



816554

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/20/2023	.	
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The Committee on Transportation (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), (15), (18), (10), (16), and (17), respectively, new subsections (8) and (13) are added to that section, and subsection (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 employee of the licensee or an employed representative of a
44 licensee, manufacturer, 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 purchase, lease, or other use of a motor vehicle, but does not
56 include facilitating a motor vehicle dealer's acceptance or a
57 deposit or receipt of a payment from a consumer;

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

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

63 (d) Offering or negotiating with a retail consumer terms
64 for the purchase, lease, financing, or other use of a motor
65 vehicle;

66 (e) Offering or negotiating with a retail consumer a value
67 for a motor vehicle being traded in as part of the purchase,
68 lease, or other use of a motor vehicle, but does not include a



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69 website or other means of electronic communication that
70 identifies to a consumer a conditional trade-in value and that
71 contains language informing the consumer that the trade-in value
72 is not binding on any motor vehicle dealer;

73 (f) Offering or negotiating with a retail consumer any
74 service contract, extended warranty, vehicle maintenance
75 contract, guaranteed asset protection agreement, or any other
76 vehicle-related products or services in connection with the
77 purchase or lease of a motor vehicle;

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

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

89 Section 2. Section 320.605, Florida Statutes, is amended to
90 read:

91 320.605 Legislative intent.—It is the intent of the
92 Legislature to protect the public health, safety, and welfare of
93 the citizens of the state by regulating the licensing of motor
94 vehicle dealers and manufacturers, maintaining competition,
95 providing consumer protection and fair trade and providing
96 minorities with opportunities for full participation as motor
97 vehicle dealers. Sections 320.61-320.70 are intended to apply



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98 solely to the licensing of motor vehicle dealers and
99 manufacturers and do not apply to non-motor-vehicle-related
100 businesses.

101 Section 3. 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 vehicle identification number or
123 other unique identifier for a specifically named person, except
124 for purposes of replacing a consumer's vehicle pursuant to
125 chapter 681;

126 (c) Requires or incentivizes motor vehicle dealers to sell



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127 or lease, or to negotiate the sale or lease of, a specific motor
128 vehicle identified by vehicle identification number or other
129 unique identifier to a specifically named person;

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

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

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

155 (23) The applicant or licensee has engaged in any of the



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

164 (24) The applicant or licensee, or common entity thereof,
165 has sold or leased a motor vehicle of a line-make to any retail
166 consumer in this state, or has sold or activated for a fee any
167 permanent or temporary motor vehicle accessory, option, add-on,
168 feature, improvement, or upgrade to any retail consumer in the
169 state, except through a motor vehicle dealer properly licensed
170 pursuant to s. 320.27 and holding a franchise agreement for the
171 line-make that includes the motor vehicle. Notwithstanding this
172 subsection, an applicant, a licensee, or their common entity may
173 sell or activate for a fee 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 only if the accessory, option, add-on,
178 feature, improvement, or upgrade is provided directly to the
179 motor vehicle through remote electronic transmission, provided
180 that if such motor vehicle was sold or leased as new by a
181 Florida-franchised motor vehicle dealer within the 3-year period
182 preceding such remote electronic transmission, the applicant or
183 licensee must pay the Florida-franchised motor vehicle dealer a
184 percentage of the gross sale price for the accessory, option,



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185 add-on, feature, improvement, or upgrade which is at least
186 commensurate with the dealer margin structure established by the
187 applicant or licensee for the sale of the vehicle to which the
188 accessory, option, add-on, feature, improvement, or upgrade was
189 remotely transmitted. As used in this subsection, the dealer
190 margin structure is calculated by the applicant or licensee
191 subtracting the invoiced vehicle wholesale price from the
192 manufacturer's suggested retail price, then adding to that
193 figure all monetary per-vehicle incentives offered by the
194 applicant or licensee whether or not received by the motor
195 vehicle dealer, and then dividing that sum by the invoiced
196 vehicle wholesale price. This subsection ~~section~~ does not apply
197 to sales by the applicant or licensee of motor vehicles to its
198 current employees, employees of companies affiliated by common
199 ownership, charitable not-for-profit organizations, and the
200 Federal Government.

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

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

210 320.642 Dealer licenses in areas previously served;
211 procedure.—

212 (6) When a proposed addition or relocation concerns a
213 dealership that performs or is to perform only service, as



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214 defined in s. 320.60 ~~s. 320.60(16)~~, and will not or does not
215 sell or lease new motor vehicles, as defined in s. 320.60 ~~s.~~
216 ~~320.60(15)~~, the proposal shall be subject to notice and protest
217 pursuant to the provisions of this section.

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

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

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

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

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

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

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

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



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

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

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

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

257 320.645 Restriction upon ownership of dealership by
258 licensee.—

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



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

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

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

296 (c) If the department determines, after a hearing on the
297 matter, pursuant to chapter 120, at the request of any person,
298 that there is no independent person available in the community
299 or territory to own and operate the motor vehicle dealership in
300 a manner consistent with the public interest. This paragraph



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301 shall apply only if the motor vehicle dealership at issue sells
302 motor vehicles of a line-make that, at the time of the hearing,
303 is offered for sale by at least one other existing motor vehicle
304 dealership not owned, operated, or controlled by the licensee,
305 an officer or employed representative of the licensee, a parent,
306 subsidiary, or common entity of the licensee, or a manufacturer,
307 importer, or distributor. A motor vehicle dealer association has
308 standing to intervene in any hearing held pursuant to this
309 subsection.

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

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

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

321 (4) Nothing in this chapter shall prohibit a distributor as
322 defined in s. 320.60 ~~s. 320.60(5)~~ or common entity an affiliate
323 thereof that is not a manufacturer or importer, a division of a
324 manufacturer or importer, an entity that is controlled by a
325 manufacturer or importer, or a common entity of a manufacturer
326 or importer, and that is not owned, in whole or in part,
327 directly or indirectly, by a manufacturer or importer, as
328 defined in s. 320.60 ~~s. 320.60(9)~~, from receiving a license or
329 licenses as defined in s. 320.27 and owning and operating a



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330 motor vehicle dealership or dealerships that sell or service
331 motor vehicles other than any line-make of motor vehicles
332 distributed by the distributor. Neither a distributor nor an
333 affiliate thereof may receive a license pursuant to s. 320.27
334 for a motor vehicle dealership, or own or operate a motor
335 vehicle dealership, that sells or services motor vehicles of the
336 line-make of motor vehicles distributed by the distributor.

337 Section 6. Section 320.67, Florida Statutes, is amended to
338 read:

339 320.67 Inquiry and inspection of books or other documents
340 of licensee.-

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

349 (2) In the exercise of its duties under this section, the
350 department is granted and authorized to exercise the power of
351 subpoena for the purposes of compelling production of and
352 inspecting pertinent books, records, letters, and contracts of a
353 licensee and compelling the attendance of witnesses at
354 deposition and the production of any documentary evidence
355 necessary to the disposition by it of any written complaint
356 under this section. The inquiry required by this section must be
357 commenced within 30 days after receipt of the written complaint.
358 The department may allow the licensee that is the subject of the



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359 complaint no more than 60 days from commencement of the inquiry
360 to provide a written response. Within 30 days after the deadline
361 for a written response by the licensee, the department must
362 provide a written response to the complainant stating whether
363 the department intends to take action against the licensee under
364 subsection (3) and, if so, what action the department intends to
365 take. Any information obtained may not be used against the
366 licensee as the basis for a criminal prosecution under the laws
367 of this state.

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

376 (4) If the complainant is a motor vehicle dealer
377 association and the department's inquiry determines that a
378 licensee has violated ss. 320.60-320.70, the motor vehicle
379 dealer association may seek a declaration and adjudication that
380 the alleged conduct of the licensee violated ss. 320.60-320.70
381 by filing with the department a request for a proceeding and an
382 administrative hearing which conforms substantially with the
383 requirements of ss. 120.569 and 120.57.

384 (5) This section does not alter or affect the rights of a
385 motor vehicle dealer to bring a claim or action against a
386 licensee pursuant to any other provision of ss. 320.60-320.70.

387 Section 7. Subsection (13) of section 681.102, Florida



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388 Statutes, is amended to read:

389 681.102 Definitions.—As used in this chapter, the term:

390 (13) "Manufacturer" means any person, whether a resident or
391 nonresident of this state, who manufactures or assembles motor
392 vehicles, or who manufactures or assembles chassis for
393 recreational vehicles, or who manufactures or installs on
394 previously assembled truck or recreational vehicle chassis
395 special bodies or equipment which, when installed, forms an
396 integral part of the motor vehicle, or a distributor or an
397 importer as those terms are defined in s. 320.60 ~~s. 320.60(5),~~
398 ~~or an importer as defined in s. 320.60(7).~~ A dealer as defined
399 in s. 320.60 ~~s. 320.60(11)(a)~~ shall not be deemed to be a
400 manufacturer, distributor, or importer as provided in this
401 section.

402 Section 8. Section 681.113, Florida Statutes, is amended to
403 read:

404 681.113 Dealer liability.—Except as provided in ss.
405 681.103(3) and 681.114(2), nothing in this chapter imposes any
406 liability on a dealer as defined in s. 320.60 ~~s. 320.60(11)(a)~~
407 or creates a cause of action by a consumer against a dealer,
408 except for written express warranties made by the dealer apart
409 from the manufacturer's warranties. A dealer may not be made a
410 party defendant in any action involving or relating to this
411 chapter, except as provided in this section. The manufacturer
412 shall not charge back or require reimbursement by the dealer for
413 any costs, including, but not limited to, any refunds or vehicle
414 replacements, incurred by the manufacturer arising out of this
415 chapter, in the absence of evidence that the related repairs had
416 been carried out by the dealer in a manner substantially



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417 inconsistent with the manufacturer's published instructions.

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

419

420 ===== T I T L E A M E N D M E N T =====

421 And the title is amended as follows:

422 Delete everything before the enacting clause

423 and insert:

424 A bill to be entitled

425 An act relating to motor vehicle sales; amending s.

426 320.60, F.S.; revising and providing definitions;

427 amending s. 320.605, F.S.; providing legislative

428 intent; amending s. 320.64, F.S.; prohibiting an

429 applicant or a licensee from certain actions in the

430 allocation or distribution of motor vehicles to

431 franchised motor vehicle dealers; revising the

432 definition of the term "unfair"; prohibiting

433 applicants and licensees from engaging in certain

434 activities of motor vehicle dealers; authorizing an

435 applicant, a licensee, or their common entity to sell

436 or activate certain motor vehicle accessories or

437 features through remote electronic transmission;

438 providing for revenue-sharing regarding such sale or

439 activation; providing for the calculation of the

440 dealer margin structure; providing applicability;

441 amending s. 320.642, F.S.; conforming cross

442 references; amending s. 320.645, F.S.; revising

443 provisions prohibiting a manufacturer, a distributor,

444 or an importer from owning, operating, or controlling

445 a motor vehicle dealership in this state; specifying



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446 when certain licenses may be and are prohibited from
447 being issued; revising exceptions to certain
448 prohibitions on licensees; providing applicability;
449 providing that a motor vehicle dealer association has
450 standing to intervene under certain circumstances;
451 making technical changes; deleting the definition of
452 the term "independent person"; conforming cross
453 references; amending s. 320.67, F.S.; requiring the
454 Department of Highway Safety and Motor Vehicles to
455 conduct an inquiry relating to certain written
456 complaints; providing purposes of the department's use
457 of a subpoena; authorizing the department to allow a
458 written response to the complaint; requiring the
459 department to commence the inquiry by a certain
460 timeframe; requiring the department to provide a
461 certain written response to the complainant by a
462 certain date; requiring the department to take certain
463 action if the department determines that a licensee
464 violated certain statutes; authorizing a motor vehicle
465 dealer association to file an administrative action
466 regarding such complaint in certain circumstances;
467 providing construction; amending ss. 681.102 and
468 681.113, F.S.; conforming cross-references; providing
469 an effective date.