

By the Committee on Transportation; and 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.; revising the definition of "motor vehicle
4 dealer" to authorize such dealers to apply for
5 certificates of title to certain vehicles using a
6 manufacturer's statement of origin; eliminating
7 exceptions; deleting a provision requiring that certain
8 vehicles be titled as used vehicles; adding provisions
9 pursuant to which the Department of Highway Safety and
10 Motor Vehicle may deny, suspend, or revoke certain
11 licenses; providing that a franchised motor vehicle dealer
12 of the same line-make has a cause of action against a
13 motor vehicle dealer who engages, with sufficient
14 frequency so as to establish a pattern of wrongdoing, in
15 the business of an unauthorized and unlawful additional
16 motor vehicle dealership location as described by state
17 law; providing for venue for such causes of action;
18 creating s. 320.6425, F.S.; providing that certain
19 activities or the fulfillment of certain criteria
20 constitute the operation of an unlawful and additional
21 motor vehicle dealership; defining the term "sale for
22 retail purposes"; providing that certain actions by motor
23 vehicle dealers constitute violations of state law;
24 authorizing any same line-make motor vehicle dealer who
25 suffers damages as a result of an unlawful and additional
26 motor vehicle dealership location to seek damages;
27 providing for the application and nonapplication of
28 certain provisions of state law; providing an effective
29 date.

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

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

320.27 Motor vehicle dealers.--

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

(c) "Motor vehicle dealer" means any person engaged in the business of buying, selling, or dealing in motor vehicles or offering or displaying motor vehicles for sale at wholesale or retail, or who may service and repair motor vehicles pursuant to an agreement as defined in s. 320.60(1). Any person who buys, sells, or deals in three or more motor vehicles in any 12-month period or who offers or displays for sale three or more motor vehicles in any 12-month period shall be prima facie presumed to be engaged in such business. The terms "selling" and "sale" include lease-purchase transactions. A motor vehicle dealer may, at retail or wholesale, sell a recreational vehicle as described in s. 320.01(1)(b)1.-6. and 8., acquired in exchange for the sale of a motor vehicle, provided such acquisition is incidental to the principal business of being a motor vehicle dealer. However, a motor vehicle dealer may not buy a recreational vehicle for the purpose of resale unless licensed as a recreational vehicle dealer pursuant to s. 320.771. A motor vehicle dealer may apply for a certificate of title to a motor vehicle required to be

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59 registered under s. 320.08(2)(b), (c), and (d), 320.08(3)(a),
60 (b), and (c), and 320.08(4)(a)-(n), using a manufacturer's
61 statement of origin as permitted by s. 319.23(1), only if such
62 dealer is authorized by a franchised agreement as defined in s.
63 320.60(1), to buy, sell, or deal in such vehicle and is
64 authorized by such agreement to perform delivery and preparation
65 obligations and warranty defect adjustments on the motor vehicle;
66 ~~provided this limitation shall not apply to recreational~~
67 ~~vehicles, van conversions, or any other motor vehicle~~
68 ~~manufactured on a truck chassis. The transfer of a motor vehicle~~
69 ~~by a dealer not meeting these qualifications shall be titled as a~~
70 ~~used vehicle.~~ The classifications of motor vehicle dealers are
71 defined as follows:

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

76 2. "Independent motor vehicle dealer" means any person
77 other than a franchised or wholesale motor vehicle dealer who
78 engages in the business of buying, selling, or dealing in motor
79 vehicles, and who may service and repair motor vehicles.

80 3. "Wholesale motor vehicle dealer" means any person who
81 engages exclusively in the business of buying, selling, or
82 dealing in motor vehicles at wholesale or with motor vehicle
83 auctions. Such person shall be licensed to do business in this
84 state, shall not sell or auction a vehicle to any person who is
85 not a licensed dealer, and shall not have the privilege of the
86 use of dealer license plates. Any person who buys, sells, or
87 deals in motor vehicles at wholesale or with motor vehicle

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88 | auctions on behalf of a licensed motor vehicle dealer and as a
89 | bona fide employee of such licensed motor vehicle dealer is not
90 | required to be licensed as a wholesale motor vehicle dealer. In
91 | such cases it shall be prima facie presumed that a bona fide
92 | employer-employee relationship exists. A wholesale motor vehicle
93 | dealer shall be exempt from the display provisions of this
94 | section but shall maintain an office wherein records are kept in
95 | order that those records may be inspected.

96 | 4. "Motor vehicle auction" means any person offering motor
97 | vehicles or recreational vehicles for sale to the highest bidder
98 | where buyers are licensed motor vehicle dealers. Such person
99 | shall not sell a vehicle to anyone other than a licensed motor
100 | vehicle dealer.

101 | 5. "Salvage motor vehicle dealer" means any person who
102 | engages in the business of acquiring salvaged or wrecked motor
103 | vehicles for the purpose of reselling them and their parts.

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105 | The term "motor vehicle dealer" does not include persons not
106 | engaged in the purchase or sale of motor vehicles as a business
107 | who are disposing of vehicles acquired for their own use or for
108 | use in their business or acquired by foreclosure or by operation
109 | of law, provided such vehicles are acquired and sold in good
110 | faith and not for the purpose of avoiding the provisions of this
111 | law; persons engaged in the business of manufacturing, selling,
112 | or offering or displaying for sale at wholesale or retail no more
113 | than 25 trailers in a 12-month period; public officers while
114 | performing their official duties; receivers; trustees,
115 | administrators, executors, guardians, or other persons appointed
116 | by, or acting under the judgment or order of, any court; banks,

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117 finance companies, or other loan agencies that acquire motor
118 vehicles as an incident to their regular business; motor vehicle
119 brokers; and motor vehicle rental and leasing companies that sell
120 motor vehicles to motor vehicle dealers licensed under this
121 section. Vehicles owned under circumstances described in this
122 paragraph may be disposed of at retail, wholesale, or auction,
123 unless otherwise restricted. A manufacturer of fire trucks,
124 ambulances, or school buses may sell such vehicles directly to
125 governmental agencies or to persons who contract to perform or
126 provide firefighting, ambulance, or school transportation
127 services exclusively to governmental agencies without processing
128 such sales through dealers if such fire trucks, ambulances,
129 school buses, or similar vehicles are not presently available
130 through motor vehicle dealers licensed by the department.

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

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,
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

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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.

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.

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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).

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.

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

212 (15) PRIVATE ENFORCEMENT.--A franchised motor vehicle
213 dealer of the same line-make has a cause of action under this
214 section against a motor vehicle dealer who engages, with
215 sufficient frequency so as to establish a pattern of wrongdoing,
216 in the business of an unauthorized and unlawful additional motor
217 vehicle dealership location as described in s. 320.6425. The
218 cause of action for injunctive relief and actual damages,
219 including lost profit, court costs, and reasonable attorney's
220 fees, may be brought in any court of competent jurisdiction.

221 Section 2. Section 320.6425, Florida Statutes, is created
222 to read:

223 320.6425 Unauthorized and additional motor vehicle
224 dealerships.--

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

229 (a) Is not located in this state;

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

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

238 (2) A sale for retail purposes is the first sale of the
239 motor vehicle to a customer for personal use or the first sale of
240 the motor vehicle for commercial use, such as leasing, if a motor
241 vehicle sold for commercial use is not resold within 90 days.
242 This section applies regardless of whether the title issued
243 pursuant to such sale, in this state or another state, is
244 designated as new or used. However, this section does not
245 prohibit a motor vehicle dealer from reselling any motor vehicle
246 it receives in trade for the sale of another motor vehicle.

247 (3) Any motor vehicle dealer, whether located inside or
248 outside this state, which supplies any motor vehicle to the
249 unlawful and additional motor vehicle dealership location
250 established pursuant to subsection (1), unlawfully:

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

253 (b) Conducts business within this state as a distributor
254 and licensee, as contemplated by s. 320.60, in violation of ss.
255 320.61 and 320.642.

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

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

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