

By Senator Haridopolos

26-1213A-06

1 A bill to be entitled
 2 An act relating to motor vehicle dealers;
 3 amending s. 320.27, F.S.; exempting certain
 4 licensure applicants from certain training
 5 requirements; amending s. 320.60, F.S.;
 6 clarifying the definition of the term
 7 "demonstrator"; amending s. 320.64, F.S.;
 8 prohibiting a licensee from failing to make
 9 certain payments to a motor vehicle dealer
 10 after the termination of the dealer's
 11 franchise; providing guidelines for specific
 12 payments; amending s. 320.642, F.S.; deleting a
 13 requirement that certain notices be sent by
 14 certified mail; revising criteria for the
 15 opening or reopening of the same or a successor
 16 dealer within 12 months; limiting the location
 17 of a licensee if a dealer has been opened or
 18 reopened pursuant to the section; providing
 19 criteria for measuring the distance between
 20 dealer location; providing an effective date.

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 22 Be It Enacted by the Legislature of the State of Florida:
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24 Section 1. Paragraph (a) of subsection (4) of section
 25 320.27, Florida Statutes, is amended to read:

26 320.27 Motor vehicle dealers.--

27 (4) LICENSE CERTIFICATE.--

28 (a) A license certificate shall be issued by the
 29 department in accordance with such application when the
 30 application is regular in form and in compliance with the
 31 provisions of this section. The license certificate may be in

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

1 dealer on the license expiration date. A renewal filed with
2 the department within 45 days after the expiration date shall
3 be accompanied by a delinquent fee of \$100. Thereafter, a new
4 application is required, accompanied by the initial license
5 fee. A license certificate duly issued by the department may
6 be modified by endorsement to show a change in the name of the
7 licensee, provided, as shown by affidavit of the licensee, the
8 majority ownership interest of the licensee has not changed or
9 the name of the person appearing as franchisee on the sales
10 and service agreement has not changed. Modification of a
11 license certificate to show any name change as herein provided
12 shall not require initial licensure or reissuance of dealer
13 tags; however, any dealer obtaining a name change shall
14 transact all business in and be properly identified by that
15 name. All documents relative to licensure shall reflect the
16 new name. In the case of a franchise dealer, the name change
17 shall be approved by the manufacturer, distributor, or
18 importer. A licensee applying for a name change endorsement
19 shall pay a fee of \$25 which fee shall apply to the change in
20 the name of a main location and all additional locations
21 licensed under the provisions of subsection (5). Each initial
22 license application received by the department shall be
23 accompanied by verification that, within the preceding 6
24 months, the applicant, or one or more of his or her designated
25 employees, has attended a training and information seminar
26 conducted by a licensed motor vehicle dealer training school.
27 Any applicant for a new franchised motor vehicle dealer
28 license who has held a valid franchised motor vehicle dealer's
29 license within the past 2 years, and who remains in good
30 standing with the department, is exempt from the prelicensing
31 training requirement. Such seminar shall include, but is not

1 limited to, statutory dealer requirements, which requirements
2 include required bookkeeping and recordkeeping procedures,
3 requirements for the collection of sales and use taxes, and
4 such other information that in the opinion of the department
5 will promote good business practices. No seminar may exceed 8
6 hours in length.

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

9 320.60 Definitions for ss. 320.61-320.70.--Whenever
10 used in ss. 320.61-320.70, unless the context otherwise
11 requires, the following words and terms have the following
12 meanings:

13 (3) "Demonstrator" means any new motor vehicle that
14 ~~which~~ is carried on the records of the dealer as a
15 demonstrator and is used by, being inspected or driven by the
16 dealer or his or her employees, or driven by prospective
17 customers for the purpose of demonstrating vehicle
18 characteristics in the sale or display of motor vehicles sold
19 by the dealer.

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

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

3 (36)(a) Notwithstanding the terms of any franchise
4 agreement, in addition to any other statutory or contractual
5 rights of recovery after the voluntary or involuntary
6 termination of a franchise, failing to pay the motor vehicle
7 dealer, within 90 days after the effective date of the
8 termination, cancellation, or nonrenewal, the following
9 amounts:

10 1. The net cost paid by the dealer for each new motor
11 vehicle in the dealer's inventory with mileage of 2,000 miles
12 or less, exclusive of mileage placed on the vehicle before it
13 was delivered to the dealer;

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

16 a. Is in the current parts catalogue and is still in
17 the original, resalable merchandising package and in an
18 unbroken lot, except that sheet metal may be in a comparable
19 substitute for the original package, and

20 b. Was purchased by the dealer directly from the
21 manufacturer or distributor or from an outgoing authorized
22 dealer as a part of the dealer's initial inventory;

23 3. The fair market value of each undamaged sign owned
24 by the dealer which bears a trademark or tradename used or
25 claimed by the applicant or licensee or its representative
26 which was purchased from or at the request of the applicant or
27 licensee or its representative;

28 4. The fair market value of all special tools, data
29 processing equipment, and automotive service equipment owned
30 by the dealer which:

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1 a. Were recommended in writing by the applicant or
2 licensee or its representative and designated as special tools
3 and equipment;

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

6 c. Are in usable and good condition except for
7 reasonable wear and tear; and

8 5. The cost of transporting, handling, packing,
9 storing, and loading any property subject to repurchase under
10 this section.

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

26
27 A motor vehicle dealer who can demonstrate that a violation
28 of, or failure to comply with, any of the preceding provisions
29 by an applicant or licensee will or can adversely and
30 pecuniarily affect the complaining dealer, shall be entitled
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1 to pursue all of the remedies, procedures, and rights of
2 recovery available under ss. 320.695 and 320.697.

3 Section 4. Subsections (1) and (5) of section 320.642,
4 Florida Statutes, are amended and subsection (7) is added to
5 that section, to read:

6 320.642 Dealer licenses in areas previously served;
7 procedure.--

8 (1) Any licensee who proposes to establish an
9 additional motor vehicle dealership or permit the relocation
10 of an existing dealer to a location within a community or
11 territory where the same line-make vehicle is presently
12 represented by a franchised motor vehicle dealer or dealers
13 shall give written notice of its intention ~~by certified mail~~
14 to the department. Such notice shall state:

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

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

20 (c) The identity of all motor vehicle dealers who are
21 franchised to sell the same line-make vehicle with licensed
22 locations in the county or any contiguous county to the county
23 where the additional or relocated motor vehicle dealer is
24 proposed to be located.

25 (d) The names and addresses of the dealer-operator and
26 principal investors in the proposed additional or relocated
27 motor vehicle dealership.

28
29 Immediately upon receipt of such notice the department shall
30 cause a notice to be published in the Florida Administrative
31 Weekly. The published notice shall state that a petition or

1 | complaint by any dealer with standing to protest pursuant to
2 | subsection (3) must be filed not more than 30 days from the
3 | date of publication of the notice in the Florida
4 | Administrative Weekly. The published notice shall describe and
5 | identify the proposed dealership sought to be licensed, and
6 | the department shall cause a copy of the notice to be mailed
7 | to those dealers identified in the licensee's notice under
8 | paragraph (c).

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

13 | 1.(a) The opening or reopening is within the same or
14 | an adjacent county ~~and~~ is within 2 miles of the former motor
15 | vehicle dealer location;~~;~~

16 | 2.(b) There is no dealer within 25 miles of the
17 | proposed location or the proposed location is further from
18 | each existing dealer of the same line-make than the prior
19 | location is from each dealer of the same line-make within 25
20 | miles of the new location;~~;~~

21 | 3.(c) The opening or reopening is within 6 miles of
22 | the prior location and, if any existing motor vehicle dealer
23 | of the same line-make is located within 15 miles of the former
24 | location, the proposed location is no closer to any existing
25 | dealer of the same line-make within 15 miles of the proposed
26 | location;~~;~~ or

27 | 4.(d) The opening or reopening is within 6 miles of
28 | the prior location and, if all existing motor vehicle dealers
29 | of the same line-make are beyond 15 miles of the former
30 | location, the proposed location is further than 15 miles from
31 | any existing motor vehicle dealer of the same line-make.

1 **(b)** Any other ~~such~~ opening or reopening shall
2 constitute an additional motor vehicle dealer within the
3 meaning of this section.

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

9 **(7)** Measurements of the distance between proposed or
10 existing dealer locations required by this section shall be
11 taken from the geometric centroid of the property that
12 encompasses all of the existing or proposed motor vehicle
13 dealer operations.

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

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17 SENATE SUMMARY

18 Revises provisions governing the relationship between
19 motor vehicle dealers and manufacturers, distributors,
20 importers, or other licensees. Exempts certain applicants
21 for licensure from training requirements. Prohibits a
22 licensee from failing to make certain payments to a motor
23 vehicle dealer after termination of the dealer's
24 franchise. Deletes a requirement that a notice be sent by
25 certified mail. Revises requirements for the opening or
26 reopening of the same or a successor motor vehicle dealer
27 within 12 months. Limits the licensee from taking certain
28 actions against such dealer. Establishes criteria for
29 measuring the distance between dealer locations.
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