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HB 1077, Engrossed 1

2006 Legislature

1 A bill to be entitled
2 An act relating to motor vehicle dealers; amending s.
3 320.27, F.S.; revising education requirements for
4 licensure to provide for a full-time, management-level
5 employee of the applicant or licensee; exempting certain
6 applicants for a new franchised motor vehicle dealer
7 license from certain training requirements; amending s.
8 320.60, F.S.; revising the definition of "demonstrator"
9 for purposes of provisions relating to manufacturing,
10 importing, and distributing motor vehicles; amending s.
11 320.64, F.S.; prohibiting specified licensees from failing
12 to pay certain compensation amounts to a motor vehicle
13 dealer after termination of the dealer's franchise
14 agreement; providing exceptions; providing procedures for
15 payment of the compensation amounts; providing for certain
16 remedies, procedures, and rights of recovery; amending s.
17 320.642, F.S.; deleting a requirement that certain notices
18 be sent by certified mail; revising conditions under which
19 an opening or reopening of the same or a successor dealer
20 within 12 months is not considered an additional dealer
21 subject to protest; prohibiting for a certain time
22 proposals for a dealer of the same line-make after the
23 opening or reopening of the dealer; providing criteria for
24 measurements of distance between dealer locations;
25 providing that the Department of Highway Safety and Motor
26 Vehicles is not obligated to determine the accuracy of any
27 distance submitted in a notice; providing for resolution

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28 of disputed distances by a hearing in accordance with
 29 specified provisions; providing an effective date.

30

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

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33 Section 1. Subsection (4) of section 320.27, Florida
 34 Statutes, is amended to read:

35 320.27 Motor vehicle dealers.--

36 (4) LICENSE CERTIFICATE.--

37 (a) A license certificate shall be issued by the
 38 department in accordance with such application when the
 39 application is regular in form and in compliance with the
 40 provisions of this section. The license certificate may be in
 41 the form of a document or a computerized card as determined by
 42 the department. The actual cost of each original, additional, or
 43 replacement computerized card shall be borne by the licensee and
 44 is in addition to the fee for licensure. Such license, when so
 45 issued, entitles the licensee to carry on and conduct the
 46 business of a motor vehicle dealer. Each license issued to a
 47 franchise motor vehicle dealer expires annually on December 31
 48 unless revoked or suspended prior to that date. Each license
 49 issued to an independent or wholesale dealer or auction expires
 50 annually on April 30 unless revoked or suspended prior to that
 51 date. Not less than 60 days prior to the license expiration
 52 date, the department shall deliver or mail to each licensee the
 53 necessary renewal forms. Each independent dealer shall certify
 54 that the dealer ~~principal~~ (owner, partner, officer ~~of the~~

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55 ~~corporation~~, or director of the licensee, or a full-time
56 employee of the licensee who holds a responsible management-
57 level position) has completed 8 hours of continuing education
58 prior to filing the renewal forms with the department. Such
59 certification shall be filed once every 2 years commencing with
60 the 2006 renewal period. The continuing education shall include
61 at least 2 hours of legal or legislative issues, 1 hour of
62 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
80 majority ownership interest of the licensee has not changed or
81 the name of the person appearing as franchisee on the sales and

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

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109 (b) Each initial license application received by the
110 department for licensure under subparagraph (1)(c)2. must be
111 accompanied by verification that, within the preceding 6 months,
112 the applicant (owner, partner, officer ~~of the corporation,~~ or
113 director of the applicant, or a full-time employee of the
114 applicant who holds a responsible management-level position) has
115 successfully completed training conducted by a licensed motor
116 vehicle dealer training school. Such training must include
117 training in titling and registration of motor vehicles, laws
118 relating to unfair and deceptive trade practices, laws relating
119 to financing with regard to buy-here, pay-here operations, and
120 such other information that in the opinion of the department
121 will promote good business practices. Successful completion of
122 this training shall be determined by examination administered at
123 the end of the course and attendance of no less than 90 percent
124 of the total hours required by such school. Any applicant who
125 had held a valid motor vehicle dealer's license within the past
126 2 years and who remains in good standing with the department is
127 exempt from the requirements of this paragraph. ~~In the case of~~
128 ~~nonresident applicants, the requirement to attend such training~~
129 ~~shall be placed on any employee of the licensee who holds a~~
130 ~~responsible management-level position and who is employed full-~~
131 ~~time at the motor vehicle dealership.~~ The department shall have
132 the authority to adopt any rule necessary for establishing the
133 training curriculum; length of training, which shall not exceed
134 8 hours for required department topics and shall not exceed an
135 additional 24 hours for topics related to other regulatory

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136 agencies' instructor qualifications; and any other requirements
137 under this section. The curriculum for other subjects shall be
138 approved by any and all other regulatory agencies having
139 jurisdiction over specific subject matters; however, the overall
140 administration of the licensing of these dealer schools and
141 their instructors shall remain with the department. Such schools
142 are authorized to charge a fee. This privatized method for
143 training applicants for dealer licensing pursuant to
144 subparagraph (1)(c)2. is a pilot program that shall be evaluated
145 by the department after it has been in operation for a period of
146 2 years.

147 Section 2. Subsection (3) of section 320.60, Florida
148 Statutes, is amended to read:

149 320.60 Definitions for ss. 320.61-320.70.--Whenever used
150 in ss. 320.61-320.70, unless the context otherwise requires, the
151 following words and terms have the following meanings:

152 (3) "Demonstrator" means any new motor vehicle that ~~which~~
153 is carried on the records of the dealer as a demonstrator and is
154 used by, being inspected or driven by the dealer or his or her
155 employees, or driven by prospective customers for the purpose of
156 demonstrating vehicle characteristics in the sale or display of
157 motor vehicles sold by the dealer.

158 Section 3. Subsection (36) is added to section 320.64,
159 Florida Statutes, to read:

160 320.64 Denial, suspension, or revocation of license;
161 grounds.--A license of a licensee under s. 320.61 may be denied,
162 suspended, or revoked within the entire state or at any specific

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163 location or locations within the state at which the applicant or
164 licensee engages or proposes to engage in business, upon proof
165 that the section was violated with sufficient frequency to
166 establish a pattern of wrongdoing, and a licensee or applicant
167 shall be liable for claims and remedies provided in ss. 320.695
168 and 320.697 for any violation of any of the following
169 provisions. A licensee is prohibited from committing the
170 following acts:

171 (36) (a) Notwithstanding the terms of any franchise
172 agreement, in addition to any other statutory or contractual
173 rights of recovery after the voluntary or involuntary
174 termination of a franchise, failing to pay the motor vehicle
175 dealer, within 90 days after the effective date of the
176 termination, cancellation, or nonrenewal, the following amounts:

177 1. The net cost paid by the dealer for each new car or
178 truck in the dealer's inventory with mileage of 2,000 miles or
179 less, or a motorcycle with mileage of 100 miles or less,
180 exclusive of mileage placed on the vehicle before it was
181 delivered to the dealer.

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

184 a. Is in the current parts catalogue and is still in the
185 original, resalable merchandising package and in an unbroken
186 lot, except that sheet metal may be in a comparable substitute
187 for the original package; and

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188 b. Was purchased by the dealer directly from the
189 manufacturer or distributor or from an outgoing authorized
190 dealer as a part of the dealer's initial inventory.

191 3. The fair market value of each undamaged sign owned by
192 the dealer which bears a trademark or trade name used or claimed
193 by the applicant or licensee or its representative which was
194 purchased from or at the request of the applicant or licensee or
195 its representative.

196 4. The fair market value of all special tools, data
197 processing equipment, and automotive service equipment owned by
198 the dealer which:

199 a. Were recommended in writing by the applicant or
200 licensee or its representative and designated as special tools
201 and equipment;

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

204 c. Are in usable and good condition except for reasonable
205 wear and tear.

206 5. The cost of transporting, handling, packing, storing,
207 and loading any property subject to repurchase under this
208 section.

209 (b) This subsection does not apply to a termination,
210 cancellation, or nonrenewal that is implemented as a result of
211 the sale of the assets or stock of the dealer. The dealer shall
212 return the property listed in this subsection to the licensee
213 within 90 days after the effective date of the termination,
214 cancellation, or nonrenewal. The licensee shall supply the

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215 dealer with reasonable instructions regarding the method by
216 which the dealer must return the property. The compensation for
217 the property shall be paid by the licensee within 60 days after
218 the tender of inventory and other items, if the dealer has clear
219 title to the inventory and other items and is in a position to
220 convey that title to the manufacturer or distributor. If the
221 inventory or other items are subject to a security interest, the
222 licensee may make payment jointly to the dealer and the holder
223 of the security interest.

224

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

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

234 320.642 Dealer licenses in areas previously served;
235 procedure.--

236 (1) Any licensee who proposes to establish an additional
237 motor vehicle dealership or permit the relocation of an existing
238 dealer to a location within a community or territory where the
239 same line-make vehicle is presently represented by a franchised
240 motor vehicle dealer or dealers shall give written notice of its

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241 | intention ~~by certified mail~~ to the department. Such notice shall
 242 | state:

243 | (a) The specific location at which the additional or
 244 | relocated motor vehicle dealership will be established.

245 | (b) The date on or after which the licensee intends to be
 246 | engaged in business with the additional or relocated motor
 247 | vehicle dealer at the proposed location.

248 | (c) The identity of all motor vehicle dealers who are
 249 | franchised to sell the same line-make vehicle with licensed
 250 | locations in the county or any contiguous county to the county
 251 | where the additional or relocated motor vehicle dealer is
 252 | proposed to be located.

253 | (d) The names and addresses of the dealer-operator and
 254 | principal investors in the proposed additional or relocated
 255 | motor vehicle dealership.

256 |
 257 | Immediately upon receipt of such notice the department shall
 258 | cause a notice to be published in the Florida Administrative
 259 | Weekly. The published notice shall state that a petition or
 260 | complaint by any dealer with standing to protest pursuant to
 261 | subsection (3) must be filed not more than 30 days from the date
 262 | of publication of the notice in the Florida Administrative
 263 | Weekly. The published notice shall describe and identify the
 264 | proposed dealership sought to be licensed, and the department
 265 | shall cause a copy of the notice to be mailed to those dealers
 266 | identified in the licensee's notice under paragraph (c).

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

271 1.-(a) The opening or reopening is within the same or an
272 adjacent county and, is within 2 miles of the former motor
273 vehicle dealer location;;

274 2.-(b) There is no dealer within 25 miles of the proposed
275 location or the proposed location is further from each existing
276 dealer of the same line-make than the prior location is from
277 each dealer of the same line-make within 25 miles of the new
278 location;;

279 3.-(c) The opening or reopening is within 6 miles of the
280 prior location and, if any existing motor vehicle dealer of the
281 same line-make is located within 15 miles of the former
282 location, the proposed location is no closer to any existing
283 dealer of the same line-make within 15 miles of the proposed
284 location;; or

285 4.-(d) The opening or reopening is within 6 miles of the
286 prior location and, if all existing motor vehicle dealers of the
287 same line-make are beyond 15 miles of the former location, the
288 proposed location is further than 15 miles from any existing
289 motor vehicle dealer of the same line-make.

290 (b) Any other such opening or reopening shall constitute
291 an additional motor vehicle dealer within the meaning of this
292 section.

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293 (c) If a motor vehicle dealer has been opened or reopened
 294 pursuant to this subsection, the licensee may not propose a
 295 motor vehicle dealer of the same line-make to be located within
 296 4 miles of the previous location of such dealer for 2 years
 297 after the date the relocated dealership opens.

298 (7) Measurements of the distance between proposed or
 299 existing dealer locations required by this section shall be
 300 taken from the geometric centroid of the property that
 301 encompasses all of the existing or proposed motor vehicle dealer
 302 operations.

303 (8) The department shall not be obligated to determine the
 304 accuracy of any distance asserted by any party in a notice
 305 submitted to it. Any dispute concerning a distance measurement
 306 asserted by a party shall be resolved by a hearing conducted in
 307 accordance with ss. 120.569 and 120.57.

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