The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Transportation Committee

BILL:	CS/SB 2150
INTRODUCER:	Transportation Committee and Senator Bennett
SUBJECT:	Motor Vehicle Dealerships
DATE:	March 25, 2008 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Meyer	TR	**Fav/CS**
2.			CM	
3.			JU	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This committee substitute (CS) modifies the definition of "motor vehicle dealer" to clarify non-franchised dealers cannot apply for a certificate of title using a Manufacturer's Statement of Origin (MSO), and to remove recreational vehicles, van conversions or vehicles built on truck chassis from an exception to the MSO requirements. The CS also removes the requirement that the transfer of a motor vehicle by a dealer not meeting certain requirements must be titled as a used vehicle.

CS/SB 2150 creates new prohibitions regarding additional dealer locations, defining certain new locations to be unlawful, and providing competing dealers with a private right of action against dealers with such unlawful locations and against the distributor providing vehicles to the location. The Department of Highway Safety and Motor Vehicles (department) is also granted enforcement rights regarding the new 'unlawful location' provisions.

This CS substantially amends s. 320.27 and creates s. 320.6425 of the Florida Statutes.

II. Present Situation:

Motor Vehicle Dealers
Chapter 320, F.S., provides for the licensing of motor vehicle dealers and motor vehicle manufacturers, distributors, and importers, and also regulates numerous components of the franchise contracts they enter into to do business in the state of Florida.

The definition of "motor vehicle dealer" provided in s. 320.27(1)(c), F.S., contains several substantive provisions of law, rather than merely providing a definition. Among these substantive laws are permissions and prohibitions regarding certificates of title, and whether certain vehicles may be titled as "new" or "used." With regard to typical automobiles, dealers are permitted to apply for a title using the "manufacturer's statement of origin," only if the dealer is:

- Authorized by franchise agreement to buy, sell, or trade such vehicle, and
- Authorized by agreement to perform delivery, preparation, and warranty defect "adjustments" on the vehicle.

This limitation "shall not apply to recreational vehicles, van conversions, or any other motor vehicle manufactured on a truck chassis."

Notwithstanding the requirements above, that only franchised dealers may use a MSO to title a vehicle, the statute subsequently states a transfer of a vehicle not meeting the qualifications listed above must be titled as "used." This statement appears to suggest a dealer without a franchise agreement can use an MSO to title a vehicle, if the vehicle is registered as used.

Motor Vehicle Dealership Locations
Section 320.642, F.S., provides a dealer who seeks to establish another motor vehicle dealership or relocate a dealership to a location within a community where the same line-make vehicle is presently represented must give written notice to the department. The department shall review the notice and may object to the addition or relocation if certain criteria exist. Department denials remain in effect for 12 months.[1]

The department may deny the request if another dealer timely files a protest or if the applicant fails to adequately establish that current locations do not "adequately represent" the dealer in the community or territory. Section 320.642(2)(b), F.S., provides eleven specific criteria the dealer may use to meet the burden of proof. Other dealers have standing to protest, pursuant to s. 320.642(3), F.S. The section provides demographic and geographic requirements dealers must document in order to prove standing. Openings and re-openings of the same dealer are not considered "relocations," unless certain geographic limitations are reached.[2] "Service only" locations must be noticed, but are subject to limited protests.

The department promulgated Rule 15C-7.005, F.A.C., to further address dealer locations. The rule, "Unauthorized Additional Motor Vehicle Dealerships-Unauthorized Supplemental

[1] s. 320.642(4), F.S.

[2] s. 320.642(5), F.S.

Dealership Locations," provides additional dealerships are deemed to be created when vehicles are "regularly and repeatedly" sold at specific locations, and are unlawful for failure to register under s. 320.642, F.S., if the dealer:

- Is not located in Florida;
- Is not a licensed dealer with a franchise to sell the relevant line-make; or
- Is a licensed dealer with a franchise to sell the relevant line-make, but the sales occur at a location other than that permitted by the license, except that sales made "occasionally and temporarily (not to exceed 7 days)" are permitted, if the sales are also within the dealer's licensed "area of sales responsibility."

The rule authorizes the department to investigate complaints that a dealer is violating the provisions contained therein, and provides notice and hearing requirements. The rule explicitly states it does not create a private right of action for any individual; it reserves all remedies to the department and adversely-affected competing dealers.

On April 20th, 2007, an Administrative Law Judge (ALJ) ruled, in promulgating Rule 15C-7.005, F.A.C., the department exceeded its rulemaking authority in violation of s. 120.52(8)(b) and (c), F.S. The ALJ also deemed the rule to be an invalid exercise of delegated legislative authority.

Denial, Suspension, or Revocation; Enforcement

Section 320.27(9)(b), F.S., permits the department to deny, suspend, or revoke a dealer's license for a series of violations. The department must prove the dealer has committed such violations with sufficient frequency to establish a pattern of wrongdoing. The prohibited activities currently include:

- Misrepresenting "demo" vehicles as new;
- Unjustifiable refusal to perform certain warranty work;
- Misleading or false statements regarding sales or financing information;
- Failure to provide customers with odometer disclosure statements, sales, contracts, or other documents;
- Failure to comply with the terms of written agreements;
- Failure to apply for title appropriately;
- Use of a dealer's identification number by another;
- Failure to "continually meet the requirements of the licensure law;"
- Representation of a vehicle as new, to a customer who cannot lawfully take title to the vehicle based on an MSO;
- Forcing unwanted equipment on a customer's purchased vehicle;
- Requiring customers to use specific financing companies;
- Requiring customers to contract with the dealer for "physical damage insurance;"
- Misrepresentation of a franchise's relationship with a manufacturer, importer, or distributor;
- Violations of s. 319.35, F.S. regarding odometer tampering;
- Reselling a customer's "trade-in" vehicle to a second customer, before the first exchange is lawfully completed;
- Willful failure to comply with administrative rules of the department;

- Violations of ch. 319, F.S., (Title Certificates), ch. 320, F.S., (Motor Vehicle Licenses), certain provisions regarding motor vehicles and mobile homes in ch. 559, F.S.,[3] or violations of certain federal customer-disclosure requirements;
- Failure to maintain evidence of fees owed to the department by new owners; and
- Failure to register a mobile home salesman.

III. Effect of Proposed Changes:

This CS modifies the definition of "motor vehicle dealer" in s. 320.27(1)(c), F.S., to clarify motor vehicles required to be registered under s. 320.08(3)(a), (b), and (c), F.S., and s. 320.08(4)(a)-(n), F.S., relating to trucks, heavy trucks, and truck tractors may be registered using a MSO only by a authorized franchised dealer. In addition, the CS eliminates the exceptions by removing "recreational vehicles, van conversions, or other motor vehicle[s] manufactured on a truck chassis." The CS modifies the definition of "motor vehicle dealer" by deleting the statement a vehicle transferred by a dealer not meeting the stated qualifications may be titled as used.

The CS adds a 20th violation to the department's oversight obligation in s. 320.27(9)(b), F.S: "Any violation of s. 320.6425, F.S., by any motor vehicle dealer, including the operation of an unlawful additional motor vehicle dealership location or unlawful supply of motor vehicles."[4]

The CS also grants motor vehicle dealers a private right of action against other dealers engaged in violations of the newly created s. 320.6425, F.S. The burden of proof is the same as the department's burden, to prove the dealer has committed a violation, "with sufficient frequency so as to establish a pattern of wrongdoing." The cause of action may be for injunctive relief, actual damages including lost profit, court costs, and reasonable attorney's fees, and may be brought in any court of competent jurisdiction.

The CS creates s. 320.6425, F.S., which contains substantially similar provisions to those previously found in the department's recently invalidated "Unauthorized Additional Motor Vehicle Dealerships-Unauthorized Supplemental Dealership Locations" rule. The CS provides the same 3-point test described above, defines a "retail sale" and clarifies this new statute does not prohibit the common practice of reselling motor vehicles taken in trade.

This CS also determines any dealer providing vehicles for an unauthorized location is acting as an "unlicensed distributor," and authorizes other dealers of the same line-make to bring a private action for injunctive relief and damages against the "unlicensed distributor." The CS asserts nothing in the new statute prohibits one franchised dealer from selling vehicles to another dealer franchised to sell the same line-make vehicle.

SB 2150 takes effect July 1, 2008.

[3] ss. 559.901-559.9221, F.S.

[4] The referenced statute is the "unlawful additional motor vehicle dealership" created by the CS.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Transportation on March 25, 2008:

- Modifies the definition of "motor vehicle dealer" in s. 320.27(1)(c), F.S., to clarify motor vehicles required to be registered under s. 320.08(3)(a), (b), and (c), F.S., and s. 320.08(4)(a)-(n), F.S., relating to trucks, heavy trucks, and truck tractors may be registered using a MSO only by a authorized franchised dealer.
- Eliminates recreational vehicles and van conversions from an exception to the MSO requirements.
- Clarifies motor vehicle dealers may seek damages against "any motor vehicle dealer deemed to be a distributor or licensee by the provisions of subsection (3)."

B. Amendments:

None.