

By Senator Avila

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1 A bill to be entitled
2 An act relating to motor vehicle sales; amending s.
3 320.60, F.S.; revising definitions; defining the term
4 "motor vehicle dealer association"; amending s.
5 320.64, F.S.; prohibiting applicants and licensees
6 from reserving a certain motor vehicle for a
7 specifically named person; prohibiting applicants and
8 licensees from requiring or incentivizing motor
9 vehicle dealers to sell or lease particular motor
10 vehicles to specifically named persons or at specific
11 prices or profit margins; revising the definition of
12 the term "unfair"; prohibiting applicants and
13 licensees from engaging in certain activities of motor
14 vehicle dealers; authorizing applicants, licensees,
15 and common entities thereof to sell and activate
16 remote electronic transmission of motor vehicle
17 accessories, options, add-ons, features, improvements,
18 or upgrades; providing procedures for sale or
19 activation by applicants, licensees, and their common
20 entities of permanent or temporary motor vehicle
21 accessories, options, add-ons, features, improvements,
22 or upgrades; amending s. 320.645, F.S.; authorizing
23 specified entities without independent franchised
24 dealers in this state to own, operate, or control a
25 motor vehicle dealership in this state; making
26 technical changes; revising exceptions for certain
27 entities owning or operating a motor vehicle
28 dealership in the state; requiring certain dealerships
29 to be continually made available for sale under

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30 certain conditions; revising the definition of the
31 term "independent person"; amending s. 320.695, F.S.;
32 authorizing motor vehicle dealer associations to seek
33 injunctive relief in the name of the Department of
34 Highway Safety and Motor Vehicles; providing that the
35 injunction may be issued without having to establish
36 irreparable harm from a violation; providing an
37 exception for motor vehicle dealer associations
38 seeking injunctions; amending s. 320.699, F.S.;
39 authorizing motor vehicle dealer associations to seek
40 a declaration and adjudication of their members'
41 rights with respect to certain alleged violations by
42 an applicant or a licensee; providing an exception;
43 providing an effective date.

44
45 Be It Enacted by the Legislature of the State of Florida:

46
47 Section 1. Present subsections (9), (10), (11), (12), (13),
48 and (14) of section 320.60, Florida Statutes, are redesignated
49 as subsections (10), (11), (12), (14), (17), and (9),
50 respectively, a new subsection (13) is added to that section,
51 and subsections (2) and (15) are amended, to read:

52 320.60 Definitions for ss. 320.61-320.70.—Whenever used in
53 ss. 320.61-320.70, unless the context otherwise requires, the
54 following words and terms have the following meanings:

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

56 (a) Who is directly or indirectly ~~either~~ controlled by or
57 has more than 30 percent of its equity interest directly or
58 indirectly owned, beneficially or of record, through any form of

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59 ownership structure, by a manufacturer, an importer, a
60 distributor, or a licensee, or an affiliate thereof; or

61 (b) Who has more than 30 percent of its equity interest
62 directly or indirectly controlled or owned, beneficially or of
63 record, through any form of ownership structure, by one or more
64 persons who also directly or indirectly control or own,
65 beneficially or of record, more than 30 40 percent of the voting
66 equity interests of a manufacturer, an importer, a distributor,
67 or a licensee, or an affiliate thereof; or

68 ~~(b) Who shares directors or officers or partners with a~~
69 ~~manufacturer.~~

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

77 (15) "Sell," "selling," "sold," "exchange," "retail sales,"
78 and "leases" includes:

79 (a) Accepting a deposit or receiving a payment for the
80 purchase, lease, exchange, subscription, or use of a motor
81 vehicle;

82 (b) Accepting a reservation from a retail consumer for a
83 specific motor vehicle identified by a vehicle identification
84 number or other product identifier;

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

87 (d) Offering or negotiating with a retail consumer the

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88 terms for the purchase, lease, financing, or exchange of a motor
89 vehicle;

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

93 (f) Offering or negotiating directly with a retail consumer
94 any service contract, extended warranty, vehicle maintenance
95 contract, or guaranteed asset protection agreement or any other
96 vehicle-related products or services in connection with the
97 purchase, lease, or exchange of a motor vehicle;

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

101 (h) Any retail lease transaction where a retail consumer
102 customer leases a vehicle for a period of at least 12 months,
103 but the transaction does not include administering lease
104 agreements, taking assignments of leases, or receiving payments
105 under a lease agreement that was originated by a motor vehicle
106 dealer. ~~Establishing a price for sale pursuant to s. 320.64(24)~~
107 does not constitute a sale or lease.

108 Section 2. Subsections (18), (23), and (24) of section
109 320.64, Florida Statutes, are amended to read:

110 320.64 Denial, suspension, or revocation of license;
111 grounds.—A license of a licensee under s. 320.61 may be denied,
112 suspended, or revoked within the entire state or at any specific
113 location or locations within the state at which the applicant or
114 licensee engages or proposes to engage in business, upon proof
115 that the section was violated with sufficient frequency to
116 establish a pattern of wrongdoing, and a licensee or applicant

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117 shall be liable for claims and remedies provided in ss. 320.695
118 and 320.697 for any violation of any of the following
119 provisions. A licensee is prohibited from committing the
120 following acts:

121 (18) The applicant or licensee has established a system of
122 motor vehicle allocation or distribution or has implemented a
123 system of allocation or distribution of motor vehicles to one or
124 more of its franchised motor vehicle dealers which:

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

128 (b) Conditionally or unconditionally reserves a specific
129 motor vehicle identified by vehicle identification number or
130 other unique identifier for a specifically named person;

131 (c) Requires or incentivizes motor vehicle dealers to sell
132 or lease, or to negotiate the sale or lease of, a specific motor
133 vehicle identified by vehicle identification number or other
134 unique identifier to a specifically named person;

135 (d) Requires or incentivizes motor vehicle dealers to sell
136 or lease a motor vehicle at a specified price or profit margin;
137 or

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

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146 using the number of motor vehicles pre-ordered or reserved by
147 consumers as a factor in determining the allocation of motor
148 vehicles to motor vehicle dealers.

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

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

169 (24) The applicant or licensee, or common entity thereof
170 has sold or leased a motor vehicle of a line-make manufactured,
171 imported, or distributed by the applicant or licensee, or has
172 for a motor vehicle of such line-make sold or activated for a
173 fee any permanent or temporary motor vehicle accessory, option,
174 add-on, feature, improvement, or upgrade, to any retail consumer

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175 in the state except through a motor vehicle dealer properly
176 licensed pursuant to s. 320.27 and holding a franchise agreement
177 for the line-make that includes the motor vehicle.
178 Notwithstanding this subsection, an applicant, licensee, or
179 their common entity may sell or activate for a fee a permanent
180 or temporary motor vehicle accessory, option, add-on, feature,
181 improvement, or upgrade for a motor vehicle of a line-make
182 manufactured, imported, or distributed by the applicant or
183 licensee and registered in Florida only if the accessory,
184 option, add-on, feature, improvement, or upgrade is provided
185 directly to the motor vehicle through remote electronic
186 transmission, provided that if such motor vehicle was sold or
187 leased as new by a Florida franchised motor vehicle dealer
188 within the 3-year period preceding such remote electronic
189 transmission, then the applicant or licensee must pay such
190 Florida franchised motor vehicle dealer a minimum of 10 percent
191 of the gross revenue received by the applicant, licensee, or
192 common entity for such sale or activation and renewals during
193 such 3-year period. The applicant or licensee must provide each
194 of its franchised dealers with a quarterly statement of the
195 revenue received by the applicant, licensee, or their common
196 entity during that quarter for such sales or activations and
197 renewals relating to those vehicles sold or leased by the dealer
198 during the preceding 3 years. This section does not apply to
199 sales by the applicant or licensee of motor vehicles to its
200 current employees, employees of companies affiliated by common
201 ownership, charitable not-for-profit organizations, and the
202 Federal Government.
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204 A motor vehicle dealer who can demonstrate that a violation of,
205 or failure to comply with, any of the preceding provisions by an
206 applicant or licensee will or may adversely and pecuniarily
207 affect the complaining dealer, shall be entitled to pursue all
208 of the remedies, procedures, and rights of recovery available
209 under ss. 320.695 and 320.697.

210 Section 3. Subsections (1) and (2) of section 320.645,
211 Florida Statutes, are amended to read:

212 320.645 Restriction upon ownership of dealership by
213 licensee.—

214 (1) No licensee, manufacturer, importer, or distributor,
215 ~~manufacturer,~~ or agent of the licensee, a manufacturer,
216 importer, or distributor, or ~~any~~ parent, subsidiary, common
217 entity, ~~or~~ officer, or employed representative of the licensee,
218 manufacturer, importer, or distributor shall directly or
219 indirectly shall own, or operate, or control by contract,
220 agreement, or otherwise either directly or indirectly, a motor
221 vehicle dealership for any line-make in this state if the
222 licensee, manufacturer, importer, or distributor has
223 manufactured, imported, or distributed for the sale or service
224 ~~of~~ motor vehicles of any line-make which have been or are
225 offered for sale under a franchise agreement with a motor
226 vehicle dealer in this state with an independent person. Any
227 person who is not prohibited by this section from owning,
228 operating, or controlling a motor vehicle dealership may be
229 issued a license pursuant to s. 320.27. Any person prohibited by
230 this section from owning, operating, or controlling a motor
231 vehicle dealership. A licensee may not be issued a motor vehicle
232 dealer license pursuant to s. 320.27. However, no ~~such~~ licensee

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233 subject to the prohibition in this section will be deemed to be
234 in violation of this section:

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

238 (b) When operating a motor vehicle dealership temporarily
239 for a reasonable period for the exclusive purpose of broadening
240 the diversity of its dealer body and enhancing opportunities for
241 qualified persons who are part of a group that has historically
242 been underrepresented in its dealer body, or for other qualified
243 persons who the licensee deems lack the resources to purchase or
244 capitalize the dealership outright, in a bona fide relationship
245 with an independent person, other than a licensee or its agent
246 or affiliate, who has made a significant investment that is
247 subject to loss in the dealership within the dealership's first
248 year of operation and who can reasonably expect to acquire full
249 ownership of the dealership on reasonable terms and conditions;
250 or

251 (c) If the department determines, after a hearing on the
252 matter, pursuant to chapter 120, at the request of any person,
253 that there is no independent person available in the community
254 or territory to own and operate the motor vehicle dealership in
255 a manner consistent with the public interest. This subsection
256 shall only apply if the motor vehicle dealership at issue sells
257 motor vehicles of a line-make which, at the time of the hearing,
258 are offered for sale by at least one other existing motor
259 vehicle dealership not owned, operated, or controlled by the
260 licensee, an officer or employed representative of the licensee,
261 a parent, subsidiary, or common entity of the licensee, or a

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262 manufacturer, importer, or distributor. A motor vehicle dealer
263 association shall have standing to intervene in any hearing held
264 pursuant to this subsection.

265
266 In the any such case of a, ~~the licensee must continue to make~~
267 ~~the motor vehicle dealership~~ owned or operated pursuant to
268 paragraph (a), paragraph (b), or paragraph (c), the dealership
269 must be continually made available for sale to an independent
270 person at a fair and reasonable price. Approval of the sale of
271 such a motor vehicle dealership to a proposed motor vehicle
272 dealer shall not be unreasonably withheld.

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

274 (a) "Independent person" is a person who is not an agent,
275 parent, subsidiary, common entity, ~~officer, director, or~~
276 ~~employee of the licensee or employed representative of a~~
277 licensee, manufacturer, importer, or distributor.

278 (b) "Reasonable terms and conditions" requires that profits
279 from the dealership are reasonably expected to be sufficient to
280 allow full ownership of the dealership by the independent person
281 within a reasonable time period not to exceed 10 years, which
282 time period may be extended if there is a reasonable basis to do
283 so and is not being sought to evade the purpose of this section;
284 that the independent person has sufficient control to permit
285 acquisition of ownership; and that the relationship cannot be
286 terminated solely to avoid full ownership. The terms and
287 conditions are not reasonable if they preclude the independent
288 person from an expedited purchase of the dealership using a
289 monetary source other than profits from the dealership's
290 operation; provided, however, that the independent person must

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291 pay or make an agreement to pay to the licensee any and all
292 reasonable prepayment charges and costs, including all
293 unrecouped restored losses, associated with the expedited
294 purchase of the dealership. For the purpose of this section,
295 unrecouped restored losses are moneys that the manufacturer has
296 provided to the dealership to restore losses of the dealership
297 that the manufacturer has not been paid back through profits of
298 the dealership.

299 (c) "Significant investment" means a reasonable amount,
300 considering the reasonable capital requirements of the
301 dealership, acquired and obtained from sources other than the
302 licensee or any of its affiliates and not encumbered by the
303 person's interest in the dealership.

304 Section 4. Section 320.695, Florida Statutes, is amended to
305 read:

306 320.695 Injunction.—In addition to the remedies provided in
307 this chapter, and notwithstanding the existence of any adequate
308 remedy at law, the department, ~~or~~ any motor vehicle dealer, or
309 any motor vehicle dealer association in the name of the
310 department and state and for the use and benefit of the motor
311 vehicle dealer or motor vehicle dealer association, is
312 authorized to make application to any court of competent
313 jurisdiction ~~circuit court of the state~~ for the grant, upon a
314 hearing and for cause shown, of a temporary or permanent
315 injunction, or both, restraining any person from acting as a
316 licensee under the terms of ss. 320.60-320.70 without being
317 properly licensed hereunder, or from violating or continuing to
318 violate any of the provisions of ss. 320.60-320.70, or from
319 failing or refusing to comply with the requirements of this law

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320 or any rule or regulation adopted hereunder. Such injunction
321 shall be issued without bond. A single act in violation of the
322 provisions of ss. 320.60-320.70 shall be sufficient to authorize
323 the issuance of an injunction without the necessity of
324 establishing irreparable harm therefrom. However, this statutory
325 remedy shall not be applicable to any motor vehicle dealer after
326 final determination by the department under s. 320.641(3).
327 Notwithstanding this subsection, a motor vehicle dealer
328 association may not seek an injunction pursuant to this section
329 for a violation of any provision of ss. 320.61-320.70 against an
330 applicant, licensee, manufacturer, importer, or distributor that
331 has never, and has no common entity that has ever, manufactured,
332 imported, or distributed motor vehicles that were offered for
333 sale pursuant to a franchise agreement in this state with an
334 independent person.

335 Section 5. Section 320.699, Florida Statutes, is amended to
336 read:

337 320.699 Administrative hearings and adjudications;
338 procedure.—

339 (1) A motor vehicle dealer, or person with entitlements to
340 or in a motor vehicle dealer, who is directly and adversely
341 affected by the action or conduct of an applicant or licensee
342 which is alleged to be in violation of any provision of ss.
343 320.60-320.70, or a motor vehicle dealer association with one or
344 more members who are directly and adversely affected by the
345 action or conduct of an applicant or licensee which is alleged
346 to be in violation of any provision of ss. 320.60-320.70, may
347 seek a declaration and adjudication of its rights or the rights
348 of its member with respect to the alleged action or conduct of

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349 the applicant or licensee by:

350 ~~(a)~~ filing with the department a request for a proceeding
351 and an administrative hearing which conforms substantially with
352 the requirements of ss. 120.569 and 120.57. Notwithstanding this
353 subsection, a motor vehicle dealer association may not seek a
354 declaration or adjudication pursuant to this section for a
355 violation of any provision of ss. 320.61-320.70 against an
356 applicant or licensee that has never, and has no common entity
357 that has ever, manufactured, imported, or distributed motor
358 vehicles that were offered for sale pursuant to a franchise
359 agreement in this state with an independent person. ~~or~~

360 (2) ~~(b)~~ A motor vehicle dealer with standing pursuant to s.
361 320.642(3) may file ~~Filing~~ with the department a written
362 objection or notice of protest pursuant to s. 320.642.

363 (3) ~~(2)~~ If a written objection or notice of protest is filed
364 with the department under subsection (2) ~~paragraph (1)(b)~~, a
365 hearing shall be held not sooner than 180 days nor later than
366 240 days from the date of filing of the first objection or
367 notice of protest, unless the time is extended by the
368 administrative law judge for good cause shown. This subsection
369 shall govern the schedule of hearings in lieu of any other
370 provision of law with respect to administrative hearings
371 conducted by the Department of Highway Safety and Motor Vehicles
372 or the Division of Administrative Hearings, including
373 performance standards of state agencies, which may be included
374 in current and future appropriations acts.

375 Section 6. This act shall take effect July 1, 2023.