

By the Committee on Transportation; and Senator Haridopolos

596-2120-06

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

1           for resolution of disputed distances by a  
2           hearing in accordance with specified  
3           provisions; providing an effective date.  
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5 Be It Enacted by the Legislature of the State of Florida:  
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7           Section 1. Paragraph (a) of subsection (4) of section  
8 320.27, Florida Statutes, is amended to read:

9           320.27 Motor vehicle dealers.--

10          (4) LICENSE CERTIFICATE.--

11          (a) A license certificate shall be issued by the  
12 department in accordance with such application when the  
13 application is regular in form and in compliance with the  
14 provisions of this section. The license certificate may be in  
15 the form of a document or a computerized card as determined by  
16 the department. The actual cost of each original, additional,  
17 or replacement computerized card shall be borne by the  
18 licensee and is in addition to the fee for licensure. Such  
19 license, when so issued, entitles the licensee to carry on and  
20 conduct the business of a motor vehicle dealer. Each license  
21 issued to a franchise motor vehicle dealer expires annually on  
22 December 31 unless revoked or suspended prior to that date.  
23 Each license issued to an independent or wholesale dealer or  
24 auction expires annually on April 30 unless revoked or  
25 suspended prior to that date. Not less than 60 days prior to  
26 the license expiration date, the department shall deliver or  
27 mail to each licensee the necessary renewal forms. Each  
28 independent dealer shall certify that the dealer principal  
29 (owner, partner, officer of the corporation, or director) has  
30 completed 8 hours of continuing education prior to filing the  
31 renewal forms with the department. Such certification shall be

1 | filed once every 2 years commencing with the 2006 renewal  
2 | period. The continuing education shall include at least 2  
3 | hours of legal or legislative issues, 1 hour of department  
4 | issues, and 5 hours of relevant motor vehicle industry topics.  
5 | Continuing education shall be provided by dealer schools  
6 | licensed under paragraph (b) either in a classroom setting or  
7 | by correspondence. Such schools shall provide certificates of  
8 | completion to the department and the customer which shall be  
9 | filed with the license renewal form, and such schools may  
10 | charge a fee for providing continuing education. Any licensee  
11 | who does not file his or her application and fees and any  
12 | other requisite documents, as required by law, with the  
13 | department at least 30 days prior to the license expiration  
14 | date shall cease to engage in business as a motor vehicle  
15 | dealer on the license expiration date. A renewal filed with  
16 | the department within 45 days after the expiration date shall  
17 | be accompanied by a delinquent fee of \$100. Thereafter, a new  
18 | application is required, accompanied by the initial license  
19 | fee. A license certificate duly issued by the department may  
20 | be modified by endorsement to show a change in the name of the  
21 | licensee, provided, as shown by affidavit of the licensee, the  
22 | majority ownership interest of the licensee has not changed or  
23 | the name of the person appearing as franchisee on the sales  
24 | and service agreement has not changed. Modification of a  
25 | license certificate to show any name change as herein provided  
26 | shall not require initial licensure or reissuance of dealer  
27 | tags; however, any dealer obtaining a name change shall  
28 | transact all business in and be properly identified by that  
29 | name. All documents relative to licensure shall reflect the  
30 | new name. In the case of a franchise dealer, the name change  
31 | shall be approved by the manufacturer, distributor, or

1 importer. A licensee applying for a name change endorsement  
2 shall pay a fee of \$25 which fee shall apply to the change in  
3 the name of a main location and all additional locations  
4 licensed under the provisions of subsection (5). Each initial  
5 license application received by the department shall be  
6 accompanied by verification that, within the preceding 6  
7 months, the applicant, or one or more of his or her designated  
8 employees, has attended a training and information seminar  
9 conducted by a licensed motor vehicle dealer training school.  
10 Any applicant for a new franchised motor vehicle dealer  
11 license who has held a valid franchised motor vehicle dealer  
12 license continuously for the past 2 years and who remains in  
13 good standing with the department is exempt from the  
14 prelicensing training requirement. Such seminar shall include,  
15 but is not limited to, statutory dealer requirements, which  
16 requirements include required bookkeeping and recordkeeping  
17 procedures, requirements for the collection of sales and use  
18 taxes, and such other information that in the opinion of the  
19 department will promote good business practices. No seminar  
20 may exceed 8 hours in length.

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

23 320.60 Definitions for ss. 320.61-320.70.--Whenever  
24 used in ss. 320.61-320.70, unless the context otherwise  
25 requires, the following words and terms have the following  
26 meanings:

27 (3) "Demonstrator" means any new motor vehicle that  
28 ~~which~~ is carried on the records of the dealer as a  
29 demonstrator and is used by, being inspected or driven by the  
30 dealer or his or her employees, or driven by prospective  
31 customers for the purpose of demonstrating vehicle

1 characteristics in the sale or display of motor vehicles sold  
2 by the dealer.

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

5 320.64 Denial, suspension, or revocation of license;  
6 grounds.--A license of a licensee under s. 320.61 may be  
7 denied, suspended, or revoked within the entire state or at  
8 any specific location or locations within the state at which  
9 the applicant or licensee engages or proposes to engage in  
10 business, upon proof that the section was violated with  
11 sufficient frequency to establish a pattern of wrongdoing, and  
12 a licensee or applicant shall be liable for claims and  
13 remedies provided in ss. 320.695 and 320.697 for any violation  
14 of any of the following provisions. A licensee is prohibited  
15 from committing the following acts:

16 (36)(a) Notwithstanding the terms of any franchise  
17 agreement, in addition to any other statutory or contractual  
18 rights of recovery after the voluntary or involuntary  
19 termination of a franchise, failing to pay the motor vehicle  
20 dealer, within 90 days after the effective date of the  
21 termination, cancellation, or nonrenewal, the following  
22 amounts:

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

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

29 a. Is in the current parts catalogue and is still in  
30 the original, resalable merchandising package and in an  
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1 unbroken lot, except that sheet metal may be in a comparable  
2 substitute for the original package; and

3 b. Was purchased by the dealer directly from the  
4 manufacturer or distributor or from an outgoing authorized  
5 dealer as a part of the dealer's initial inventory.

6 3. The fair market value of each undamaged sign owned  
7 by the dealer which bears a trademark or trade name used or  
8 claimed by the applicant or licensee or its representative  
9 which was purchased from or at the request of the applicant or  
10 licensee or its representative.

11 4. The fair market value of all special tools, data  
12 processing equipment, and automotive service equipment owned  
13 by the dealer which:

14 a. Were recommended in writing by the applicant or  
15 licensee or its representative and designated as special tools  
16 and equipment;

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

19 c. Are in usable and good condition except for  
20 reasonable wear and tear.

21 5. The cost of transporting, handling, packing,  
22 storing, and loading any property subject to repurchase under  
23 this section.

24 (b) This subsection does not apply to a termination,  
25 cancellation, or nonrenewal that is implemented as a result of  
26 the sale of the assets or stock of the dealer. The dealer  
27 shall return the property listed in this subsection to the  
28 licensee within 90 days after the effective date of the  
29 termination, cancellation, or nonrenewal. The licensee shall  
30 supply the dealer with reasonable instructions regarding the  
31 method by which the dealer must return the property. The

1 compensation for the property shall be paid by the licensee  
2 within 60 days after the tender of inventory and other items,  
3 if the dealer has clear title to the inventory and other items  
4 and is in a position to convey that title to the manufacturer  
5 or distributor. If the inventory or other items are subject to  
6 a security interest, the licensee may make payment jointly to  
7 the dealer and the holder of the security interest.

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

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

18 320.642 Dealer licenses in areas previously served;  
19 procedure.--

20 (1) Any licensee who proposes to establish an  
21 additional motor vehicle dealership or permit the relocation  
22 of an existing dealer to a location within a community or  
23 territory where the same line-make vehicle is presently  
24 represented by a franchised motor vehicle dealer or dealers  
25 shall give written notice of its intention ~~by certified mail~~  
26 to the department. Such notice shall state:

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

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

1 (c) The identity of all motor vehicle dealers who are  
2 franchised to sell the same line-make vehicle with licensed  
3 locations in the county or any contiguous county to the county  
4 where the additional or relocated motor vehicle dealer is  
5 proposed to be located.

6 (d) The names and addresses of the dealer-operator and  
7 principal investors in the proposed additional or relocated  
8 motor vehicle dealership.

9  
10 Immediately upon receipt of such notice the department shall  
11 cause a notice to be published in the Florida Administrative  
12 Weekly. The published notice shall state that a petition or  
13 complaint by any dealer with standing to protest pursuant to  
14 subsection (3) must be filed not more than 30 days from the  
15 date of publication of the notice in the Florida  
16 Administrative Weekly. The published notice shall describe and  
17 identify the proposed dealership sought to be licensed, and  
18 the department shall cause a copy of the notice to be mailed  
19 to those dealers identified in the licensee's notice under  
20 paragraph (c).

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

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

28 ~~2.(b)~~ There is no dealer within 25 miles of the  
29 proposed location or the proposed location is further from  
30 each existing dealer of the same line-make than the prior  
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1 location is from each dealer of the same line-make within 25  
2 miles of the new location;~~i~~7

3 ~~3.(c)~~ The opening or reopening is within 6 miles of  
4 the prior location and, if any existing motor vehicle dealer  
5 of the same line-make is located within 15 miles of the former  
6 location, the proposed location is no closer to any existing  
7 dealer of the same line-make within 15 miles of the proposed  
8 location;7 or

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

14 (b) Any other such opening or reopening shall  
15 constitute an additional motor vehicle dealer within the  
16 meaning of this section.

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

22 (7) Measurements of the distance between proposed or  
23 existing dealer locations required by this section shall be  
24 taken from the geometric centroid of the property that  
25 encompasses all of the existing or proposed motor vehicle  
26 dealer operations.

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

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

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3                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
4                   COMMITTEE SUBSTITUTE FOR  
5                   Senate Bill 2682

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6 This CS specifies applicants for new franchised dealer  
7 licenses who have held an existing license continuously for  
8 (vs. within) the past two years and are in good standing with  
9 the Department of Highway Safety and Motor Vehicles (DHSMV)  
10 are exempt from the prelicensing training requirement.

11 Also, the CS provides the DHSMV is not obligated to check the  
12 accuracy of the measurements in the applications, and any  
13 dispute about distance measurements in an application shall be  
14 resolved by an administrative hearing in accordance with ss.  
15 120.569 and 120.57, F.S.

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