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CHAMBER ACTION

<u>Senate</u>	.	<u>House</u>
Comm: 1/RCS	.	
3/25/2008	.	
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1 The Committee on Transportation (Dockery) recommended the  
 2 following **amendment**:

3  
 4 **Senate Amendment (with title amendment)**

5 Delete everything after the enacting clause  
 6 and insert:

7  
 8 Section 1. Paragraph (c) of subsection (1) and paragraph  
 9 (b) of subsection (9) of section 320.27, Florida Statutes, are  
 10 amended, and subsection (15) is added to that section, to read:

11 320.27 Motor vehicle dealers.--

12 (1) DEFINITIONS.--The following words, terms, and phrases  
 13 when used in this section have the meanings respectively ascribed  
 14 to them in this subsection, except where the context clearly  
 15 indicates a different meaning:

16 (c) "Motor vehicle dealer" means any person engaged in the  
 17 business of buying, selling, or dealing in motor vehicles or

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18 offering or displaying motor vehicles for sale at wholesale or  
19 retail, or who may service and repair motor vehicles pursuant to  
20 an agreement as defined in s. 320.60(1). Any person who buys,  
21 sells, or deals in three or more motor vehicles in any 12-month  
22 period or who offers or displays for sale three or more motor  
23 vehicles in any 12-month period shall be prima facie presumed to  
24 be engaged in such business. The terms "selling" and "sale"  
25 include lease-purchase transactions. A motor vehicle dealer may,  
26 at retail or wholesale, sell a recreational vehicle as described  
27 in s. 320.01(1)(b)1.-6. and 8., acquired in exchange for the sale  
28 of a motor vehicle, provided such acquisition is incidental to  
29 the principal business of being a motor vehicle dealer. However,  
30 a motor vehicle dealer may not buy a recreational vehicle for the  
31 purpose of resale unless licensed as a recreational vehicle  
32 dealer pursuant to s. 320.771. A motor vehicle dealer may apply  
33 for a certificate of title to a motor vehicle required to be  
34 registered under s. 320.08(2)(b), (c), and (d), 320.08(3)(a),  
35 (b), and (c), and 320.08(4)(a)-(n), using a manufacturer's  
36 statement of origin as permitted by s. 319.23(1), only if such  
37 dealer is authorized by a franchised agreement as defined in s.  
38 320.60(1), to buy, sell, or deal in such vehicle and is  
39 authorized by such agreement to perform delivery and preparation  
40 obligations and warranty defect adjustments on the motor vehicle;  
41 ~~provided this limitation shall not apply to recreational~~  
42 ~~vehicles, van conversions, or any other motor vehicle~~  
43 ~~manufactured on a truck chassis. The transfer of a motor vehicle~~  
44 ~~by a dealer not meeting these qualifications shall be titled as a~~  
45 ~~used vehicle.~~ The classifications of motor vehicle dealers are  
46 defined as follows:

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47           1. "Franchised motor vehicle dealer" means any person who  
48 engages in the business of repairing, servicing, buying, selling,  
49 or dealing in motor vehicles pursuant to an agreement as defined  
50 in s. 320.60(1).

51           2. "Independent motor vehicle dealer" means any person  
52 other than a franchised or wholesale motor vehicle dealer who  
53 engages in the business of buying, selling, or dealing in motor  
54 vehicles, and who may service and repair motor vehicles.

55           3. "Wholesale motor vehicle dealer" means any person who  
56 engages exclusively in the business of buying, selling, or  
57 dealing in motor vehicles at wholesale or with motor vehicle  
58 auctions. Such person shall be licensed to do business in this  
59 state, shall not sell or auction a vehicle to any person who is  
60 not a licensed dealer, and shall not have the privilege of the  
61 use of dealer license plates. Any person who buys, sells, or  
62 deals in motor vehicles at wholesale or with motor vehicle  
63 auctions on behalf of a licensed motor vehicle dealer and as a  
64 bona fide employee of such licensed motor vehicle dealer is not  
65 required to be licensed as a wholesale motor vehicle dealer. In  
66 such cases it shall be prima facie presumed that a bona fide  
67 employer-employee relationship exists. A wholesale motor vehicle  
68 dealer shall be exempt from the display provisions of this  
69 section but shall maintain an office wherein records are kept in  
70 order that those records may be inspected.

71           4. "Motor vehicle auction" means any person offering motor  
72 vehicles or recreational vehicles for sale to the highest bidder  
73 where buyers are licensed motor vehicle dealers. Such person  
74 shall not sell a vehicle to anyone other than a licensed motor  
75 vehicle dealer.

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76           5. "Salvage motor vehicle dealer" means any person who  
77 engages in the business of acquiring salvaged or wrecked motor  
78 vehicles for the purpose of reselling them and their parts.  
79

80 The term "motor vehicle dealer" does not include persons not  
81 engaged in the purchase or sale of motor vehicles as a business  
82 who are disposing of vehicles acquired for their own use or for  
83 use in their business or acquired by foreclosure or by operation  
84 of law, provided such vehicles are acquired and sold in good  
85 faith and not for the purpose of avoiding the provisions of this  
86 law; persons engaged in the business of manufacturing, selling,  
87 or offering or displaying for sale at wholesale or retail no more  
88 than 25 trailers in a 12-month period; public officers while  
89 performing their official duties; receivers; trustees,  
90 administrators, executors, guardians, or other persons appointed  
91 by, or acting under the judgment or order of, any court; banks,  
92 finance companies, or other loan agencies that acquire motor  
93 vehicles as an incident to their regular business; motor vehicle  
94 brokers; and motor vehicle rental and leasing companies that sell  
95 motor vehicles to motor vehicle dealers licensed under this  
96 section. Vehicles owned under circumstances described in this  
97 paragraph may be disposed of at retail, wholesale, or auction,  
98 unless otherwise restricted. A manufacturer of fire trucks,  
99 ambulances, or school buses may sell such vehicles directly to  
100 governmental agencies or to persons who contract to perform or  
101 provide firefighting, ambulance, or school transportation  
102 services exclusively to governmental agencies without processing  
103 such sales through dealers if such fire trucks, ambulances,  
104 school buses, or similar vehicles are not presently available  
105 through motor vehicle dealers licensed by the department.



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106 (9) DENIAL, SUSPENSION, OR REVOCATION.--

107 (b) The department may deny, suspend, or revoke any license  
108 issued hereunder or under the provisions of s. 320.77 or s.  
109 320.771 upon proof that a licensee has committed, with sufficient  
110 frequency so as to establish a pattern of wrongdoing on the part  
111 of a licensee, violations of one or more of the following  
112 activities:

113 1. Representation that a demonstrator is a new motor  
114 vehicle, or the attempt to sell or the sale of a demonstrator as  
115 a new motor vehicle without written notice to the purchaser that  
116 the vehicle is a demonstrator. For the purposes of this section,  
117 a "demonstrator," a "new motor vehicle," and a "used motor  
118 vehicle" shall be defined as under s. 320.60.

119 2. Unjustifiable refusal to comply with a licensee's  
120 responsibility under the terms of the new motor vehicle warranty  
121 issued by its respective manufacturer, distributor, or importer.  
122 However, if such refusal is at the direction of the manufacturer,  
123 distributor, or importer, such refusal shall not be a ground  
124 under this section.

125 3. Misrepresentation or false, deceptive, or misleading  
126 statements with regard to the sale or financing of motor vehicles  
127 which any motor vehicle dealer has, or causes to have,  
128 advertised, printed, displayed, published, distributed,  
129 broadcast, televised, or made in any manner with regard to the  
130 sale or financing of motor vehicles.

131 4. Failure by any motor vehicle dealer to provide a  
132 customer or purchaser with an odometer disclosure statement and a  
133 copy of any bona fide written, executed sales contract or  
134 agreement of purchase connected with the purchase of the motor  
135 vehicle purchased by the customer or purchaser.



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136           5. Failure of any motor vehicle dealer to comply with the  
137 terms of any bona fide written, executed agreement, pursuant to  
138 the sale of a motor vehicle.

139           6. Failure to apply for transfer of a title as prescribed  
140 in s. 319.23(6).

141           7. Use of the dealer license identification number by any  
142 person other than the licensed dealer or his or her designee.

143           8. Failure to continually meet the requirements of the  
144 licensure law.

145           9. Representation to a customer or any advertisement to the  
146 public representing or suggesting that a motor vehicle is a new  
147 motor vehicle if such vehicle lawfully cannot be titled in the  
148 name of the customer or other member of the public by the seller  
149 using a manufacturer's statement of origin as permitted in s.  
150 319.23(1).

151           10. Requirement by any motor vehicle dealer that a customer  
152 or purchaser accept equipment on his or her motor vehicle which  
153 was not ordered by the customer or purchaser.

154           11. Requirement by any motor vehicle dealer that any  
155 customer or purchaser finance a motor vehicle with a specific  
156 financial institution or company.

157           12. Requirement by any motor vehicle dealer that the  
158 purchaser of a motor vehicle contract with the dealer for  
159 physical damage insurance.

160           13. Perpetration of a fraud upon any person as a result of  
161 dealing in motor vehicles, including, without limitation, the  
162 misrepresentation to any person by the licensee of the licensee's  
163 relationship to any manufacturer, importer, or distributor.

164           14. Violation of any of the provisions of s. 319.35 by any  
165 motor vehicle dealer.

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166           15. Sale by a motor vehicle dealer of a vehicle offered in  
167 trade by a customer prior to consummation of the sale, exchange,  
168 or transfer of a newly acquired vehicle to the customer, unless  
169 the customer provides written authorization for the sale of the  
170 trade-in vehicle prior to delivery of the newly acquired vehicle.

171           16. Willful failure to comply with any administrative rule  
172 adopted by the department or the provisions of s. 320.131(8).

173           17. Violation of chapter 319, this chapter, or ss. 559.901-  
174 559.9221, which has to do with dealing in or repairing motor  
175 vehicles or mobile homes. Additionally, in the case of used motor  
176 vehicles, the willful violation of the federal law and rule in 15  
177 U.S.C. s. 2304, 16 C.F.R. part 455, pertaining to the consumer  
178 sales window form.

179           18. Failure to maintain evidence of notification to the  
180 owner or coowner of a vehicle regarding registration or titling  
181 fees owed as required in s. 320.02(17).

182           19. Failure to register a mobile home salesperson with the  
183 department as required by this section.

184           20. Any violation of s. 320.6425 by any motor vehicle  
185 dealer, including the operation of an unlawful additional motor  
186 vehicle dealership location or unlawful supply of motor vehicles.

187           (15) PRIVATE ENFORCEMENT.--A franchised motor vehicle  
188 dealer of the same line-make has a cause of action under this  
189 section against a motor vehicle dealer who engages, with  
190 sufficient frequency so as to establish a pattern of wrongdoing,  
191 in the business of an unauthorized and unlawful additional motor  
192 vehicle dealership location as described in s. 320.6425. The  
193 cause of action for injunctive relief and actual damages,  
194 including lost profit, court costs, and reasonable attorney's  
195 fees, may be brought in any court of competent jurisdiction.

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196 Section 2. Section 320.6425, Florida Statutes, is created  
197 to read:

198 320.6425 Unauthorized and additional motor vehicle  
199 dealerships.--

200 (1) An unlawful and additional motor vehicle dealership  
201 location, as contemplated by s. 320.642, exists if motor vehicles  
202 are sold from a location in this state for retail purposes if the  
203 motor vehicle dealer transacting such sales:

204 (a) Is not located in this state;

205 (b) Is not a licensed motor vehicle dealer authorized by  
206 a franchise agreement to sell the specific line-make of vehicle;  
207 or

208 (c) Is a licensed motor vehicle dealer authorized by a  
209 franchise agreement to sell the specific line-make of vehicle,  
210 but such sales are transacted at a location other than that  
211 permitted by a license issued to the motor vehicle dealer by the  
212 Department of Highway Safety and Motor Vehicles.

213 (2) A sale for retail purposes is the first sale of the  
214 motor vehicle to a customer for personal use or the first sale of  
215 the motor vehicle for commercial use, such as leasing, if a motor  
216 vehicle sold for commercial use is not resold within 90 days.

217 This section applies regardless of whether the title issued  
218 pursuant to such sale, in this state or another state, is  
219 designated as new or used. However, this section does not  
220 prohibit a motor vehicle dealer from reselling any motor vehicle  
221 it receives in trade for the sale of another motor vehicle.

222 (3) Any motor vehicle dealer, whether located inside or  
223 outside this state, which supplies any motor vehicle to the  
224 unlawful and additional motor vehicle dealership location  
225 established pursuant to subsection (1), unlawfully:





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226 (a) Establishes an additional motor vehicle dealership  
227 location in violation of s. 320.642; and

228 (b) Conducts business within this state as a distributor  
229 and licensee, as contemplated by s. 320.60, in violation of ss.  
230 320.61 and 320.642.

231 (4) Any same line-make motor vehicle dealer suffering  
232 damages as a result of the unlawful and additional motor vehicle  
233 dealership location may seek damages against any motor vehicle  
234 dealer deemed to be a distributor or licensee pursuant to  
235 subsection (3) and may seek all remedies, procedures, and rights  
236 of recovery available under ss. 320.695 and 320.697.

237 (5) This section does not prohibit the transfer of a motor  
238 vehicle, by sale or trade, from one franchised dealer to another  
239 dealer authorized by franchise agreement to sell the same line-  
240 make of motor vehicles.

241 Section 3. This act shall take effect July 1, 2008.

242  
243 ===== T I T L E A M E N D M E N T =====

244 And the title is amended as follows:

245 Delete everything before the enacting clause  
246 and insert:

247 A bill to be entitled  
248 An act relating to motor vehicle dealers; amending s.  
249 320.27, F.S.; revising the definition of "motor vehicle  
250 dealer" to authorize such dealers to apply for  
251 certificates of title to certain vehicles using a  
252 manufacturer's statement of origin; eliminating  
253 exceptions; deleting a provision requiring that certain  
254 vehicles be titled as used vehicles; adding provisions  
255 pursuant to which the Department of Highway Safety and



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256 Motor Vehicle may deny, suspend, or revoke certain  
257 licenses; providing that a franchised motor vehicle dealer  
258 of the same line-make has a cause of action against a  
259 motor vehicle dealer who engages, with sufficient  
260 frequency so as to establish a pattern of wrongdoing, in  
261 the business of an unauthorized and unlawful additional  
262 motor vehicle dealership location as described by state  
263 law; providing for venue for such causes of action;  
264 creating s. 320.6425, F.S.; providing that certain  
265 activities or the fulfillment of certain criteria  
266 constitute the operation of an unlawful and additional  
267 motor vehicle dealership; defining the term "sale for  
268 retail purposes"; providing that certain actions by motor  
269 vehicle dealers constitute violations of state law;  
270 authorizing any same line-make motor vehicle dealer who  
271 suffers damages as a result of an unlawful and additional  
272 motor vehicle dealership location to seek damages;  
273 providing for the application and nonapplication of  
274 certain provisions of state law; providing an effective  
275 date.