320.645, F.S.; revising
430 provisions prohibiting a manufacturer, a distributor,
431 or an importer from owning, operating, or controlling
432 a motor vehicle dealership in this state; specifying
433 when certain licenses may be and are prohibited from
434 being issued; revising exceptions to certain
435 prohibitions on licensees; providing applicability;
436 making technical changes; deleting the definition of
437 the term "independent person"; conforming cross-
438 references; amending s. 320.67, F.S.; requiring the
439 Department of Highway Safety and Motor Vehicles to
440 conduct an inquiry relating to certain written
441 complaints; providing purposes of the department's use
442 of a subpoena; authorizing the department to allow a
443 written response to the complaint; requiring the
444 department to commence the inquiry by a certain
445 timeframe; requiring the department to provide a



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446 certain written response to the complainant by a
447 certain date; requiring the department to take certain
448 action if the department determines that a licensee
449 violated certain statutes; providing construction;
450 amending ss. 681.102 and 681.113, F.S.; conforming
451 cross-references; providing an effective date.