

1 A bill to be entitled
2 An act relating to motor vehicle dealers,
3 manufacturers, importers, and distributors; amending
4 s. 320.60, F.S.; revising and providing definitions;
5 amending s. 320.64, F.S.; prohibiting a motor vehicle
6 manufacturer, distributor, or importer from certain
7 actions in the allocation or distribution of motor
8 vehicles to franchised motor vehicle dealers; revising
9 the definition of the term "unfair"; authorizing a
10 motor vehicle manufacturer, distributor, or importer
11 to sell or activate certain motor vehicle accessories
12 or features through remote electronic transmission;
13 providing for revenue-sharing after such a sale or
14 activation; amending s. 320.645, F.S.; revising
15 provisions prohibiting a motor vehicle manufacturer,
16 distributor, or importer from owning, operating, or
17 controlling a motor vehicle dealership in this state;
18 providing for the application of provisions relating
19 to certain hearings; revising the definition of the
20 term "independent person"; amending s. 320.67, F.S.;
21 authorizing a motor vehicle dealer or motor vehicle
22 dealer association to file a written complaint with
23 the Department of Highway Safety and Motor Vehicles
24 alleging a motor vehicle dealer, manufacturer,
25 importer, or distributor has violated a provision of

26 ss. 320.60-320.70, F.S.; requiring the department to
 27 review such a complaint and make a specified report to
 28 the complainant; providing that, if the department
 29 determines not to pursue action against a licensee as
 30 a result of a complaint filed by a motor vehicle
 31 dealer association, the motor vehicle dealer
 32 association may bring an administrative action
 33 challenging the actions of the licensee; providing an
 34 effective date.

35

36 Be It Enacted by the Legislature of the State of Florida:

37

38 Section 1. Subsections (2) and (15) of section 320.60,
 39 Florida Statutes, are amended, and subsection (17) is added to
 40 that section, to read:

41 320.60 Definitions for ss. 320.61-320.70.—Whenever used in
 42 ss. 320.61-320.70, unless the context otherwise requires, the
 43 following words and terms have the following meanings:

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

45 1. (a) Who is directly or indirectly ~~either~~ controlled by
 46 or has more than 30 percent of its equity interest directly or
 47 indirectly owned, beneficially or of record, through any form of
 48 ownership structure, by a manufacturer, an importer, a
 49 distributor, or a licensee, or an affiliate thereof; or

50 2. Who has more than 30 percent of its equity interest

51 directly or indirectly controlled or owned, beneficially or of
 52 record, through any form of ownership structure, by one or more
 53 persons who also directly or indirectly control or own,
 54 beneficially or of record, more than 30 40 percent of the voting
 55 equity interests of a manufacturer, an importer, a distributor,
 56 or a licensee, or an affiliate thereof; ~~or~~

57 ~~(b) Who shares directors or officers or partners with a~~
 58 ~~manufacturer.~~

59 (b) Notwithstanding the foregoing, an entity which would
 60 otherwise be considered a common entity of a distributor
 61 pursuant to subparagraph (a)1. or subparagraph (a)2. because of
 62 its relation to a distributor shall not be considered a common
 63 entity of that distributor if:

64 1. The distributor to which the entity is related was a
 65 licensed distributor on March 1, 2023;

66 2. The entity is not a common entity of a manufacturer or
 67 importer; and

68 3. The distributor to which the entity is related is not,
 69 and has never been, a common entity of a manufacturer or
 70 importer.

71 (15) "Sell," "selling," "sold," "exchange," "retail
 72 sales," and "leases" includes:

73 (a) Accepting a deposit or receiving a payment for the
 74 purchase, lease, or other use of a motor vehicle, except that
 75 this definition shall not include facilitating a motor vehicle

76 dealer's acceptance of a deposit or receipt of a payment from a
 77 customer;

78 (b) Accepting a reservation from a retail consumer for a
 79 specific motor vehicle identified by a vehicle identification
 80 number or other product identifier;

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

83 (d) Offering or negotiating with a retail consumer terms
 84 for the purchase, lease, financing, or other use of a motor
 85 vehicle;

86 (e) Offering or negotiating with a retail consumer a value
 87 for a motor vehicle being traded in as part of the purchase,
 88 lease, or other use of a motor vehicle, provided that this
 89 definition shall not include a website or other means of
 90 electronic communication that identifies to a consumer a
 91 conditional trade-in value that contains language informing the
 92 consumer that the trade-in value is not binding on any motor
 93 vehicle dealer;

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

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

101 ~~and also~~

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

110 (17) "Motor vehicle dealer association" means a not-for-
 111 profit entity organized under the laws of this state and
 112 qualified as tax-exempt under s. 501(c)(6) of the Internal
 113 Revenue Code which acts as a trade association that primarily
 114 represents the interests of franchised motor vehicle dealers and
 115 has a membership of at least 500 franchised motor vehicle
 116 dealers as defined in s. 320.27(1)(c)1.

117 Section 2. Subsections (18), (23), and (24) of section
 118 320.64, Florida Statutes, are amended to read:

119 320.64 Denial, suspension, or revocation of license;
 120 grounds.—A license of a licensee under s. 320.61 may be denied,
 121 suspended, or revoked within the entire state or at any specific
 122 location or locations within the state at which the applicant or
 123 licensee engages or proposes to engage in business, upon proof
 124 that the section was violated with sufficient frequency to
 125 establish a pattern of wrongdoing, and a licensee or applicant

126 shall be liable for claims and remedies provided in ss. 320.695
 127 and 320.697 for any violation of any of the following
 128 provisions. A licensee is prohibited from committing the
 129 following acts:

130 (18) The applicant or licensee has established a system of
 131 motor vehicle allocation or distribution or has implemented a
 132 system of allocation or distribution of motor vehicles to one or
 133 more of its franchised motor vehicle dealers which:

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

137 (b) Conditionally or unconditionally reserves a specific
 138 motor vehicle identified by vehicle identification number or
 139 other unique identifier for a specifically named person, except
 140 for purposes of replacing a consumer's vehicle pursuant to
 141 chapter 681;

142 (c) Requires or incentivizes motor vehicle dealers to sell
 143 or lease, or to negotiate the sale or lease of, a specific motor
 144 vehicle identified by vehicle identification number or other
 145 unique identifier to a specifically named person;

146 (d) Requires or incentivizes motor vehicle dealers to sell
 147 or lease a motor vehicle at a specified price or profit margin,
 148 or restricts the price at which a motor vehicle dealer may sell
 149 or lease a motor vehicle; or

150 (e) Is, ~~or which~~ otherwise is unfair, inequitable,

151 | unreasonably discriminatory, or not supportable by reason and
 152 | good cause after considering the equities of the affected motor
 153 | vehicles dealer or dealers. As used in this paragraph, "unfair"
 154 | includes, but is not limited to, refusing or failing to offer to
 155 | any dealer an equitable supply of new vehicles under its
 156 | franchise, by model, mix, or color as the licensee offers or
 157 | allocates to its other same line-make dealers in this state or
 158 | using the number of motor vehicles pre-ordered or reserved by
 159 | consumers as a factor in determining the allocation of motor
 160 | vehicles to motor vehicle dealers.

161 |
 162 | An applicant or licensee shall maintain for 3 years records that
 163 | describe its methods or formula of allocation and distribution
 164 | of its motor vehicles and records of its actual allocation and
 165 | distribution of motor vehicles to its motor vehicle dealers in
 166 | this state. ~~As used in this subsection, "unfair" includes,~~
 167 | ~~without limitation, the refusal or failure to offer to any~~
 168 | ~~dealer an equitable supply of new vehicles under its franchise,~~
 169 | ~~by model, mix, or colors as the licensee offers or allocates to~~
 170 | ~~its other same line-make dealers in the state.~~

171 | (23) The applicant or licensee has engaged in any of the
 172 | activities of a motor vehicle dealer as defined in s.
 173 | 320.60(11)(a) or (15) or has competed or is competing with
 174 | respect to any activity covered by the franchise agreement with
 175 | a motor vehicle dealer of the same line-make located in this

176 state with whom the applicant or licensee has entered into a
177 franchise agreement, except as permitted in s. 320.645 or in
178 subsection (24) with respect to the remote electronic
179 transmission of a motor vehicle accessory, option, add-on,
180 feature, improvement, or upgrade.

181 (24) The applicant or licensee, or common entity thereof,
182 has sold or leased a motor vehicle of a line-make manufactured,
183 imported, or distributed by the applicant or licensee to any
184 retail consumer in this state, or has for a motor vehicle of
185 such line-make sold or activated for a fee any permanent or
186 temporary motor vehicle accessory, option, add-on, feature,
187 improvement, or upgrade, to any retail consumer for a motor
188 vehicle ~~in~~ the consumer purchased from a motor vehicle dealer in
189 this state, except through a motor vehicle dealer properly
190 licensed pursuant to s. 320.27 and holding a franchise agreement
191 for the line-make that includes the motor vehicle.
192 Notwithstanding this subsection, an applicant, licensee, or
193 their common entity may sell or activate for a fee a permanent
194 or temporary motor vehicle accessory, option, add-on, feature,
195 improvement, or upgrade for a motor vehicle of a line-make
196 manufactured, imported, or distributed by the applicant or
197 licensee and registered in Florida if and only if the accessory,
198 option, add-on, feature, improvement, or upgrade is provided
199 directly to the motor vehicle through remote electronic
200 transmission, provided that if such motor vehicle was sold or

201 leased as new by a Florida franchised motor vehicle dealer
 202 within the 3-year period preceding such remote electronic
 203 transmission, then the applicant or licensee must pay such
 204 Florida franchised motor vehicle dealer a percentage of the
 205 gross sale price for the accessory, option, add-on, feature,
 206 improvement, or upgrade that is at least commensurate with the
 207 dealer margin structure established by the applicant or licensee
 208 for the sale of the vehicle to which the accessory, option, add-
 209 on, feature, improvement, or upgrade was remotely transmitted.
 210 To calculate the "dealer margin structure" as used in this
 211 subsection, the applicant or licensee must subtract the invoiced
 212 vehicle wholesale price from the Manufacturer's Suggested Retail
 213 Price, then add to that figure all monetary per-vehicle
 214 incentives offered by the applicant or licensee whether or not
 215 received by the motor vehicle dealer, and then divide that sum
 216 by the invoiced vehicle wholesale price. This section does not
 217 apply to sales by the applicant or licensee of motor vehicles to
 218 its current employees, employees of companies affiliated by
 219 common ownership, charitable not-for-profit organizations, and
 220 the federal government.

221
 222 A motor vehicle dealer who can demonstrate that a violation of,
 223 or failure to comply with, any of the preceding provisions by an
 224 applicant or licensee will or may adversely and pecuniarily
 225 affect the complaining dealer, shall be entitled to pursue all

226 of the remedies, procedures, and rights of recovery available
 227 under ss. 320.695 and 320.697.

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

230 320.645 Restriction upon ownership of dealership by
 231 licensee.-

232 (1) No licensee, manufacturer, importer, or distributor,
 233 ~~manufacturer,~~ or agent of the licensee, a manufacturer,
 234 importer, or distributor, or ~~any~~ parent, subsidiary, common
 235 entity, ~~or~~ officer, or employed representative of the licensee,
 236 manufacturer, importer, or distributor shall directly or
 237 indirectly own, ~~or~~ operate, or control by contract, agreement,
 238 or otherwise ~~either directly or indirectly,~~ a motor vehicle
 239 dealership for any line-make in this state if the licensee,
 240 manufacturer, importer, or distributor has manufactured,
 241 imported, or distributed ~~for the sale or service of~~ motor
 242 vehicles of any line-make which have been or are offered for
 243 sale under a franchise agreement ~~with a motor vehicle dealer~~ in
 244 this state with an independent person. Any person who is not
 245 prohibited by this section from owning, operating, or
 246 controlling a motor vehicle dealership may be issued a license
 247 pursuant to s. 320.27. Any person prohibited by this section
 248 from owning, operating, or controlling a motor vehicle
 249 dealership. A licensee may not be issued a motor vehicle dealer
 250 license pursuant to s. 320.27. However, no ~~such~~ licensee subject

251 to the prohibition in this section will be deemed to be in
252 violation of this section:

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

256 (b) When operating a motor vehicle dealership temporarily
257 for a reasonable period for the exclusive purpose of broadening
258 the diversity of its dealer body and enhancing opportunities for
259 qualified persons who are part of a group that has historically
260 been underrepresented in its dealer body, or for other qualified
261 persons who the licensee deems lack the resources to purchase or
262 capitalize the dealership outright, in a bona fide relationship
263 with an independent person, other than a licensee or its agent
264 or affiliate, who has made a significant investment that is
265 subject to loss in the dealership within the dealership's first
266 year of operation and who can reasonably expect to acquire full
267 ownership of the dealership on reasonable terms and conditions;
268 or

269 (c) If the department determines, after a hearing on the
270 matter, pursuant to chapter 120, at the request of any person,
271 that there is no independent person available in the community
272 or territory to own and operate the motor vehicle dealership in
273 a manner consistent with the public interest. This subsection
274 shall only apply if the motor vehicle dealership at issue sells
275 motor vehicles of a line-make which, at the time of the hearing,

276 are offered for sale by at least one other existing motor
 277 vehicle dealership not owned, operated, or controlled by the
 278 licensee, an officer or employed representative of the licensee,
 279 a parent, subsidiary, or common entity of the licensee, or a
 280 manufacturer, importer, or distributor. A motor vehicle dealer
 281 association shall have standing to intervene in any hearing held
 282 pursuant to this subsection.

283
 284 In the any such case of a, ~~the licensee must continue to make~~
 285 ~~the motor vehicle dealership~~ owned or operated pursuant to
 286 paragraph (a), paragraph (b), or paragraph (c), the dealership
 287 must be continually made available for sale to an independent
 288 person at a fair and reasonable price. Approval of the sale of
 289 such a motor vehicle dealership to a proposed motor vehicle
 290 dealer shall not be unreasonably withheld.

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

292 (a) "Independent person" is a person who is not an agent,
 293 parent, subsidiary, common entity, officer, or employed
 294 representative of a licensee, manufacturer, importer, or
 295 distributor ~~director, or employee of the licensee.~~

296 (b) "Reasonable terms and conditions" requires that
 297 profits from the dealership are reasonably expected to be
 298 sufficient to allow full ownership of the dealership by the
 299 independent person within a reasonable time period not to exceed
 300 10 years, which time period may be extended if there is a

301 reasonable basis to do so and is not being sought to evade the
302 purpose of this section; that the independent person has
303 sufficient control to permit acquisition of ownership; and that
304 the relationship cannot be terminated solely to avoid full
305 ownership. The terms and conditions are not reasonable if they
306 preclude the independent person from an expedited purchase of
307 the dealership using a monetary source other than profits from
308 the dealership's operation; provided, however, that the
309 independent person must pay or make an agreement to pay to the
310 licensee any and all reasonable prepayment charges and costs,
311 including all unrecouped restored losses, associated with the
312 expedited purchase of the dealership. For the purpose of this
313 section, unrecouped restored losses are moneys that the
314 manufacturer has provided to the dealership to restore losses of
315 the dealership that the manufacturer has not been paid back
316 through profits of the dealership.

317 (c) "Significant investment" means a reasonable amount,
318 considering the reasonable capital requirements of the
319 dealership, acquired and obtained from sources other than the
320 licensee or any of its affiliates and not encumbered by the
321 person's interest in the dealership.

322 Section 4. Section 320.67, Florida Statutes, is amended to
323 read:

324 320.67 Investigation and inspection of books or other
325 documents of licensee.-

326 (1) The department shall conduct an inquiry ~~may inspect~~
 327 ~~the pertinent books, records, letters, and contracts~~ of a
 328 licensee relating to any written complaint alleging a violation
 329 of any provision of ss. 320.60-320.70 ~~made to it~~ against such
 330 licensee made by a motor vehicle dealer with a current franchise
 331 agreement issued by the licensee or motor vehicle dealer
 332 association with at least one member with a current franchise
 333 agreement issued by the licensee.

334 (2) In the exercise of its duties under this section, the
 335 department is granted and authorized to exercise the power of
 336 subpoena for the purposes of compelling production of and
 337 inspecting pertinent books, records, letters, and contracts of a
 338 licensee and compelling the attendance of witnesses at
 339 deposition. The inquiry required by this section must be
 340 commenced within 30 days after the date of the written complaint
 341 and the department must obtain a written response from the
 342 licensee to the allegations contained in the complaint within 60
 343 days after the department inquiry and must respond to the
 344 inquiring party within 30 days after the response from the
 345 licensee ~~and the production of any documentary evidence~~
 346 ~~necessary to the disposition by it of any written complaint~~
 347 ~~under this section.~~ Any information obtained may not be used
 348 against the licensee as the basis for a criminal prosecution
 349 under the laws of this state.

350 (3) If any investigation or examination conducted pursuant

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351 to this inquiry results in a determination that the licensee has
352 violated any provision of ss. 320.60-320.70, the department
353 shall take appropriate action against the licensee, which may
354 include license suspension or revocation; denial of a license
355 renewal application; assessment, imposition, levy, and
356 collection of an appropriate civil fine; or instituting a civil
357 action for issuance of an injunction pursuant to s. 320.695.

358 (4) Nothing in this section shall alter or affect the
359 rights of a motor vehicle dealer to bring a claim or action
360 against a licensee pursuant to any other provision of ss.
361 320.60-320.70.

362 Section 5. This act shall take effect July 1, 2023.