

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

595-04202-23

2023712c3

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.; revising 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 within a certain timeframe; providing  
17      applicability; amending s. 320.642, F.S.; conforming  
18      cross-references; amending s. 320.645, F.S.; revising  
19      provisions prohibiting specified entities from owning,  
20      operating, or controlling a motor vehicle dealership  
21      in this state; specifying when certain licenses may be  
22      and are prohibited from being issued; revising  
23      exceptions to certain prohibitions on licensees;  
24      providing applicability; making technical changes;  
25      deleting the definition of the term "independent  
26      person"; conforming cross-references; prohibiting a  
27      distributor or affiliate thereof from receiving a  
28      certain license under certain circumstances; amending  
29      s. 320.67, F.S.; requiring the Department of Highway

595-04202-23

2023712c3

30 Safety and Motor Vehicles to conduct an inquiry  
31 relating to certain written complaints; providing  
32 purposes of the department's use of a subpoena;  
33 requiring the department to commence the inquiry  
34 within a certain timeframe; authorizing the department  
35 to allow a written response to the complaint;  
36 requiring the department to provide a certain written  
37 response to the complainant within a certain date;  
38 requiring the department to take certain action if the  
39 department determines that a licensee violated certain  
40 statutes; providing construction; amending ss. 681.102  
41 and 681.113, F.S.; conforming cross-references;  
42 providing an effective date.  
43

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

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

595-04202-23

2023712c3

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

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

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

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

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

86 (14) "Motor vehicle dealer association" means a not-for-  
87 profit entity organized under the laws of this state and

595-04202-23

2023712c3

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

93 (16)~~(15)~~ "Sell," "selling," "sold," "exchange," "retail  
94 sales," and "leases" includes:

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

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

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

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

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

116 (f) Any transaction where the title of a motor vehicle or a

595-04202-23

2023712c3

117 used motor vehicle is transferred to a retail consumer; or, and  
118 ~~also~~

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

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

129 320.605 Legislative intent.—It is the intent of the  
130 Legislature to protect the public health, safety, and welfare of  
131 the citizens of the state by regulating the licensing of motor  
132 vehicle dealers and manufacturers, maintaining competition,  
133 providing consumer protection and fair trade and providing  
134 minorities with opportunities for full participation as motor  
135 vehicle dealers. Sections 320.61-320.70 are intended to apply  
136 solely to the licensing of manufacturers, factory branches,  
137 distributors, and importers and do not apply to non-motor-  
138 vehicle-related businesses.

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

141 320.64 Denial, suspension, or revocation of license;  
142 grounds.—A license of a licensee under s. 320.61 may be denied,  
143 suspended, or revoked within the entire state or at any specific  
144 location or locations within the state at which the applicant or  
145 licensee engages or proposes to engage in business, upon proof

595-04202-23

2023712c3

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

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

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

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

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

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

172 (e) Is, ~~or which~~ otherwise ~~is~~ unfair, inequitable,  
173 unreasonably discriminatory, or not supportable by reason and  
174 good cause after considering the equities of the affected motor

595-04202-23

2023712c3

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

183

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

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

203 (24) The applicant or licensee, or common entity thereof,

595-04202-23

2023712c3

204 has sold or leased a motor vehicle to any retail consumer in  
205 this state, or has sold or activated for a fee to any retail  
206 consumer in the state any permanent or temporary motor vehicle  
207 feature or improvement that functions through hardware or  
208 components installed on the motor vehicle, except through a  
209 motor vehicle dealer properly licensed pursuant to s. 320.27 and  
210 holding a franchise agreement for the line-make that includes  
211 the motor vehicle. Notwithstanding this subsection, an applicant  
212 or a licensee, or a common entity thereof, may sell or activate  
213 for a fee a permanent or temporary motor vehicle feature or  
214 improvement to a retail consumer in this state only if the  
215 feature or improvement is provided directly to the motor vehicle  
216 through remote electronic transmission, provided that if such  
217 motor vehicle was sold or leased as new by a motor vehicle  
218 dealer in this state within the 2-year period preceding such  
219 remote electronic transmission, and the ownership of the vehicle  
220 has not changed, the applicant or licensee must pay such motor  
221 vehicle dealer a minimum of 8 percent of the payment received by  
222 the applicant, licensee, or common entity from the sale of the  
223 feature or improvement. As used in this subsection, the term  
224 "feature or improvement" includes the activation or use of motor  
225 vehicle components or hardware, but does not include services  
226 that require the transmission of data or information to or from  
227 the motor vehicle while the service is being used. Payments  
228 required under this subsection must be made within 60 days after  
229 the date of sale of the feature or improvement. This subsection  
230 ~~section~~ does not apply to sales by the applicant or licensee of  
231 motor vehicles to its current employees, employees of companies  
232 affiliated by common ownership, charitable not-for-profit



595-04202-23

2023712c3

233 organizations, and the Federal Government.

234

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

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

243 320.642 Dealer licenses in areas previously served;  
244 procedure.—

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

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

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

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

260 2. There is no existing dealer of the same line-make closer  
261 than the applicant to the proposed location of the additional or

595-04202-23

2023712c3

262 relocated service-only dealership; and

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

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

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

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

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

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

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

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

290 320.645 Restriction upon ownership of dealership by

595-04202-23

2023712c3

291 licensee.-

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

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

316 (b) When operating a motor vehicle dealership temporarily  
 317 for a reasonable period for the exclusive purpose of broadening  
 318 the diversity of its dealer body and enhancing opportunities for  
 319 qualified persons who are part of a group that has historically

595-04202-23

2023712c3

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

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

341  
342 In the any such case of a, ~~the licensee must continue to make~~  
343 ~~the motor vehicle dealership~~ owned or operated pursuant to  
344 paragraph (a), paragraph (b), or paragraph (c), the dealership  
345 must be continually made available for sale to an independent  
346 person at a fair and reasonable price. Approval of the sale of  
347 such a motor vehicle dealership to a proposed motor vehicle  
348 dealer shall not be unreasonably withheld.

595-04202-23

2023712c3

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

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

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

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

370 320.67 Inquiry and inspection of books or other documents  
371 of licensee.-

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

595-04202-23

2023712c3

378 association with at least one member with a current franchise  
379 agreement issued by the licensee.

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

399 (3) If, as the result of an inquiry conducted under this  
400 section, the department determines that a licensee has violated  
401 ss. 320.61-320.70, the department must take appropriate action  
402 against the licensee, which may include license suspension or  
403 revocation; denial of a license renewal application; assessment,  
404 imposition, levy, and collection of an appropriate civil fine;  
405 or instituting a civil action for issuance of an injunction  
406 pursuant to s. 320.695.

595-04202-23

2023712c3

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

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

412       681.102 Definitions.—As used in this chapter, the term:

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

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

427       681.113 Dealer liability.—Except as provided in ss.  
428 681.103(3) and 681.114(2), nothing in this chapter imposes any  
429 liability on a dealer as defined in s. 320.60 ~~s. 320.60(11)(a)~~  
430 or creates a cause of action by a consumer against a dealer,  
431 except for written express warranties made by the dealer apart  
432 from the manufacturer's warranties. A dealer may not be made a  
433 party defendant in any action involving or relating to this  
434 chapter, except as provided in this section. The manufacturer  
435 shall not charge back or require reimbursement by the dealer for

595-04202-23

2023712c3

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

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