

By Senator Bennett

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1 A bill to be entitled

2 An act relating to motor vehicle dealers; amending s.
3 320.27, F.S.; redefining the term "motor vehicle dealer"
4 to remove provisions excluding a dealer engaging in
5 transactions of certain vehicles; providing conforming
6 penalty provisions; creating s. 320.6425, F.S.;
7 prohibiting unlawful and additional motor vehicle
8 dealership locations in violation of laws restricting the
9 establishment of dealerships representing the same line-
10 make; providing guidelines for determining what
11 constitutes such locations; providing penalties for
12 establishing an unlawful additional motor vehicle
13 dealership or supplying a motor vehicle to such a
14 dealership; exempting certain dealer-to-dealer transfers;
15 providing an effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

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19 Section 1. Paragraph (c) of subsection (1) and subsection
20 (9) of section 320.27, Florida Statutes, are amended, and
21 subsection (15) is added to that section, to read:

22 320.27 Motor vehicle dealers.--

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

27 (c) "Motor vehicle dealer" means any person engaged in the
28 business of buying, selling, or dealing in motor vehicles or
29 offering or displaying motor vehicles for sale at wholesale or

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

57 1. "Franchised motor vehicle dealer" means any person who
58 engages in the business of repairing, servicing, buying, selling,

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59 or dealing in motor vehicles pursuant to an agreement as defined
60 in s. 320.60(1).

61 2. "Independent motor vehicle dealer" means any person
62 other than a franchised or wholesale motor vehicle dealer who
63 engages in the business of buying, selling, or dealing in motor
64 vehicles, and who may service and repair motor vehicles.

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

81 4. "Motor vehicle auction" means any person offering motor
82 vehicles or recreational vehicles for sale to the highest bidder
83 where buyers are licensed motor vehicle dealers. Such person
84 shall not sell a vehicle to anyone other than a licensed motor
85 vehicle dealer.

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

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114 school buses, or similar vehicles are not presently available
115 through motor vehicle dealers licensed by the department.

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

117 (a) The department may deny, suspend, or revoke any license
118 issued hereunder or under the provisions of s. 320.77 or s.
119 320.771, upon proof that a licensee has committed any of the
120 following activities:

121 1. Commission of fraud or willful misrepresentation in
122 application for or in obtaining a license.

123 2. Conviction of a felony.

124 3. Failure to honor a bank draft or check given to a motor
125 vehicle dealer for the purchase of a motor vehicle by another
126 motor vehicle dealer within 10 days after notification that the
127 bank draft or check has been dishonored. If the transaction is
128 disputed, the maker of the bank draft or check shall post a bond
129 in accordance with the provisions of s. 559.917, and no
130 proceeding for revocation or suspension shall be commenced until
131 the dispute is resolved.

132 (b) The department may deny, suspend, or revoke any license
133 issued hereunder or under the provisions of s. 320.77 or s.
134 320.771 upon proof that a licensee has committed, with sufficient
135 frequency so as to establish a pattern of wrongdoing on the part
136 of a licensee, violations of one or more of the following
137 activities:

138 1. Representation that a demonstrator is a new motor
139 vehicle, or the attempt to sell or the sale of a demonstrator as
140 a new motor vehicle without written notice to the purchaser that
141 the vehicle is a demonstrator. For the purposes of this section,

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142 a "demonstrator," a "new motor vehicle," and a "used motor
143 vehicle" shall be defined as under s. 320.60.

144 2. Unjustifiable refusal to comply with a licensee's
145 responsibility under the terms of the new motor vehicle warranty
146 issued by its respective manufacturer, distributor, or importer.
147 However, if such refusal is at the direction of the manufacturer,
148 distributor, or importer, such refusal shall not be a ground
149 under this section.

150 3. Misrepresentation or false, deceptive, or misleading
151 statements with regard to the sale or financing of motor vehicles
152 which any motor vehicle dealer has, or causes to have,
153 advertised, printed, displayed, published, distributed,
154 broadcast, televised, or made in any manner with regard to the
155 sale or financing of motor vehicles.

156 4. Failure by any motor vehicle dealer to provide a
157 customer or purchaser with an odometer disclosure statement and a
158 copy of any bona fide written, executed sales contract or
159 agreement of purchase connected with the purchase of the motor
160 vehicle purchased by the customer or purchaser.

161 5. Failure of any motor vehicle dealer to comply with the
162 terms of any bona fide written, executed agreement, pursuant to
163 the sale of a motor vehicle.

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

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

168 8. Failure to continually meet the requirements of the
169 licensure law.

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170 9. Representation to a customer or any advertisement to the
171 public representing or suggesting that a motor vehicle is a new
172 motor vehicle if such vehicle lawfully cannot be titled in the
173 name of the customer or other member of the public by the seller
174 using a manufacturer's statement of origin as permitted in s.
175 319.23(1).

176 10. Requirement by any motor vehicle dealer that a customer
177 or purchaser accept equipment on his or her motor vehicle which
178 was not ordered by the customer or purchaser.

179 11. Requirement by any motor vehicle dealer that any
180 customer or purchaser finance a motor vehicle with a specific
181 financial institution or company.

182 12. Requirement by any motor vehicle dealer that the
183 purchaser of a motor vehicle contract with the dealer for
184 physical damage insurance.

185 13. Perpetration of a fraud upon any person as a result of
186 dealing in motor vehicles, including, without limitation, the
187 misrepresentation to any person by the licensee of the licensee's
188 relationship to any manufacturer, importer, or distributor.

189 14. Violation of any of the provisions of s. 319.35 by any
190 motor vehicle dealer.

191 15. Sale by a motor vehicle dealer of a vehicle offered in
192 trade by a customer prior to consummation of the sale, exchange,
193 or transfer of a newly acquired vehicle to the customer, unless
194 the customer provides written authorization for the sale of the
195 trade-in vehicle prior to delivery of the newly acquired vehicle.

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

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198 17. Violation of chapter 319, this chapter, or ss. 559.901-
199 559.9221, which has to do with dealing in or repairing motor
200 vehicles or mobile homes. Additionally, in the case of used motor
201 vehicles, the willful violation of the federal law and rule in 15
202 U.S.C. s. 2304, 16 C.F.R. part 455, pertaining to the consumer
203 sales window form.

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

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

209 20. Violation of s. 320.6425 by any motor vehicle dealer,
210 including the operation of an unlawful additional motor vehicle
211 dealership location or unlawful supply of motor vehicles.

212 (c) When a motor vehicle dealer is convicted of a crime
213 which results in his or her being prohibited from continuing in
214 that capacity, the dealer may not continue in any capacity within
215 the industry. The offender shall have no financial interest,
216 management, sales, or other role in the operation of a
217 dealership. Further, the offender may not derive income from the
218 dealership beyond reasonable compensation for the sale of his or
219 her ownership interest in the business.

220 (15) PRIVATE ENFORCEMENT.--A franchised motor vehicle
221 dealer of the same line-make has a cause of action under this
222 section against a motor vehicle dealer who engages, with
223 sufficient frequency to establish a pattern of wrongdoing, in the
224 business of an unauthorized and unlawful additional motor vehicle
225 dealership location as described in s. 320.6425. The cause of
226 action for injunctive relief and actual damages, including lost

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227 profit, court costs, and reasonable attorney's fees, may be
228 brought in any court of competent jurisdiction.

229 Section 2. Section 320.6425, Florida Statutes, is created
230 to read:

231 320.6425 Unlawful additional motor vehicle dealerships.--

232 (1) An unlawful and additional motor vehicle dealership
233 location, as contemplated by s. 320.642, is established when
234 motor vehicles are sold from a location in this state for retail
235 purposes if the motor vehicle dealer transacting the sales:

236 (a) Is not located in this state;

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

239 (c) Is a licensed motor vehicle dealer authorized by a
240 franchise agreement to sell the specific line-make of vehicle,
241 but such sales are transacted at a location other than that
242 permitted by a license issued to the motor vehicle dealer by the
243 department.

244 (2) A sale for retail purposes is the first sale of the
245 motor vehicle to a customer for personal use or the first sale of
246 the motor vehicle for commercial use, such as a lease, if the
247 motor vehicle sold for commercial use is not resold within 90
248 days. This section applies regardless of whether the titles
249 issued, in this or another state, pursuant to the sales are
250 designated as new or used. However, this section does not
251 prohibit a motor vehicle dealer from reselling any motor vehicle
252 it receives in trade for the sale of another motor vehicle.

253 (3) Any motor vehicle dealer, whether located in this state
254 or not, which supplies a motor vehicle to an unlawful and
255 additional motor vehicle dealership location is deemed to have

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256 unlawfully established an additional motor vehicle dealership
257 location in violation of s. 320.642 and to have conducted
258 business within this state as a distributor and licensee, as
259 defined in s. 320.60, in violation of ss. 320.61 and 320.642.

260 (4) Any same line-make motor vehicle dealer who suffers
261 damages as a result of the unlawful and additional motor vehicle
262 dealership location may seek damages against the distributor or
263 licensee and may seek all remedies available under ss. 320.695
264 and 320.697.

265 (5) This section does not prohibit the transfer of a motor
266 vehicle by sale or trade from one franchised dealer to another
267 dealer authorized by franchise agreement to sell the same line-
268 make of motor vehicles.

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