

Bill No. SB 2682

Barcode 264826

CHAMBER ACTION

Senate

House

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The Committee on Transportation (Bennett) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

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

320.27 Motor vehicle dealers.--

(4) LICENSE CERTIFICATE.--

(a) A license certificate shall be issued by the department in accordance with such application when the application is regular in form and in compliance with the provisions of this section. The license certificate may be in the form of a document or a computerized card as determined by the department. The actual cost of each original, additional, or replacement computerized card shall be borne by the licensee and is in addition to the fee for licensure. Such license, when so issued, entitles the licensee to carry on and conduct the business of a motor vehicle dealer. Each license

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1 issued to a franchise motor vehicle dealer expires annually on
2 December 31 unless revoked or suspended prior to that date.
3 Each license issued to an independent or wholesale dealer or
4 auction expires annually on April 30 unless revoked or
5 suspended prior to that date. Not less than 60 days prior to
6 the license expiration date, the department shall deliver or
7 mail to each licensee the necessary renewal forms. Each
8 independent dealer shall certify that the dealer principal
9 (owner, partner, officer of the corporation, or director) has
10 completed 8 hours of continuing education prior to filing the
11 renewal forms with the department. Such certification shall be
12 filed once every 2 years commencing with the 2006 renewal
13 period. The continuing education shall include at least 2
14 hours of legal or legislative issues, 1 hour of department
15 issues, and 5 hours of relevant motor vehicle industry topics.
16 Continuing education shall be provided by dealer schools
17 licensed under paragraph (b) either in a classroom setting or
18 by correspondence. Such schools shall provide certificates of
19 completion to the department and the customer which shall be
20 filed with the license renewal form, and such schools may
21 charge a fee for providing continuing education. Any licensee
22 who does not file his or her application and fees and any
23 other requisite documents, as required by law, with the
24 department at least 30 days prior to the license expiration
25 date shall cease to engage in business as a motor vehicle
26 dealer on the license expiration date. A renewal filed with
27 the department within 45 days after the expiration date shall
28 be accompanied by a delinquent fee of \$100. Thereafter, a new
29 application is required, accompanied by the initial license
30 fee. A license certificate duly issued by the department may
31 be modified by endorsement to show a change in the name of the

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1 licensee, provided, as shown by affidavit of the licensee, the
2 majority ownership interest of the licensee has not changed or
3 the name of the person appearing as franchisee on the sales
4 and service agreement has not changed. Modification of a
5 license certificate to show any name change as herein provided
6 shall not require initial licensure or reissuance of dealer
7 tags; however, any dealer obtaining a name change shall
8 transact all business in and be properly identified by that
9 name. All documents relative to licensure shall reflect the
10 new name. In the case of a franchise dealer, the name change
11 shall be approved by the manufacturer, distributor, or
12 importer. A licensee applying for a name change endorsement
13 shall pay a fee of \$25 which fee shall apply to the change in
14 the name of a main location and all additional locations
15 licensed under the provisions of subsection (5). Each initial
16 license application received by the department shall be
17 accompanied by verification that, within the preceding 6
18 months, the applicant, or one or more of his or her designated
19 employees, has attended a training and information seminar
20 conducted by a licensed motor vehicle dealer training school.
21 Any applicant for a new franchised motor vehicle dealer
22 license who has held a valid franchised motor vehicle dealer
23 license continuously for the past 2 years and who remains in
24 good standing with the department is exempt from the
25 prelicensing training requirement. Such seminar shall include,
26 but is not limited to, statutory dealer requirements, which
27 requirements include required bookkeeping and recordkeeping
28 procedures, requirements for the collection of sales and use
29 taxes, and such other information that in the opinion of the
30 department will promote good business practices. No seminar
31 may exceed 8 hours in length.

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

3 320.60 Definitions for ss. 320.61-320.70.--Whenever
4 used in ss. 320.61-320.70, unless the context otherwise
5 requires, the following words and terms have the following
6 meanings:

7 (3) "Demonstrator" means any new motor vehicle that
8 ~~which~~ is carried on the records of the dealer as a
9 demonstrator and is used by, being inspected or driven by the
10 dealer or his or her employees, or driven by prospective
11 customers for the purpose of demonstrating vehicle
12 characteristics in the sale or display of motor vehicles sold
13 by the dealer.

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

16 320.64 Denial, suspension, or revocation of license;
17 grounds.--A license of a licensee under s. 320.61 may be
18 denied, suspended, or revoked within the entire state or at
19 any specific location or locations within the state at which
20 the applicant or licensee engages or proposes to engage in
21 business, upon proof that the section was violated with
22 sufficient frequency to establish a pattern of wrongdoing, and
23 a licensee or applicant shall be liable for claims and
24 remedies provided in ss. 320.695 and 320.697 for any violation
25 of any of the following provisions. A licensee is prohibited
26 from committing the following acts:

27 (36)(a) Notwithstanding the terms of any franchise
28 agreement, in addition to any other statutory or contractual
29 rights of recovery after the voluntary or involuntary
30 termination of a franchise, failing to pay the motor vehicle
31 dealer, within 90 days after the effective date of the

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1 termination, cancellation, or nonrenewal, the following
2 amounts:

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

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

9 a. Is in the current parts catalogue and is still in
10 the original, resalable merchandising package and in an
11 unbroken lot, except that sheet metal may be in a comparable
12 substitute for the original package; and

13 b. Was purchased by the dealer directly from the
14 manufacturer or distributor or from an outgoing authorized
15 dealer as a part of the dealer's initial inventory.

16 3. The fair market value of each undamaged sign owned
17 by the dealer which bears a trademark or trade name used or
18 claimed by the applicant or licensee or its representative
19 which was purchased from or at the request of the applicant or
20 licensee or its representative.

21 4. The fair market value of all special tools, data
22 processing equipment, and automotive service equipment owned
23 by the dealer which:

24 a. Were recommended in writing by the applicant or
25 licensee or its representative and designated as special tools
26 and equipment;

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

29 c. Are in usable and good condition except for
30 reasonable wear and tear.

31 5. The cost of transporting, handling, packing,

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1 storing, and loading any property subject to repurchase under
2 this section.

3 (b) This subsection does not apply to a termination,
4 cancellation, or nonrenewal that is implemented as a result of
5 the sale of the assets or stock of the dealer. The dealer
6 shall return the property listed in this subsection to the
7 licensee within 90 days after the effective date of the
8 termination, cancellation, or nonrenewal. The licensee shall
9 supply the dealer with reasonable instructions regarding the
10 method by which the dealer must return the property. The
11 compensation for the property shall be paid by the licensee
12 within 60 days after the tender of inventory and other items,
13 if the dealer has clear title to the inventory and other items
14 and is in a position to convey that title to the manufacturer
15 or distributor. If the inventory or other items are subject to
16 a security interest, the licensee may make payment jointly to
17 the dealer and the holder of the security interest.

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

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

28 320.642 Dealer licenses in areas previously served;
29 procedure.--

30 (1) Any licensee who proposes to establish an
31 additional motor vehicle dealership or permit the relocation

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1 of an existing dealer to a location within a community or
 2 territory where the same line-make vehicle is presently
 3 represented by a franchised motor vehicle dealer or dealers
 4 shall give written notice of its intention ~~by certified mail~~
 5 to the department. Such notice shall state:

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

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

11 (c) The identity of all motor vehicle dealers who are
 12 franchised to sell the same line-make vehicle with licensed
 13 locations in the county or any contiguous county to the county
 14 where the additional or relocated motor vehicle dealer is
 15 proposed to be located.

16 (d) The names and addresses of the dealer-operator and
 17 principal investors in the proposed additional or relocated
 18 motor vehicle dealership.

19
 20 Immediately upon receipt of such notice the department shall
 21 cause a notice to be published in the Florida Administrative
 22 Weekly. The published notice shall state that a petition or
 23 complaint by any dealer with standing to protest pursuant to
 24 subsection (3) must be filed not more than 30 days from the
 25 date of publication of the notice in the Florida
 26 Administrative Weekly. The published notice shall describe and
 27 identify the proposed dealership sought to be licensed, and
 28 the department shall cause a copy of the notice to be mailed
 29 to those dealers identified in the licensee's notice under
 30 paragraph (c).

31 (5)(a) The opening or reopening of the same or a

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1 successor motor vehicle dealer within 12 months ~~is shall~~ not
2 ~~be~~ considered an additional motor vehicle dealer subject to
3 protest within the meaning of this section, if:

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

7 ~~2.(b)~~ There is no dealer within 25 miles of the
8 proposed location or the proposed location is further from
9 each existing dealer of the same line-make than the prior
10 location is from each dealer of the same line-make within 25
11 miles of the new location;~~;~~

12 ~~3.(c)~~ The opening or reopening is within 6 miles of
13 the prior location and, if any existing motor vehicle dealer
14 of the same line-make is located within 15 miles of the former
15 location, the proposed location is no closer to any existing
16 dealer of the same line-make within 15 miles of the proposed
17 location;~~;~~ or

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

23 (b) Any other such opening or reopening shall
24 constitute an additional motor vehicle dealer within the
25 meaning of this section.

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

31 (7) Measurements of the distance between proposed or

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1 existing dealer locations required by this section shall be
 2 taken from the geometric centroid of the property that
 3 encompasses all of the existing or proposed motor vehicle
 4 dealer operations.

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

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

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13 ===== T I T L E A M E N D M E N T =====

14 And the title is amended as follows:

15 Delete everything before the enacting clause

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17 and insert:

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A bill to be entitled

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An act relating to motor vehicle dealers;

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amending s. 320.27, F.S.; exempting certain

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applicants for a new franchised motor vehicle

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dealer license from certain training

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requirements; amending s. 320.60, F.S.;

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revising the definition of "demonstrator" for

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purposes of provisions relating to

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manufacturing, importing, and distributing

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motor vehicles; amending s. 320.64, F.S.;

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prohibiting specified licensees from failing to

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pay certain compensation amounts to a motor

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vehicle dealer after termination of the

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dealer's franchise agreement; providing

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1 exceptions; providing procedures for payment of
2 the compensation amounts; providing for certain
3 remedies, procedures, and rights of recovery;
4 amending s. 320.642, F.S.; deleting a
5 requirement that certain notices be sent by
6 certified mail; revising conditions under which
7 an opening or reopening of the same or a
8 successor dealer within 12 months is not
9 considered an additional dealer subject to
10 protest; prohibiting for a certain time
11 proposals for a dealer of the same line-make
12 after the opening or reopening of the dealer;
13 providing criteria for measurements of distance
14 between dealer locations; providing that the
15 Department of Highway Safety and Motor Vehicles
16 is not obligated to determine the accuracy of
17 any distance submitted in a notice; providing
18 for resolution of disputed distances by a
19 hearing in accordance with specified
20 provisions; providing an effective date.

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