

By the Committees on Commerce and Tourism; and Transportation;
and Senators Avila and Garcia

577-03494-23

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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; authorizing an applicant or a licensee, or
12 a common entity thereof, to sell or activate certain
13 motor vehicle features or improvements through remote
14 electronic transmission; providing for a payment of
15 the percentage of such sale or activation to a motor
16 vehicle dealer; providing applicability; requiring
17 certain payments to be made within a certain
18 timeframe; amending s. 320.642, F.S.; conforming
19 cross-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 making technical changes; deleting the definition of
27 the term "independent person"; conforming cross-
28 references; prohibiting a distributor or affiliate
29 thereof from receiving a certain license under certain

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30 circumstances; 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 within 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; providing construction;
42 amending ss. 681.102 and 681.113, F.S.; conforming
43 cross-references; providing an effective date.

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

46
47 Section 1. Present subsections (8), (9), (10), (11), (12),
48 (13), (14), (15), and (16) of section 320.60, Florida Statutes,
49 are redesignated as subsections (9), (11), (12), (13), (15),
50 (18), (10), (16), and (17), respectively, new subsections (8)
51 and (14) are added to that section, and subsection (2) and
52 present subsection (15) of that section are amended, to read:

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

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

57 (a) Who is directly or indirectly ~~either~~ controlled by or
58 has more than 30 percent of its equity interest directly or

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59 indirectly owned, beneficially or of record, through any form of
60 ownership structure, by a manufacturer, an importer, a
61 distributor, or a licensee, or an affiliate thereof; or

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

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

71 (c) Notwithstanding paragraphs (a) and (b), an entity that
72 would otherwise be considered a common entity of a distributor
73 under paragraph (a) or paragraph (b) because of its relation to
74 a distributor is not considered a common entity of that
75 distributor if:

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

78 2. The entity is not a common entity of a manufacturer or
79 importer; and

80 3. The distributor that the entity is related to is not,
81 and has never been, a common entity of a manufacturer or
82 importer.

83 (8) "Independent person" means a person who is not an
84 agent, a parent, a subsidiary, a common entity, an officer, a
85 director, or an employed representative of a licensee,
86 manufacturer, importer, or distributor.

87 (14) "Motor vehicle dealer association" means a not-for-

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88 profit entity organized under the laws of this state and
89 qualified as tax-exempt under s. 501(c)(6) of the Internal
90 Revenue Code which acts as a trade association that primarily
91 represents the interests of franchised motor vehicle dealers and
92 has a membership of at least 500 franchised motor vehicle
93 dealers as defined in s. 320.27(1)(c)1.

94 (16)~~(15)~~ "Sell," "selling," "sold," "exchange," "retail
95 sales," and "leases" includes:

96 (a) Accepting a deposit or receiving a payment for the
97 retail purchase, lease, or other use of a motor vehicle, but
98 does not include facilitating a motor vehicle dealer's
99 acceptance of a deposit or receipt of a payment from a consumer,
100 and does not include receiving payment under a retail
101 installment sale contract;

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

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

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

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

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

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

128 Section 2. Section 320.605, Florida Statutes, is amended to
129 read:

130 320.605 Legislative intent.—It is the intent of the
131 Legislature to protect the public health, safety, and welfare of
132 the citizens of the state by regulating the licensing of motor
133 vehicle dealers and manufacturers, maintaining competition,
134 providing consumer protection and fair trade and providing
135 minorities with opportunities for full participation as motor
136 vehicle dealers. Sections 320.61-320.70 are intended to apply
137 solely to the licensing of manufacturers, factory branches,
138 distributors, and importers and do not apply to non-motor-
139 vehicle-related businesses.

140 Section 3. Subsections (18), (23), and (24) of section
141 320.64, Florida Statutes, are amended to read:

142 320.64 Denial, suspension, or revocation of license;
143 grounds.—A license of a licensee under s. 320.61 may be denied,
144 suspended, or revoked within the entire state or at any specific
145 location or locations within the state at which the applicant or

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146 licensee engages or proposes to engage in business, upon proof
147 that the section was violated with sufficient frequency to
148 establish a pattern of wrongdoing, and a licensee or applicant
149 shall be liable for claims and remedies provided in ss. 320.695
150 and 320.697 for any violation of any of the following
151 provisions. A licensee is prohibited from committing the
152 following acts:

153 (18) The applicant or licensee has established a system of
154 motor vehicle allocation or distribution or has implemented a
155 system of allocation or distribution of motor vehicles to one or
156 more of its franchised motor vehicle dealers which:

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

160 (b) Conditionally or unconditionally reserves a specific
161 motor vehicle identified by vehicle identification number or
162 other unique identifier for a specifically named person, except
163 for purposes of replacing a consumer's vehicle pursuant to
164 chapter 681;

165 (c) Requires or incentivizes motor vehicle dealers to sell
166 or lease, or to negotiate the sale or lease of, a specific motor
167 vehicle identified by vehicle identification number or other
168 unique identifier to a specifically named person;

169 (d) Requires or incentivizes motor vehicle dealers to sell
170 or lease a motor vehicle at a specified price or profit margin
171 or restricts the price at which a motor vehicle dealer may sell
172 or lease a motor vehicle; or

173 (e) Is, ~~or which~~ otherwise is unfair, inequitable,
174 unreasonably discriminatory, or not supportable by reason and

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175 good cause after considering the equities of the affected motor
176 vehicles dealer or dealers. As used in this paragraph, the term
177 "unfair" includes, but is not limited to, refusing or failing to
178 offer to any dealer an equitable supply of new vehicles under
179 its franchise, by model, mix, or color, as the licensee offers
180 or allocates to its other same line-make dealers in this state
181 or using the number of motor vehicles preordered or reserved by
182 consumers as a factor in determining the allocation of motor
183 vehicles to motor vehicle dealers.

184

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

194 (23) The applicant or licensee has engaged in any of the
195 activities of a motor vehicle dealer as defined in s.
196 320.60(13) (a) or any activities described in s. 320.60(16) or
197 has competed or is competing with respect to any activity
198 covered by the franchise agreement with a motor vehicle dealer
199 of the same line-make located in this state with whom the
200 applicant or licensee has entered into a franchise agreement,
201 except as permitted in s. 320.645 or in subsection (24) with
202 respect to the remote electronic transmission of a permanent or
203 temporary feature or improvement of a motor vehicle.

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204 (24) The applicant or licensee, or common entity thereof,
205 has sold or leased a motor vehicle to any retail consumer in
206 this state, or has sold or activated for a fee to any retail
207 consumer in the state any permanent or temporary motor vehicle
208 feature or improvement that functions through hardware or
209 components installed on the motor vehicle, except through a
210 motor vehicle dealer properly licensed pursuant to s. 320.27 and
211 holding a franchise agreement for the line-make that includes
212 the motor vehicle. Notwithstanding this subsection, an applicant
213 or a licensee, or a common entity thereof, may sell or activate
214 for a fee a permanent or temporary motor vehicle feature or
215 improvement to a retail consumer in this state only if the
216 feature or improvement is provided directly to the motor vehicle
217 through remote electronic transmission, provided that if such
218 motor vehicle was sold or leased as new by a motor vehicle
219 dealer in this state within the 3-year period preceding such
220 remote electronic transmission, the applicant or licensee must
221 pay such motor vehicle dealer a minimum of 8 percent of the
222 payment received by the applicant, licensee, or common entity
223 from the sale of the feature or improvement. As used in this
224 subsection, the term "feature or improvement" includes the
225 activation or use of motor vehicle components or hardware, but
226 does not include services that require the transmission of data
227 or information to or from the motor vehicle while the service is
228 being used. Payments required under this subsection must be made
229 within 30 days after the date of sale of the feature or
230 improvement. This subsection ~~section~~ does not apply to sales by
231 the applicant or licensee of motor vehicles to its current
232 employees, employees of companies affiliated by common

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233 ownership, charitable not-for-profit organizations, and the
234 Federal Government.

235

236 A motor vehicle dealer who can demonstrate that a violation of,
237 or failure to comply with, any of the preceding provisions by an
238 applicant or licensee will or may adversely and pecuniarily
239 affect the complaining dealer, shall be entitled to pursue all
240 of the remedies, procedures, and rights of recovery available
241 under ss. 320.695 and 320.697.

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

244 320.642 Dealer licenses in areas previously served;
245 procedure.—

246 (6) When a proposed addition or relocation concerns a
247 dealership that performs or is to perform only service, as
248 defined in s. 320.60 ~~s. 320.60(16)~~, and will not or does not
249 sell or lease new motor vehicles, as defined in s. 320.60 ~~s.~~
250 ~~320.60(15)~~, the proposal shall be subject to notice and protest
251 pursuant to the provisions of this section.

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

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

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

261 2. There is no existing dealer of the same line-make closer

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262 than the applicant to the proposed location of the additional or
263 relocated service-only dealership; and

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

268 (c) In determining whether existing franchised motor
269 vehicle dealers are providing adequate representations in the
270 community or territory for the line-make in question in a
271 protest of the proposed addition or relocation of a service-only
272 dealership, the department may consider the elements set forth
273 in paragraph (2) (b), provided:

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

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

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

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

281 (d) If an application for a service-only dealership is
282 granted, the department must ~~shall~~ issue a license which permits
283 only service, as defined in s. 320.60 ~~s. 320.60(16)~~, and does
284 not permit the selling or leasing of new motor vehicles, as
285 defined in s. 320.60 ~~s. 320.60(15)~~. If a service-only dealership
286 subsequently seeks to sell new motor vehicles at its location,
287 the notice and protest provisions of this section shall apply.

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

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291 320.645 Restriction upon ownership of dealership by
292 licensee.—

293 (1) A ~~No~~ licensee, manufacturer, importer, or distributor,
294 ~~manufacturer,~~ or agent of the licensee, a manufacturer,
295 importer, or distributor, or ~~any~~ parent, subsidiary, common
296 entity, ~~or~~ officer, or employed representative of the licensee,
297 manufacturer, importer, or distributor, may not directly or
298 indirectly shall own, or operate, or control, by contract,
299 agreement, or otherwise either directly or indirectly, a motor
300 vehicle dealership for any line-make in this state if the
301 licensee, manufacturer, importer, or distributor has
302 manufactured, imported, or distributed for the sale or service
303 of motor vehicles of any line-make which have been or are
304 offered for sale under a franchise agreement ~~with a motor~~
305 ~~vehicle dealer~~ in this state with an independent person. Any
306 person who is not prohibited by this section from owning,
307 operating, or controlling a motor vehicle dealership may be
308 issued a license pursuant to s. 320.27. Any person prohibited by
309 this section from owning, operating, or controlling a motor
310 vehicle dealership. A licensee may not be issued a motor vehicle
311 dealer license pursuant to s. 320.27. However, a ~~no~~ such
312 licensee subject to the prohibition in this section is not ~~will~~
313 ~~be~~ deemed to be in violation of this section:

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

317 (b) When operating a motor vehicle dealership temporarily
318 for a reasonable period for the exclusive purpose of broadening
319 the diversity of its dealer body and enhancing opportunities for

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320 qualified persons who are part of a group that has historically
321 been underrepresented in its dealer body, or for other qualified
322 persons who the licensee deems lack the resources to purchase or
323 capitalize the dealership outright, in a bona fide relationship
324 with an independent person, other than a licensee or its agent
325 or affiliate, who has made a significant investment that is
326 subject to loss in the dealership within the dealership's first
327 year of operation and who can reasonably expect to acquire full
328 ownership of the dealership on reasonable terms and conditions;
329 or

330 (c) If the department determines, after a hearing on the
331 matter, pursuant to chapter 120, at the request of any person,
332 that there is no independent person available in the community
333 or territory to own and operate the motor vehicle dealership in
334 a manner consistent with the public interest. This paragraph
335 applies only if the motor vehicle dealership at issue sells
336 motor vehicles of a line-make that, at the time of the hearing,
337 is offered for sale by at least one other existing motor vehicle
338 dealership not owned, operated, or controlled by the licensee,
339 an officer or employed representative of the licensee, a parent,
340 subsidiary, or common entity of the licensee, or a manufacturer,
341 importer, or distributor.

342
343 In the any such case of a, ~~the licensee must continue to make~~
344 ~~the motor vehicle dealership owned or operated pursuant to~~
345 paragraph (a), paragraph (b), or paragraph (c), the dealership
346 must be continually made available for sale to an independent
347 person at a fair and reasonable price. Approval of the sale of
348 such a motor vehicle dealership to a proposed motor vehicle

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349 dealer shall not be unreasonably withheld.

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

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

353 (4) Nothing in this chapter shall prohibit a distributor as
 354 defined in s. 320.60 ~~s. 320.60(5)~~ or an affiliate thereof which
 355 ~~common entity that~~ is not a manufacturer or importer, a division
 356 of a manufacturer or importer, an entity that is controlled by a
 357 manufacturer or importer, or a common entity of a manufacturer
 358 or importer, and that is not owned, in whole or in part,
 359 directly or indirectly, by a manufacturer or importer, as
 360 defined in s. 320.60 ~~s. 320.60(9)~~, from receiving a license or
 361 licenses as defined in s. 320.27 and owning and operating a
 362 motor vehicle dealership or dealerships that sell or service
 363 motor vehicles other than any line-make of motor vehicles
 364 distributed by the distributor. A distributor or an affiliate
 365 thereof may not receive a license pursuant to s. 320.27 for a
 366 motor vehicle dealership, or own or operate a motor vehicle
 367 dealership, that sells or services motor vehicles of the line-
 368 make of motor vehicles distributed by the distributor.

369 Section 6. Section 320.67, Florida Statutes, is amended to
 370 read:

371 320.67 Inquiry and inspection of books or other documents
 372 of licensee.-

373 (1) The department shall conduct an inquiry of a licensee
 374 ~~may inspect the pertinent books, records, letters, and contracts~~
 375 ~~of a licensee~~ relating to any written complaint alleging a
 376 violation of ss. 320.61-320.70 ~~made to it~~ against such licensee
 377 made by a motor vehicle dealer with a current franchise

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378 agreement issued by the licensee, or a motor vehicle dealer
379 association with at least one member with a current franchise
380 agreement issued by the licensee.

381 (2) In the exercise of its duties under this section, the
382 department is granted and authorized to exercise the power of
383 subpoena for the purposes of compelling production of and
384 inspecting pertinent books, records, letters, and contracts of a
385 licensee and compelling the attendance of witnesses at
386 deposition and the production of any documentary evidence
387 necessary to the disposition by it of any written complaint
388 under this section. The inquiry required by this section must be
389 commenced within 30 days after receipt of the written complaint.
390 The department may allow the licensee that is the subject of the
391 complaint no more than 60 days after commencement of the inquiry
392 to provide a written response. Within 30 days after the deadline
393 for a written response by the licensee, the department shall
394 provide a written response to the complainant stating whether
395 the department intends to take action against the licensee under
396 subsection (3) and, if so, what action the department intends to
397 take. Any information obtained may not be used against the
398 licensee as the basis for a criminal prosecution under the laws
399 of this state.

400 (3) If, as the result of an inquiry conducted under this
401 section, the department determines that a licensee has violated
402 ss. 320.61-320.70, the department must take appropriate action
403 against the licensee, which may include license suspension or
404 revocation; denial of a license renewal application; assessment,
405 imposition, levy, and collection of an appropriate civil fine;
406 or instituting a civil action for issuance of an injunction

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407 pursuant to s. 320.695.

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

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

413 681.102 Definitions.—As used in this chapter, the term:

414 (13) "Manufacturer" means any person, whether a resident or
415 nonresident of this state, who manufactures or assembles motor
416 vehicles, or who manufactures or assembles chassis for
417 recreational vehicles, or who manufactures or installs on
418 previously assembled truck or recreational vehicle chassis
419 special bodies or equipment which, when installed, forms an
420 integral part of the motor vehicle, or a distributor or an
421 importer as those terms are defined in s. 320.60 s. 320.60(5),
422 ~~or an importer as defined in s. 320.60(7).~~ A dealer as defined
423 in s. 320.60 may not s. 320.60(11)(a) shall not be deemed to be
424 a manufacturer, distributor, or importer as provided in this
425 section.

426 Section 8. Section 681.113, Florida Statutes, is amended to
427 read:

428 681.113 Dealer liability.—Except as provided in ss.
429 681.103(3) and 681.114(2), nothing in this chapter imposes any
430 liability on a dealer as defined in s. 320.60 s. 320.60(11)(a)
431 or creates a cause of action by a consumer against a dealer,
432 except for written express warranties made by the dealer apart
433 from the manufacturer's warranties. A dealer may not be made a
434 party defendant in any action involving or relating to this
435 chapter, except as provided in this section. The manufacturer

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436 shall not charge back or require reimbursement by the dealer for
437 any costs, including, but not limited to, any refunds or vehicle
438 replacements, incurred by the manufacturer arising out of this
439 chapter, in the absence of evidence that the related repairs had
440 been carried out by the dealer in a manner substantially
441 inconsistent with the manufacturer's published instructions.

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