

CHAMBER ACTION

1 The Transportation Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to motor vehicle dealers; amending s.
7 320.27, F.S.; exempting certain applicants for a new
8 franchised motor vehicle dealer license from certain
9 training requirements; amending s. 320.60, F.S.; revising
10 the definition of "demonstrator" for purposes of
11 provisions relating to manufacturing, importing, and
12 distributing motor vehicles; amending s. 320.64, F.S.;
13 prohibiting specified licensees from failing to pay
14 certain compensation amounts to a motor vehicle dealer
15 after termination of the dealer's franchise agreement;
16 providing exceptions; providing procedures for payment of
17 the compensation amounts; providing for certain remedies,
18 procedures, and rights of recovery; amending s. 320.642,
19 F.S.; deleting a requirement that certain notices be sent
20 by certified mail; revising conditions under which an
21 opening or reopening of the same or a successor dealer
22 within 12 months is not considered an additional dealer
23 subject to protest; prohibiting for a certain time

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24 proposals for a dealer of the same line-make after the
25 opening or reopening of the dealer; providing criteria for
26 measurements of distance between dealer locations;
27 providing that the Department of Highway Safety and Motor
28 Vehicles is not obligated to determine the accuracy of any
29 distance submitted in a notice; providing for resolution
30 of disputed distances by a hearing in accordance with
31 specified provisions; providing an effective date.
32

33 Be It Enacted by the Legislature of the State of Florida:
34

35 Section 1. Paragraph (a) of subsection (4) of section
36 320.27, Florida Statutes, is amended to read:

37 320.27 Motor vehicle dealers.--

38 (4) LICENSE CERTIFICATE.--

39 (a) A license certificate shall be issued by the
40 department in accordance with such application when the
41 application is regular in form and in compliance with the
42 provisions of this section. The license certificate may be in
43 the form of a document or a computerized card as determined by
44 the department. The actual cost of each original, additional, or
45 replacement computerized card shall be borne by the licensee and
46 is in addition to the fee for licensure. Such license, when so
47 issued, entitles the licensee to carry on and conduct the
48 business of a motor vehicle dealer. Each license issued to a
49 franchise motor vehicle dealer expires annually on December 31
50 unless revoked or suspended prior to that date. Each license
51 issued to an independent or wholesale dealer or auction expires

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52 | annually on April 30 unless revoked or suspended prior to that
53 | date. Not less than 60 days prior to the license expiration
54 | date, the department shall deliver or mail to each licensee the
55 | necessary renewal forms. Each independent dealer shall certify
56 | that the dealer principal (owner, partner, officer of the
57 | corporation, or director) has completed 8 hours of continuing
58 | education prior to filing the renewal forms with the department.
59 | Such certification shall be filed once every 2 years commencing
60 | with the 2006 renewal period. The continuing education shall
61 | include at least 2 hours of legal or legislative issues, 1 hour
62 | of department issues, and 5 hours of relevant motor vehicle
63 | industry topics. Continuing education shall be provided by
64 | dealer schools licensed under paragraph (b) either in a
65 | classroom setting or by correspondence. Such schools shall
66 | provide certificates of completion to the department and the
67 | customer which shall be filed with the license renewal form, and
68 | such schools may charge a fee for providing continuing
69 | education. Any licensee who does not file his or her application
70 | and fees and any other requisite documents, as required by law,
71 | with the department at least 30 days prior to the license
72 | expiration date shall cease to engage in business as a motor
73 | vehicle dealer on the license expiration date. A renewal filed
74 | with the department within 45 days after the expiration date
75 | shall be accompanied by a delinquent fee of \$100. Thereafter, a
76 | new application is required, accompanied by the initial license
77 | fee. A license certificate duly issued by the department may be
78 | modified by endorsement to show a change in the name of the
79 | licensee, provided, as shown by affidavit of the licensee, the

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80 majority ownership interest of the licensee has not changed or
81 the name of the person appearing as franchisee on the sales and
82 service agreement has not changed. Modification of a license
83 certificate to show any name change as herein provided shall not
84 require initial licensure or reissuance of dealer tags; however,
85 any dealer obtaining a name change shall transact all business
86 in and be properly identified by that name. All documents
87 relative to licensure shall reflect the new name. In the case of
88 a franchise dealer, the name change shall be approved by the
89 manufacturer, distributor, or importer. A licensee applying for
90 a name change endorsement shall pay a fee of \$25 which fee shall
91 apply to the change in the name of a main location and all
92 additional locations licensed under the provisions of subsection
93 (5). Each initial license application received by the department
94 shall be accompanied by verification that, within the preceding
95 6 months, the applicant, or one or more of his or her designated
96 employees, has attended a training and information seminar
97 conducted by a licensed motor vehicle dealer training school.
98 Any applicant for a new franchised motor vehicle dealer license
99 who has held a valid franchised motor vehicle dealer license
100 continuously for the past 2 years and who remains in good
101 standing with the department is exempt from the prelicensing
102 training requirement. Such seminar shall include, but is not
103 limited to, statutory dealer requirements, which requirements
104 include required bookkeeping and recordkeeping procedures,
105 requirements for the collection of sales and use taxes, and such
106 other information that in the opinion of the department will

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107 | promote good business practices. No seminar may exceed 8 hours
108 | in length.

109 | Section 2. Subsection (3) of section 320.60, Florida
110 | Statutes, is amended to read:

111 | 320.60 Definitions for ss. 320.61-320.70.--Whenever used
112 | in ss. 320.61-320.70, unless the context otherwise requires, the
113 | following words and terms have the following meanings:

114 | (3) "Demonstrator" means any new motor vehicle that ~~which~~
115 | is carried on the records of the dealer as a demonstrator and is
116 | used by, being inspected or driven by the dealer or his or her
117 | employees, or driven by prospective customers for the purpose of
118 | demonstrating vehicle characteristics in the sale or display of
119 | motor vehicles sold by the dealer.

120 | Section 3. Subsection (36) is added to section 320.64,
121 | Florida Statutes, to read:

122 | 320.64 Denial, suspension, or revocation of license;
123 | grounds.--A license of a licensee under s. 320.61 may be denied,
124 | suspended, or revoked within the entire state or at any specific
125 | location or locations within the state at which the applicant or
126 | licensee engages or proposes to engage in business, upon proof
127 | that the section was violated with sufficient frequency to
128 | establish a pattern of wrongdoing, and a licensee or applicant
129 | shall be liable for claims and remedies provided in ss. 320.695
130 | and 320.697 for any violation of any of the following
131 | provisions. A licensee is prohibited from committing the
132 | following acts:

133 | (36) (a) Notwithstanding the terms of any franchise
134 | agreement, in addition to any other statutory or contractual

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135 rights of recovery after the voluntary or involuntary
136 termination of a franchise, failing to pay the motor vehicle
137 dealer, within 90 days after the effective date of the
138 termination, cancellation, or nonrenewal, the following amounts:

139 1. The net cost paid by the dealer for each new motor
140 vehicle in the dealer's inventory with mileage of 2,000 miles or
141 less, exclusive of mileage placed on the vehicle before it was
142 delivered to the dealer.

143 2. The current price charged for each new, unused,
144 undamaged, or unsold part or accessory that:

145 a. Is in the current parts catalogue and is still in the
146 original, resalable merchandising package and in an unbroken
147 lot, except that sheet metal may be in a comparable substitute
148 for the original package; and

149 b. Was purchased by the dealer directly from the
150 manufacturer or distributor or from an outgoing authorized
151 dealer as a part of the dealer's initial inventory.

152 3. The fair market value of each undamaged sign owned by
153 the dealer which bears a trademark or trade name used or claimed
154 by the applicant or licensee or its representative which was
155 purchased from or at the request of the applicant or licensee or
156 its representative.

157 4. The fair market value of all special tools, data
158 processing equipment, and automotive service equipment owned by
159 the dealer which:

160 a. Were recommended in writing by the applicant or
161 licensee or its representative and designated as special tools
162 and equipment;

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163 b. Were purchased from or at the request of the applicant
164 or licensee or its representative; and

165 c. Are in usable and good condition except for reasonable
166 wear and tear.

167 5. The cost of transporting, handling, packing, storing,
168 and loading any property subject to repurchase under this
169 section.

170 (b) This subsection does not apply to a termination,
171 cancellation, or nonrenewal that is implemented as a result of
172 the sale of the assets or stock of the dealer. The dealer shall
173 return the property listed in this subsection to the licensee
174 within 90 days after the effective date of the termination,
175 cancellation, or nonrenewal. The licensee shall supply the
176 dealer with reasonable instructions regarding the method by
177 which the dealer must return the property. The compensation for
178 the property shall be paid by the licensee within 60 days after
179 the tender of inventory and other items, if the dealer has clear
180 title to the inventory and other items and is in a position to
181 convey that title to the manufacturer or distributor. If the
182 inventory or other items are subject to a security interest, the
183 licensee may make payment jointly to the dealer and the holder
184 of the security interest.

185
186 A motor vehicle dealer who can demonstrate that a violation of,
187 or failure to comply with, any of the preceding provisions by an
188 applicant or licensee will or can adversely and pecuniarily
189 affect the complaining dealer, shall be entitled to pursue all

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190 of the remedies, procedures, and rights of recovery available
191 under ss. 320.695 and 320.697.

192 Section 4. Subsections (1) and (5) of section 320.642,
193 Florida Statutes, are amended, and subsections (7) and (8) are
194 added to that section, to read:

195 320.642 Dealer licenses in areas previously served;
196 procedure.--

197 (1) Any licensee who proposes to establish an additional
198 motor vehicle dealership or permit the relocation of an existing
199 dealer to a location within a community or territory where the
200 same line-make vehicle is presently represented by a franchised
201 motor vehicle dealer or dealers shall give written notice of its
202 intention ~~by certified mail~~ to the department. Such notice shall
203 state:

204 (a) The specific location at which the additional or
205 relocated motor vehicle dealership will be established.

206 (b) The date on or after which the licensee intends to be
207 engaged in business with the additional or relocated motor
208 vehicle dealer at the proposed location.

209 (c) The identity of all motor vehicle dealers who are
210 franchised to sell the same line-make vehicle with licensed
211 locations in the county or any contiguous county to the county
212 where the additional or relocated motor vehicle dealer is
213 proposed to be located.

214 (d) The names and addresses of the dealer-operator and
215 principal investors in the proposed additional or relocated
216 motor vehicle dealership.

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218 Immediately upon receipt of such notice the department shall
219 cause a notice to be published in the Florida Administrative
220 Weekly. The published notice shall state that a petition or
221 complaint by any dealer with standing to protest pursuant to
222 subsection (3) must be filed not more than 30 days from the date
223 of publication of the notice in the Florida Administrative
224 Weekly. The published notice shall describe and identify the
225 proposed dealership sought to be licensed, and the department
226 shall cause a copy of the notice to be mailed to those dealers
227 identified in the licensee's notice under paragraph (c).

228 (5) (a) The opening or reopening of the same or a successor
229 motor vehicle dealer within 12 months is ~~shall~~ not be considered
230 an additional motor vehicle dealer subject to protest within the
231 meaning of this section, if:

232 1. (a) The opening or reopening is within the same or an
233 adjacent county and ~~is~~ within 2 miles of the former motor
234 vehicle dealer location; ~~or~~

235 2. (b) There is no dealer within 25 miles of the proposed
236 location or the proposed location is further from each existing
237 dealer of the same line-make than the prior location is from
238 each dealer of the same line-make within 25 miles of the new
239 location; ~~or~~

240 3. (e) The opening or reopening is within 6 miles of the
241 prior location and, if any existing motor vehicle dealer of the
242 same line-make is located within 15 miles of the former
243 location, the proposed location is no closer to any existing
244 dealer of the same line-make within 15 miles of the proposed
245 location; or

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246 ~~4.(d)~~ The opening or reopening is within 6 miles of the
247 prior location and, if all existing motor vehicle dealers of the
248 same line-make are beyond 15 miles of the former location, the
249 proposed location is further than 15 miles from any existing
250 motor vehicle dealer of the same line-make.

251 (b) Any other such opening or reopening shall constitute
252 an additional motor vehicle dealer within the meaning of this
253 section.

254 (c) If a motor vehicle dealer has been opened or reopened
255 pursuant to this subsection, the licensee may not propose a
256 motor vehicle dealer of the same line-make to be located within
257 4 miles of the previous location of such dealer for 2 years
258 after the date the relocated dealership opens.

259 (7) Measurements of the distance between proposed or
260 existing dealer locations required by this section shall be
261 taken from the geometric centroid of the property that
262 encompasses all of the existing or proposed motor vehicle dealer
263 operations.

264 (8) The department shall not be obligated to determine the
265 accuracy of any distance asserted by any party in a notice
266 submitted to it. Any dispute concerning a distance measurement
267 asserted by a party shall be resolved by a hearing conducted in
268 accordance with ss. 120.569 and 120.57.

269 Section 5. This act shall take effect July 1, 2006.