

By the Committee on Transportation; and Senators Avila and Garcia

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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 and providing definitions;
4 amending s. 320.605, F.S.; providing legislative
5 intent; amending s. 320.64, F.S.; prohibiting an
6 applicant or a licensee from certain actions in the
7 allocation or distribution of motor vehicles to
8 franchised motor vehicle dealers; revising the
9 definition of the term "unfair"; prohibiting
10 applicants and licensees from engaging in certain
11 activities of motor vehicle dealers; authorizing an
12 applicant, a licensee, or their common entity to sell
13 or activate certain motor vehicle accessories or
14 features through remote electronic transmission;
15 providing for revenue-sharing regarding such sale or
16 activation; providing for the calculation of the
17 dealer margin structure; providing applicability;
18 amending s. 320.642, F.S.; conforming cross-
19 references; amending s. 320.645, F.S.; revising
20 provisions prohibiting a manufacturer, a distributor,
21 or an importer from owning, operating, or controlling
22 a motor vehicle dealership in this state; specifying
23 when certain licenses may be and are prohibited from
24 being issued; revising exceptions to certain
25 prohibitions on licensees; providing applicability;
26 providing that a motor vehicle dealer association has
27 standing to intervene under certain circumstances;
28 making technical changes; deleting the definition of
29 the term "independent person"; conforming cross-

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30 references; amending s. 320.67, F.S.; requiring the
31 Department of Highway Safety and Motor Vehicles to
32 conduct an inquiry relating to certain written
33 complaints; providing purposes of the department's use
34 of a subpoena; authorizing the department to allow a
35 written response to the complaint; requiring the
36 department to commence the inquiry by a certain
37 timeframe; requiring the department to provide a
38 certain written response to the complainant by a
39 certain date; requiring the department to take certain
40 action if the department determines that a licensee
41 violated certain statutes; authorizing a motor vehicle
42 dealer association to file an administrative action
43 regarding such complaint in certain circumstances;
44 providing construction; amending ss. 681.102 and
45 681.113, F.S.; conforming cross-references; providing
46 an effective date.

47
48 Be It Enacted by the Legislature of the State of Florida:

49
50 Section 1. Present subsections (8), (9), (10), (11), (12),
51 (13), (14), (15), and (16) of section 320.60, Florida Statutes,
52 are redesignated as subsections (9), (11), (12), (13), (15),
53 (18), (10), (16), and (17), respectively, new subsections (8)
54 and (13) are added to that section, and subsection (2) and
55 present subsection (15) of that section are amended, to read:

56 320.60 Definitions for ss. 320.61-320.70.—Whenever used in
57 ss. 320.61-320.70, unless the context otherwise requires, the
58 following words and terms have the following meanings:

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

60 (a) Who is directly or indirectly ~~either~~ controlled by or
61 has more than 30 percent of its equity interest directly or
62 indirectly owned, beneficially or of record, through any form of
63 ownership structure, by a manufacturer, an importer, a
64 distributor, or a licensee, or an affiliate thereof.

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

72 ~~(b) Who shares directors or officers or partners with a~~
73 ~~manufacturer.~~

74 (c) Notwithstanding the foregoing, an entity that would
75 otherwise be considered a common entity of a distributor under
76 paragraph (a) or paragraph (b) because of its relation to a
77 distributor is not considered a common entity of that
78 distributor if:

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

81 2. The entity is not a common entity of a manufacturer or
82 importer; and

83 3. The distributor that the entity is related to is not,
84 and has never been, a common entity of a manufacturer or
85 importer.

86 (8) "Independent person" means a person who is not an
87 agent, parent, subsidiary, common entity, officer, director, or

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88 employee of the licensee or an employed representative of a
89 licensee, manufacturer, importer, or distributor.

90 (14) "Motor vehicle dealer association" means a not-for-
91 profit entity organized under the laws of this state and
92 qualified as tax-exempt under s. 501(c)(6) of the Internal
93 Revenue Code which acts as a trade association that primarily
94 represents the interests of franchised motor vehicle dealers and
95 has a membership of at least 500 franchised motor vehicle
96 dealers as defined in s. 320.27(1)(c)1.

97 (16)~~(15)~~ "Sell," "selling," "sold," "exchange," "retail
98 sales," and "leases" includes:

99 (a) Accepting a deposit or receiving a payment for the
100 purchase, lease, or other use of a motor vehicle, but does not
101 include facilitating a motor vehicle dealer's acceptance or a
102 deposit or receipt of a payment from a consumer;

103 (b) Accepting a reservation from a retail consumer for a
104 specific motor vehicle identified by a vehicle identification
105 number or other product identifier;

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

108 (d) Offering or negotiating with a retail consumer terms
109 for the purchase, lease, financing, or other use of a motor
110 vehicle;

111 (e) Offering or negotiating with a retail consumer a value
112 for a motor vehicle being traded in as part of the purchase,
113 lease, or other use of a motor vehicle, but does not include a
114 website or other means of electronic communication that
115 identifies to a consumer a conditional trade-in value and that
116 contains language informing the consumer that the trade-in value

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117 is not binding on any motor vehicle dealer;

118 (f) Offering or negotiating with a retail consumer any
119 service contract, extended warranty, vehicle maintenance
120 contract, guaranteed asset protection agreement, or any other
121 vehicle-related products or services in connection with the
122 purchase or lease of a motor vehicle;

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

126 (h) Any retail lease transaction where a retail consumer
127 ~~customer~~ leases a vehicle for a period of at least 12 months,
128 but does not include administering lease agreements, taking
129 assignments of leases, performing required actions pursuant to
130 such leases, or receiving payments under a lease agreement that
131 was originated by a motor vehicle dealer. ~~Establishing a price~~
132 ~~for sale pursuant to s. 320.64(24) does not constitute a sale or~~
133 ~~lease.~~

134 Section 2. Section 320.605, Florida Statutes, is amended to
135 read:

136 320.605 Legislative intent.—It is the intent of the
137 Legislature to protect the public health, safety, and welfare of
138 the citizens of the state by regulating the licensing of motor
139 vehicle dealers and manufacturers, maintaining competition,
140 providing consumer protection and fair trade and providing
141 minorities with opportunities for full participation as motor
142 vehicle dealers. Sections 320.61-320.70 are intended to apply
143 solely to the licensing of motor vehicle dealers and
144 manufacturers and do not apply to non-motor-vehicle-related
145 businesses.

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146 Section 3. Subsections (18), (23), and (24) of section
147 320.64, Florida Statutes, are amended to read:

148 320.64 Denial, suspension, or revocation of license;
149 grounds.—A license of a licensee under s. 320.61 may be denied,
150 suspended, or revoked within the entire state or at any specific
151 location or locations within the state at which the applicant or
152 licensee engages or proposes to engage in business, upon proof
153 that the section was violated with sufficient frequency to
154 establish a pattern of wrongdoing, and a licensee or applicant
155 shall be liable for claims and remedies provided in ss. 320.695
156 and 320.697 for any violation of any of the following
157 provisions. A licensee is prohibited from committing the
158 following acts:

159 (18) The applicant or licensee has established a system of
160 motor vehicle allocation or distribution or has implemented a
161 system of allocation or distribution of motor vehicles to one or
162 more of its franchised motor vehicle dealers which:

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

166 (b) Conditionally or unconditionally reserves a specific
167 motor vehicle identified by vehicle identification number or
168 other unique identifier for a specifically named person, except
169 for purposes of replacing a consumer's vehicle pursuant to
170 chapter 681;

171 (c) Requires or incentivizes motor vehicle dealers to sell
172 or lease, or to negotiate the sale or lease of, a specific motor
173 vehicle identified by vehicle identification number or other
174 unique identifier to a specifically named person;

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175 (d) Requires or incentivizes motor vehicle dealers to sell
176 or lease a motor vehicle at a specified price or profit margin
177 or restricts the price at which a motor vehicle dealer may sell
178 or lease a motor vehicle; or

179 (e) Is, ~~or which~~ otherwise ~~is~~ unfair, inequitable,
180 unreasonably discriminatory, or not supportable by reason and
181 good cause after considering the equities of the affected motor
182 vehicles dealer or dealers. As used in this paragraph, "unfair"
183 includes, but is not limited to, refusing or failing to offer to
184 any dealer an equitable supply of new vehicles under its
185 franchise, by model, mix, or color, as the licensee offers or
186 allocates to its other same line-make dealers in this state or
187 using the number of motor vehicles preordered or reserved by
188 consumers as a factor in determining the allocation of motor
189 vehicles to motor vehicle dealers.

190
191 An applicant or licensee shall maintain for 3 years records that
192 describe its methods or formula of allocation and distribution
193 of its motor vehicles and records of its actual allocation and
194 distribution of motor vehicles to its motor vehicle dealers in
195 this state. ~~As used in this subsection, "unfair" includes,~~
196 ~~without limitation, the refusal or failure to offer to any~~
197 ~~dealer an equitable supply of new vehicles under its franchise,~~
198 ~~by model, mix, or colors as the licensee offers or allocates to~~
199 ~~its other same line-make dealers in the state.~~

200 (23) The applicant or licensee has engaged in any of the
201 activities of a motor vehicle dealer as defined in s. 320.60 or
202 has competed or is competing with respect to any activity
203 covered by the franchise agreement with a motor vehicle dealer

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204 of the same line-make located in this state with whom the
205 applicant or licensee has entered into a franchise agreement,
206 except as permitted in s. 320.645 or in subsection (24) with
207 respect to the remote electronic transmission of a motor vehicle
208 accessory, option, add-on, feature, improvement, or upgrade.

209 (24) The applicant or licensee, or common entity thereof,
210 has sold or leased a motor vehicle of a line-make to any retail
211 consumer in this state, or has sold or activated for a fee any
212 permanent or temporary motor vehicle accessory, option, add-on,
213 feature, improvement, or upgrade to any retail consumer in the
214 state, except through a motor vehicle dealer properly licensed
215 pursuant to s. 320.27 and holding a franchise agreement for the
216 line-make that includes the motor vehicle. Notwithstanding this
217 subsection, an applicant, a licensee, or their common entity may
218 sell or activate for a fee a permanent or temporary motor
219 vehicle accessory, option, add-on, feature, improvement, or
220 upgrade for a motor vehicle of a line-make manufactured,
221 imported, or distributed by the applicant or licensee and
222 registered in this state only if the accessory, option, add-on,
223 feature, improvement, or upgrade is provided directly to the
224 motor vehicle through remote electronic transmission, provided
225 that if such motor vehicle was sold or leased as new by a
226 Florida-franchised motor vehicle dealer within the 3-year period
227 preceding such remote electronic transmission, the applicant or
228 licensee must pay the Florida-franchised motor vehicle dealer a
229 percentage of the gross sale price for the accessory, option,
230 add-on, feature, improvement, or upgrade which is at least
231 commensurate with the dealer margin structure established by the
232 applicant or licensee for the sale of the vehicle to which the

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233 accessory, option, add-on, feature, improvement, or upgrade was
 234 remotely transmitted. As used in this subsection, the dealer
 235 margin structure is calculated by the applicant or licensee
 236 subtracting the invoiced vehicle wholesale price from the
 237 manufacturer's suggested retail price, then adding to that
 238 figure all monetary per vehicle incentives offered by the
 239 applicant or licensee whether or not received by the motor
 240 vehicle dealer, and then dividing that sum by the invoiced
 241 vehicle wholesale price. This subsection ~~section~~ does not apply
 242 to sales by the applicant or licensee of motor vehicles to its
 243 current employees, employees of companies affiliated by common
 244 ownership, charitable not-for-profit organizations, and the
 245 Federal Government.

246
 247 A motor vehicle dealer who can demonstrate that a violation of,
 248 or failure to comply with, any of the preceding provisions by an
 249 applicant or licensee will or may adversely and pecuniarily
 250 affect the complaining dealer, shall be entitled to pursue all
 251 of the remedies, procedures, and rights of recovery available
 252 under ss. 320.695 and 320.697.

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

255 320.642 Dealer licenses in areas previously served;
 256 procedure.—

257 (6) When a proposed addition or relocation concerns a
 258 dealership that performs or is to perform only service, as
 259 defined in s. 320.60 ~~s. 320.60(16)~~, and will not or does not
 260 sell or lease new motor vehicles, as defined in s. 320.60 ~~s.~~
 261 ~~320.60(15)~~, the proposal shall be subject to notice and protest

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262 pursuant to the provisions of this section.

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

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

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

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

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

279 (c) In determining whether existing franchised motor
280 vehicle dealers are providing adequate representations in the
281 community or territory for the line-make in question in a
282 protest of the proposed addition or relocation of a service-only
283 dealership, the department may consider the elements set forth
284 in paragraph (2) (b), provided:

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

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

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

290 4. With respect to subparagraph (2) (b)11., only the volume

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291 of service business transacted shall be considered.

292 (d) If an application for a service-only dealership is
293 granted, the department shall issue a license which permits only
294 service, as defined in s. 320.60 ~~s. 320.60(16)~~, and does not
295 permit the selling or leasing of new motor vehicles, as defined
296 in s. 320.60 ~~s. 320.60(15)~~. If a service-only dealership
297 subsequently seeks to sell new motor vehicles at its location,
298 the notice and protest provisions of this section shall apply.

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

302 320.645 Restriction upon ownership of dealership by
303 licensee.—

304 (1) A ~~No~~ licensee, manufacturer, importer, or distributor,
305 ~~manufacturer,~~ or agent of the licensee, a manufacturer,
306 importer, or distributor, or ~~any~~ parent, subsidiary, common
307 entity, ~~or~~ officer, or employed representative of the licensee,
308 manufacturer, importer, or distributor may not directly or
309 indirectly shall own, or operate, or control, by contract,
310 agreement, or otherwise either directly or indirectly, a motor
311 vehicle dealership for any line-make in this state if the
312 licensee, manufacturer, importer, or distributor has
313 manufactured, imported, or distributed for the sale or service
314 ~~of~~ motor vehicles of any line-make which have been or are
315 offered for sale under a franchise agreement ~~with a motor~~
316 ~~vehicle dealer~~ in this state with an independent person. Any
317 person who is not prohibited by this section from owning,
318 operating, or controlling a motor vehicle dealership may be
319 issued a license pursuant to s. 320.27. Any person prohibited by

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320 this section from owning, operating, or controlling a motor
321 vehicle dealership. A licensee may not be issued a motor vehicle
322 dealer license pursuant to s. 320.27. However, a no-such
323 licensee subject to the prohibition in this section is not will
324 be deemed to be in violation of this section:

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

328 (b) When operating a motor vehicle dealership temporarily
329 for a reasonable period for the exclusive purpose of broadening
330 the diversity of its dealer body and enhancing opportunities for
331 qualified persons who are part of a group that has historically
332 been underrepresented in its dealer body, or for other qualified
333 persons who the licensee deems lack the resources to purchase or
334 capitalize the dealership outright, in a bona fide relationship
335 with an independent person, other than a licensee or its agent
336 or affiliate, who has made a significant investment that is
337 subject to loss in the dealership within the dealership's first
338 year of operation and who can reasonably expect to acquire full
339 ownership of the dealership on reasonable terms and conditions;
340 or

341 (c) If the department determines, after a hearing on the
342 matter, pursuant to chapter 120, at the request of any person,
343 that there is no independent person available in the community
344 or territory to own and operate the motor vehicle dealership in
345 a manner consistent with the public interest. This paragraph
346 shall apply only if the motor vehicle dealership at issue sells
347 motor vehicles of a line-make that, at the time of the hearing,
348 is offered for sale by at least one other existing motor vehicle

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349 dealership not owned, operated, or controlled by the licensee,
350 an officer or employed representative of the licensee, a parent,
351 subsidiary, or common entity of the licensee, or a manufacturer,
352 importer, or distributor. A motor vehicle dealer association has
353 standing to intervene in any hearing held pursuant to this
354 subsection.

355
356 In the any such case of a, ~~the licensee must continue to make~~
357 ~~the motor vehicle dealership~~ owned or operated pursuant to
358 paragraph (a), paragraph (b), or paragraph (c), the dealership
359 must be continually made available for sale to an independent
360 person at a fair and reasonable price. Approval of the sale of
361 such a motor vehicle dealership to a proposed motor vehicle
362 dealer shall not be unreasonably withheld.

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

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

366 (4) Nothing in this chapter shall prohibit a distributor as
367 defined in s. 320.60 ~~s. 320.60(5)~~ or ~~common entity~~ an affiliate
368 thereof that is not a manufacturer or importer, a division of a
369 manufacturer or importer, an entity that is controlled by a
370 manufacturer or importer, or a common entity of a manufacturer
371 or importer, and that is not owned, in whole or in part,
372 directly or indirectly, by a manufacturer or importer, as
373 defined in s. 320.60 ~~s. 320.60(9)~~, from receiving a license or
374 licenses as defined in s. 320.27 and owning and operating a
375 motor vehicle dealership or dealerships that sell or service
376 motor vehicles other than any line-make of motor vehicles
377 distributed by the distributor. Neither a distributor nor an

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378 affiliate thereof may receive a license pursuant to s. 320.27
379 for a motor vehicle dealership, or own or operate a motor
380 vehicle dealership, that sells or services motor vehicles of the
381 line-make of motor vehicles distributed by the distributor.

382 Section 6. Section 320.67, Florida Statutes, is amended to
383 read:

384 320.67 Inquiry and inspection of books or other documents
385 of licensee.-

386 (1) The department shall conduct an inquiry of a licensee
387 ~~may inspect the pertinent books, records, letters, and contracts~~
388 ~~of a licensee~~ relating to any written complaint alleging a
389 violation of any provision of ss. 320.60-320.70 made to it
390 against such licensee made by a motor vehicle dealer with a
391 current franchise agreement issued by the licensee, or a motor
392 vehicle dealer association with at least one member with a
393 current franchise agreement issued by the licensee.

394 (2) In the exercise of its duties under this section, the
395 department is granted and authorized to exercise the power of
396 subpoena for the purposes of compelling production of and
397 inspecting pertinent books, records, letters, and contracts of a
398 licensee and compelling the attendance of witnesses at
399 deposition and the production of any documentary evidence
400 necessary to the disposition by it of any written complaint
401 under this section. The inquiry required by this section must be
402 commenced within 30 days after receipt of the written complaint.
403 The department may allow the licensee that is the subject of the
404 complaint no more than 60 days from commencement of the inquiry
405 to provide a written response. Within 30 days after the deadline
406 for a written response by the licensee, the department must

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407 provide a written response to the complainant stating whether
408 the department intends to take action against the licensee under
409 subsection (3) and, if so, what action the department intends to
410 take. Any information obtained may not be used against the
411 licensee as the basis for a criminal prosecution under the laws
412 of this state.

413 (3) If, as the result of an inquiry conducted under this
414 section, the department determines that a licensee has violated
415 ss. 320.60-320.70, the department must take appropriate action
416 against the licensee, which may include license suspension or
417 revocation; denial of a license renewal application; assessment,
418 imposition, levy, and collection of an appropriate civil fine;
419 or instituting a civil action for issuance of an injunction
420 pursuant to s. 320.695.

421 (4) If the complainant is a motor vehicle dealer
422 association and the department's inquiry determines that a
423 licensee has violated ss. 320.60-320.70, the motor vehicle
424 dealer association may seek a declaration and adjudication that
425 the alleged conduct of the licensee violated ss. 320.60-320.70
426 by filing with the department a request for a proceeding and an
427 administrative hearing which conforms substantially with the
428 requirements of ss. 120.569 and 120.57.

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

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

434 681.102 Definitions.—As used in this chapter, the term:

435 (13) "Manufacturer" means any person, whether a resident or

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436 nonresident of this state, who manufactures or assembles motor
437 vehicles, or who manufactures or assembles chassis for
438 recreational vehicles, or who manufactures or installs on
439 previously assembled truck or recreational vehicle chassis
440 special bodies or equipment which, when installed, forms an
441 integral part of the motor vehicle, or a distributor or an
442 importer as those terms are defined in s. 320.60 ~~s. 320.60(5),~~
443 ~~or an importer as defined in s. 320.60(7).~~ A dealer as defined
444 in s. 320.60 ~~s. 320.60(11)(a)~~ shall not be deemed to be a
445 manufacturer, distributor, or importer as provided in this
446 section.

447 Section 8. Section 681.113, Florida Statutes, is amended to
448 read:

449 681.113 Dealer liability.—Except as provided in ss.
450 681.103(3) and 681.114(2), nothing in this chapter imposes any
451 liability on a dealer as defined in s. 320.60 ~~s. 320.60(11)(a)~~
452 or creates a cause of action by a consumer against a dealer,
453 except for written express warranties made by the dealer apart
454 from the manufacturer's warranties. A dealer may not be made a
455 party defendant in any action involving or relating to this
456 chapter, except as provided in this section. The manufacturer
457 shall not charge back or require reimbursement by the dealer for
458 any costs, including, but not limited to, any refunds or vehicle
459 replacements, incurred by the manufacturer arising out of this
460 chapter, in the absence of evidence that the related repairs had
461 been carried out by the dealer in a manner substantially
462 inconsistent with the manufacturer's published instructions.

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