

CHAPTER 2023-233

Committee Substitute for Committee Substitute for House Bill No. 637

An act relating to motor vehicle dealers, manufacturers, importers, and distributors; amending s. 320.60, F.S.; revising and providing definitions; amending s. 320.605, F.S.; providing legislative intent; amending s. 320.64, F.S.; prohibiting an applicant or a licensee from certain actions in the allocation or distribution of motor vehicles to franchised motor vehicle dealers; revising the definition of the term “unfair”; prohibiting an applicant or a licensee from engaging in certain activities; authorizing an applicant or a licensee, or a common entity thereof, to sell or activate certain motor vehicle features or improvements through remote electronic transmission; providing for the payment of a percentage of such sale or activation to a motor vehicle dealer; defining the term “feature or improvement”; providing applicability; requiring such payment to be made within a certain timeframe; amending s. 320.642, F.S.; conforming cross-references; amending s. 320.645, F.S.; revising provisions prohibiting a licensee, a motor vehicle manufacturer, a distributor, or an importer from owning, operating, or controlling a motor vehicle dealership in this state; specifying when certain licenses may be and are prohibited from being issued; revising exceptions to certain prohibitions on licensees; providing applicability; removing the definition of the term “independent person”; prohibiting a distributor or affiliate thereof from receiving a certain license under certain circumstances; amending s. 320.67, F.S.; requiring the Department of Highway Safety and Motor Vehicles to conduct an inquiry relating to certain written complaints; providing purposes of the department’s use of a subpoena; authorizing the department to allow a written response to the complaint; requiring the department to commence the inquiry within a certain timeframe; requiring the department to provide a certain written response to the complainant within a certain timeframe; requiring the department to take certain action if the department determines that a licensee violated certain provisions; providing construction; amending ss. 681.102 and 681.113, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsections (8), (9), (10), (11), (12), (13), (14), (15), and (16) of section 320.60, Florida Statutes, are renumbered as subsections (9), (11), (12), (13), (15), (18), (10), (16), and (17), respectively, subsection (2) and present subsection (15) are amended, and new subsections (8) and (14) are added to that section, to read:

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

(2)(a) “Common entity” means a person:

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

2. Who has more than 30 percent of its equity interest directly or indirectly controlled or owned, beneficially or of record, through any form of ownership structure, by one or more persons who also directly or indirectly control or own, beneficially or of record, more than 30 40 percent of the voting equity interests of a manufacturer, an importer, a distributor, or a licensee, or an affiliate thereof; or

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

(b) Notwithstanding subparagraph (a)1. or subparagraph (a)2., an entity that would otherwise be considered a common entity of a distributor under subparagraph (a)1. or subparagraph (a)2. because of its relation to a distributor is not considered a common entity of that distributor if:

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

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

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

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

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

~~(16)(15)~~ “Sell,” “selling,” “sold,” “exchange,” “retail sales,” and “leases” includes:

(a) Accepting a deposit or receiving a payment for the retail purchase, lease, or other use of a motor vehicle, but does not include facilitating a motor vehicle dealer’s acceptance of a deposit or receipt of a payment from a consumer or receiving payment under a retail installment sale contract;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(24) The applicant or licensee, or a common entity thereof, has sold or leased a motor vehicle to any retail consumer in this state, or has sold or activated for a fee to any retail consumer in this the state any permanent or temporary motor vehicle feature or improvement that functions through hardware or components installed on the motor vehicle, except through a motor vehicle dealer properly licensed pursuant to s. 320.27 and holding a franchise agreement for the line-make that includes the motor vehicle. Notwithstanding this subsection, an applicant, a licensee, or their common entity may sell or activate for a fee a permanent or temporary feature or improvement for a motor vehicle of a line-make manufactured, imported, or distributed by the applicant or licensee and registered in Florida if and only if the feature or improvement is provided directly to the motor vehicle through remote electronic transmission. However, if such motor vehicle was new when sold or leased by a Florida franchised motor vehicle dealer within the 2-year period preceding such remote electronic transmission and the ownership of the vehicle was not changed, then the applicant or licensee must pay a percentage of the payment received for the feature or improvement to the Florida franchised motor vehicle dealer. Payment from the applicant or licensee to the Florida franchised motor vehicle dealer shall be at least 8 percent of the gross payment received by the applicant, licensee, or common entity for the sale of the feature or improvement that was remotely transmitted. As used in this subsection, the term “feature or improvement” includes the activation or use of motor vehicle components or hardware but does not include services that require the transmission of data or information to or from the motor vehicle while the service is being used. Payments required under this subsection must be made within 60 days after the date of sale of the feature or improvement. This subsection section does not apply to sales by the applicant or licensee of motor vehicles to its current employees, employees of companies affiliated by common ownership, charitable not-for-profit organizations, and the Federal Government.

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

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

320.642 Dealer licenses in areas previously served; procedure.—

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

(a) Standing to protest the addition or relocation of a service-only dealership shall be limited to those instances in which the applicable

mileage requirement established in subparagraphs (3)(a)2. and (3)(b)1. is met.

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

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

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

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

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

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

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

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

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

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

Section 5. Subsections (1), (2), and (4) of section 320.645, Florida Statutes, are amended to read:

320.645 Restriction upon ownership of dealership by licensee.—

(1) ~~A~~ No licensee, a manufacturer, an importer, or a distributor, ~~manufacturer, or an agent of the licensee, a manufacturer, importer, or distributor, or any a parent, a subsidiary, a common entity, an or officer, or~~

an employed representative of the licensee, manufacturer, importer, or distributor, may not directly or indirectly shall own, or operate, or control, by contract, agreement, or otherwise either directly or indirectly, a motor vehicle dealership for any line-make in this state if the licensee, manufacturer, importer, or distributor has manufactured, imported, or distributed for the sale or service of motor vehicles of any line-make which have been or are offered for sale under a franchise agreement with a motor vehicle dealer in this state with an independent person. Any person who is not prohibited by this section from owning, operating, or controlling a motor vehicle dealership may be issued a license pursuant to s. 320.27. Any person prohibited by this section from owning, operating, or controlling a motor vehicle dealership. A licensee may not be issued a motor vehicle dealer license pursuant to s. 320.27. However, a no-such licensee subject to the prohibition in this section is not will be deemed to be in violation of this section:

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

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

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

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

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

(a) ~~“Independent person” is a person who is not an officer, director, or employee of the licensee.~~

(a)(b) “Reasonable terms and conditions” requires that profits from the dealership are reasonably expected to be sufficient to allow full ownership of the dealership by the independent person within a reasonable time period not to exceed 10 years, which time period may be extended if there is a reasonable basis to do so and is not being sought to evade the purpose of this section; that the independent person has sufficient control to permit acquisition of ownership; and that the relationship cannot be terminated solely to avoid full ownership. The terms and conditions are not reasonable if they preclude the independent person from an expedited purchase of the dealership using a monetary source other than profits from the dealership’s operation; provided, however, that the independent person must pay or make an agreement to pay to the licensee any and all reasonable prepayment charges and costs, including all unrecouped restored losses, associated with the expedited purchase of the dealership. For the purpose of this section, unrecouped restored losses are moneys that the manufacturer has provided to the dealership to restore losses of the dealership that the manufacturer has not been paid back through profits of the dealership.

(b)(e) “Significant investment” means a reasonable amount, considering the reasonable capital requirements of the dealership, acquired and obtained from sources other than the licensee or any of its affiliates and not encumbered by the person’s interest in the dealership.

(4) ~~Nothing in This chapter does not shall prohibit a distributor as defined in s. 320.60 s. 320.60(5) or an affiliate thereof which common entity that is not a manufacturer or an importer, a division of a manufacturer or an importer, an entity that is controlled by a manufacturer or an importer, or a common entity of a manufacturer or an importer, and which that is not owned, in whole or in part, directly or indirectly, by a manufacturer or an importer, as defined in s. 320.60 s. 320.60(9), from receiving a license or licenses as defined in s. 320.27 and owning and operating a motor vehicle dealership or dealerships that sell or service motor vehicles other than any line-make of motor vehicles distributed by the distributor. A distributor or an affiliate thereof may not receive a license pursuant to s. 320.27 for a motor vehicle dealership, or own or operate a motor vehicle dealership, that sells or services motor vehicles of the line-make of motor vehicles distributed by the distributor.~~

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

320.67 Inquiry and inspection of books or other documents of licensee.

(1) The department ~~shall conduct an inquiry may inspect the pertinent books, records, letters, and contracts~~ of a licensee relating to any written complaint alleging a violation of any provision of ss. 320.61-320.70 ~~made to it~~

against such licensee made by a motor vehicle dealer with a current franchise agreement issued by the licensee, or a motor vehicle dealer association with at least one member with a current franchise agreement issued by the licensee.

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

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

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

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

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

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

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

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

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

Approved by the Governor June 13, 2023.

Filed in Office Secretary of State June 13, 2023.