

By the Committees on Commerce; Transportation; and Senator
Bennett

577-06372-08

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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; amending s. 501.975,
29 F.S.; defining the term "advertised price" for purposes of

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30 to motor vehicle sales; amending s. 501.976, F.S.;

31 requiring that the advertised price include all costs,

32 fees, or charges that the customer must pay, with certain

33 exclusions; requiring a conspicuous label containing a

34 disclosure regarding the predelivery service fee;

35 providing exceptions; providing an effective date.

36

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

38

39 Section 1. Paragraph (c) of subsection (1) and paragraph

40 (b) of subsection (9) of section 320.27, Florida Statutes, are

41 amended, and subsection (15) is added to that section, to read:

42 320.27 Motor vehicle dealers.--

43 (1) DEFINITIONS.--The following words, terms, and phrases

44 when used in this section have the meanings respectively ascribed

45 to them in this subsection, except where the context clearly

46 indicates a different meaning:

47 (c) "Motor vehicle dealer" means any person engaged in the

48 business of buying, selling, or dealing in motor vehicles or

49 offering or displaying motor vehicles for sale at wholesale or

50 retail, or who may service and repair motor vehicles pursuant to

51 an agreement as defined in s. 320.60(1). Any person who buys,

52 sells, or deals in three or more motor vehicles in any 12-month

53 period or who offers or displays for sale three or more motor

54 vehicles in any 12-month period shall be prima facie presumed to

55 be engaged in such business. The terms "selling" and "sale"

56 include lease-purchase transactions. A motor vehicle dealer may,

57 at retail or wholesale, sell a recreational vehicle as described

58 in s. 320.01(1)(b)1.-6. and 8., acquired in exchange for the sale

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59 of a motor vehicle, provided such acquisition is incidental to
60 the principal business of being a motor vehicle dealer. However,
61 a motor vehicle dealer may not buy a recreational vehicle for the
62 purpose of resale unless licensed as a recreational vehicle
63 dealer pursuant to s. 320.771. A motor vehicle dealer may apply
64 for a certificate of title to a motor vehicle required to be
65 registered under s. 320.08(2)(b), (c), and (d), s. 320.08(3)(a),
66 (b), and (c), or s. 320.08(4)(a)-(n), using a manufacturer's
67 statement of origin as permitted by s. 319.23(1), only if such
68 dealer is authorized by a franchised agreement as defined in s.
69 320.60(1), to buy, sell, or deal in such vehicle and is
70 authorized by such agreement to perform delivery and preparation
71 obligations and warranty defect adjustments on the motor vehicle;
72 provided this limitation shall not apply to recreational vehicles
73 ~~or, van conversions, or any other motor vehicle manufactured on a~~
74 ~~truck chassis. The transfer of a motor vehicle by a dealer not~~
75 ~~meeting these qualifications shall be titled as a used vehicle.~~
76 The classifications of motor vehicle dealers are defined as
77 follows:

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

82 2. "Independent motor vehicle dealer" means any person
83 other than a franchised or wholesale motor vehicle dealer who
84 engages in the business of buying, selling, or dealing in motor
85 vehicles, and who may service and repair motor vehicles.

86 3. "Wholesale motor vehicle dealer" means any person who
87 engages exclusively in the business of buying, selling, or

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88 | dealing in motor vehicles at wholesale or with motor vehicle
89 | auctions. Such person shall be licensed to do business in this
90 | state, shall not sell or auction a vehicle to any person who is
91 | not a licensed dealer, and shall not have the privilege of the
92 | use of dealer license plates. Any person who buys, sells, or
93 | deals in motor vehicles at wholesale or with motor vehicle
94 | auctions on behalf of a licensed motor vehicle dealer and as a
95 | bona fide employee of such licensed motor vehicle dealer is not
96 | required to be licensed as a wholesale motor vehicle dealer. In
97 | such cases it shall be prima facie presumed that a bona fide
98 | employer-employee relationship exists. A wholesale motor vehicle
99 | dealer shall be exempt from the display provisions of this
100 | section but shall maintain an office wherein records are kept in
101 | order that those records may be inspected.

102 | 4. "Motor vehicle auction" means any person offering motor
103 | vehicles or recreational vehicles for sale to the highest bidder
104 | where buyers are licensed motor vehicle dealers. Such person
105 | shall not sell a vehicle to anyone other than a licensed motor
106 | vehicle dealer.

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

110 |
111 | The term "motor vehicle dealer" does not include persons not
112 | engaged in the purchase or sale of motor vehicles as a business
113 | who are disposing of vehicles acquired for their own use or for
114 | use in their business or acquired by foreclosure or by operation
115 | of law, provided such vehicles are acquired and sold in good
116 | faith and not for the purpose of avoiding the provisions of this

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117 law; persons engaged in the business of manufacturing, selling,
118 or offering or displaying for sale at wholesale or retail no more
119 than 25 trailers in a 12-month period; public officers while
120 performing their official duties; receivers; trustees,
121 administrators, executors, guardians, or other persons appointed
122 by, or acting under the judgment or order of, any court; banks,
123 finance companies, or other loan agencies that acquire motor
124 vehicles as an incident to their regular business; motor vehicle
125 brokers; and motor vehicle rental and leasing companies that sell
126 motor vehicles to motor vehicle dealers licensed under this
127 section. Vehicles owned under circumstances described in this
128 paragraph may be disposed of at retail, wholesale, or auction,
129 unless otherwise restricted. A manufacturer of fire trucks,
130 ambulances, or school buses may sell such vehicles directly to
131 governmental agencies or to persons who contract to perform or
132 provide firefighting, ambulance, or school transportation
133 services exclusively to governmental agencies without processing
134 such sales through dealers if such fire trucks, ambulances,
135 school buses, or similar vehicles are not presently available
136 through motor vehicle dealers licensed by the department.

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

138 (b) The department may deny, suspend, or revoke any license
139 issued hereunder or under the provisions of s. 320.77 or s.
140 320.771 upon proof that a licensee has committed, with sufficient
141 frequency so as to establish a pattern of wrongdoing on the part
142 of a licensee, violations of one or more of the following
143 activities:

144 1. Representation that a demonstrator is a new motor
145 vehicle, or the attempt to sell or the sale of a demonstrator as

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146 a new motor vehicle without written notice to the purchaser that
147 the vehicle is a demonstrator. For the purposes of this section,
148 a "demonstrator," a "new motor vehicle," and a "used motor
149 vehicle" shall be defined as under s. 320.60.

150 2. Unjustifiable refusal to comply with a licensee's
151 responsibility under the terms of the new motor vehicle warranty
152 issued by its respective manufacturer, distributor, or importer.
153 However, if such refusal is at the direction of the manufacturer,
154 distributor, or importer, such refusal shall not be a ground
155 under this section.

156 3. Misrepresentation or false, deceptive, or misleading
157 statements with regard to the sale or financing of motor vehicles
158 which any motor vehicle dealer has, or causes to have,
159 advertised, printed, displayed, published, distributed,
160 broadcast, televised, or made in any manner with regard to the
161 sale or financing of motor vehicles.

162 4. Failure by any motor vehicle dealer to provide a
163 customer or purchaser with an odometer disclosure statement and a
164 copy of any bona fide written, executed sales contract or
165 agreement of purchase connected with the purchase of the motor
166 vehicle purchased by the customer or purchaser.

167 5. Failure of any motor vehicle dealer to comply with the
168 terms of any bona fide written, executed agreement, pursuant to
169 the sale of a motor vehicle.

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

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

174 8. Failure to continually meet the requirements of the

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175 licensure law.

176 9. Representation to a customer or any advertisement to the
177 public representing or suggesting that a motor vehicle is a new
178 motor vehicle if such vehicle lawfully cannot be titled in the
179 name of the customer or other member of the public by the seller
180 using a manufacturer's statement of origin as permitted in s.
181 319.23(1).

182 10. Requirement by any motor vehicle dealer that a customer
183 or purchaser accept equipment on his or her motor vehicle which
184 was not ordered by the customer or purchaser.

185 11. Requirement by any motor vehicle dealer that any
186 customer or purchaser finance a motor vehicle with a specific
187 financial institution or company.

188 12. Requirement by any motor vehicle dealer that the
189 purchaser of a motor vehicle contract with the dealer for
190 physical damage insurance.

191 13. Perpetration of a fraud upon any person as a result of
192 dealing in motor vehicles, including, without limitation, the
193 misrepresentation to any person by the licensee of the licensee's
194 relationship to any manufacturer, importer, or distributor.

195 14. Violation of any of the provisions of s. 319.35 by any
196 motor vehicle dealer.

197 15. Sale by a motor vehicle dealer of a vehicle offered in
198 trade by a customer prior to consummation of the sale, exchange,
199 or transfer of a newly acquired vehicle to the customer, unless
200 the customer provides written authorization for the sale of the
201 trade-in vehicle prior to delivery of the newly acquired vehicle.

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

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204 17. Violation of chapter 319, this chapter, or ss. 559.901-
205 559.9221, which has to do with dealing in or repairing motor
206 vehicles or mobile homes. Additionally, in the case of used motor
207 vehicles, the willful violation of the federal law and rule in 15
208 U.S.C. s. 2304, 16 C.F.R. part 455, pertaining to the consumer
209 sales window form.

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

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

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

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

227 Section 2. Section 320.6425, Florida Statutes, is created
228 to read:

229 320.6425 Unauthorized and additional motor vehicle
230 dealerships.--

231 (1) An unlawful and additional motor vehicle dealership
232 location, as contemplated by s. 320.642, exists if motor vehicles

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233 are sold from a location in this state for retail purposes if the
234 motor vehicle dealer transacting such sales:

235 (a) Is not located in this state;

236 (b) Is not a licensed motor vehicle dealer authorized by
237 a franchise agreement to sell the specific line-make of vehicle;
238 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 of Highway Safety and Motor Vehicles.

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 leasing, if a motor
247 vehicle sold for commercial use is not resold within 90 days.
248 This section applies regardless of whether the title issued
249 pursuant to such sale, in this state or another state, is
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 inside or
254 outside this state, which supplies any motor vehicle to the
255 unlawful and additional motor vehicle dealership location
256 established pursuant to subsection (1), unlawfully:

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

259 (b) Conducts business within this state as a distributor
260 and licensee, as contemplated by s. 320.60, in violation of ss.
261 320.61 and 320.642.

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

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

272 Section 3. Section 501.975, Florida Statutes, is amended to
273 read:

274 501.975 Definitions.--As used in s. 501.976, the following
275 terms shall have the following meanings:

276 (1) "Customer" includes a customer's designated agent.

277 (2) "Dealer" means a motor vehicle dealer as defined in s.
278 320.27, but does not include a motor vehicle auction as defined
279 in s. 320.27(1)(c)4.

280 (3) "Replacement item" means a tire, bumper, bumper fascia,
281 glass, in-dashboard equipment, seat or upholstery cover or trim,
282 exterior illumination unit, grill, sunroof, external mirror and
283 external body cladding. The replacement of up to three of these
284 items does not constitute repair of damage if each item is
285 replaced because of a product defect or damaged due to vandalism
286 while the new motor vehicle is under the control of the dealer
287 and the items are replaced with original manufacturer equipment,
288 unless an item is replaced due to a crash, collision, or
289 accident.

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290 (4) "Threshold amount" means 3 percent of the
291 manufacturer's suggested retail price of a motor vehicle or \$650,
292 whichever is less.

293 (5) "Vehicle" means any automobile, truck, bus,
294 recreational vehicle, or motorcycle required to be licensed under
295 chapter 320 for operation over the roads of Florida, but does not
296 include trailers, mobile homes, travel trailers, or trailer
297 coaches without independent motive power.

298 (6) "Advertised price" means the price as expressed in any
299 statements that are transmitted orally, through written material,
300 or through electronic means, or any illustration that is
301 disseminated to the public or affixed to a motor vehicle and that
302 is used in selling a motor vehicle or otherwise used to induce a
303 person to enter into any obligation related to the motor vehicle.

304 Section 4. Section 501.976, Florida Statutes, is amended to
305 read:

306 501.976 Actionable, unfair, or deceptive acts or
307 practices.--It is an unfair or deceptive act or practice,
308 actionable under the Florida Deceptive and Unfair Trade Practices
309 Act, for a dealer to:

310 (1) Represent directly or indirectly that a motor vehicle
311 is a factory executive vehicle or executive vehicle unless such
312 vehicle was purchased directly from the manufacturer or a
313 subsidiary of the manufacturer and the vehicle was used
314 exclusively by the manufacturer, its subsidiary, or a dealer for
315 the commercial or personal use of the manufacturer's,
316 subsidiary's, or dealer's employees.

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317 (2) Represent directly or indirectly that a vehicle is a
318 demonstrator unless the vehicle complies with the definition of a
319 demonstrator in s. 320.60(3).

320 (3) Represent the previous usage or status of a vehicle to
321 be something that it was not, or make usage or status
322 representations unless the dealer has correct information
323 regarding the history of the vehicle to support the
324 representations.

325 (4) Represent the quality of care, regularity of servicing,
326 or general condition of a vehicle unless known by the dealer to
327 be true and supportable by material fact.

328 (5) Represent orally or in writing that a particular
329 vehicle has not sustained structural or substantial skin damage
330 unless the statement is made in good faith and the vehicle has
331 been inspected by the dealer or his or her agent to determine
332 whether the vehicle has incurred such damage.

333 (6) Sell a vehicle without fully and conspicuously
334 disclosing in writing at or before the consummation of sale any
335 warranty or guarantee terms, obligations, or conditions that the
336 dealer or manufacturer has given to the buyer. If the warranty
337 obligations are to be shared by the dealer and the buyer, the
338 method of determining the percentage of repair costs to be
339 assumed by each party must be disclosed. If the dealer intends to
340 disclaim or limit any expressed or implied warranty, the
341 disclaimer must be in writing in a conspicuous manner and in lay
342 terms in accordance with chapter 672 and the Magnuson-Moss
343 Warranty--Federal Trade Commission Improvement Act.

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344 (7) Provide an express or implied warranty and fail to
345 honor such warranty unless properly disclaimed pursuant to
346 subsection (6).

347 (8) Misrepresent warranty coverage, application period, or
348 any warranty transfer cost or conditions to a customer.

349 (9) Obtain signatures from a customer on contracts that are
350 not fully completed at the time the customer signs or which do
351 not reflect accurately the negotiations and agreement between the
352 customer and the dealer.

353 (10) Require or accept a deposit from a prospective
354 customer prior to entering into a binding contract for the
355 purchase and sale of a vehicle unless the customer is given a
356 written receipt that states how long the dealer will hold the
357 vehicle from other sale and the amount of the deposit, and
358 clearly and conspicuously states whether and upon what conditions
359 the deposit is refundable or nonrefundable.

360 (11) Add to the cash price of a vehicle as defined in s.
361 520.02(2) any fee or charge other than those provided in that
362 section and in rule 3D-50.001, Florida Administrative Code. All
363 fees or charges permitted to be added to the cash price by rule
364 3D-50.001, Florida Administrative Code, must be fully disclosed
365 to customers in all binding contracts concerning the vehicle's
366 selling price.

367 (12) Alter or change the odometer mileage of a vehicle.

368 (13) Sell a vehicle without disclosing to the customer the
369 actual year and model of the vehicle.

370 (14) File a lien against a new vehicle purchased with a
371 check unless the dealer fully discloses to the purchaser that a
372 lien will be filed if purchase is made by check and fully

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373 discloses to the buyer the procedures and cost to the buyer for
374 gaining title to the vehicle after the lien is filed.

375 (15) Increase the price of the vehicle after having
376 accepted an order of purchase or a contract from a buyer,
377 notwithstanding subsequent receipt of an official price change
378 notification. The price of a vehicle may be increased after a
379 dealer accepts an order of purchase or a contract from a buyer
380 if:

381 (a) A trade-in vehicle is reappraised because it
382 subsequently is damaged, or parts or accessories are removed;

383 (b) The price increase is caused by the addition of new
384 equipment, as required by state or federal law;

385 (c) The price increase is caused by the revaluation of the
386 United States dollar by the Federal Government, in the case of a
387 foreign-made vehicle;

388 (d) The price increase is caused by state or federal tax
389 rate changes; or

390 (e) Price protection is not provided by the manufacturer,
391 importer, or distributor.

392 (16) Advertise the price of a vehicle unless the vehicle is
393 identified by year, make, model, and a commonly accepted trade,
394 brand, or style name.

395 (a) The advertised price must include all costs, fees, or
396 charges that the customer must pay, excluding including freight
397 or destination charge, dealer preparation charge, and charges for
398 undercoating or rustproofing. state and local taxes, tag fees
399 tags, registration fees, and title fees, unless otherwise
400 required by local law or standard, need not be disclosed in the
401 advertisement.

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402 (b) When two or more dealers advertise jointly, with or
403 without participation of the franchisor, the advertised price
404 must include the highest price of the vehicles being offered,
405 consistent with paragraph (a), or specify the price for each
406 vehicle, respectively ~~need not include fees and charges that are~~
407 ~~variable among the individual dealers cooperating in the~~
408 ~~advertisement, but the nature of all charges that are not~~
409 ~~included in the advertised price must be disclosed in the~~
410 advertisement.

411 (17) Charge a customer for any predelivery service required
412 by the manufacturer, distributor, or importer for which the
413 dealer is reimbursed by the manufacturer, distributor, or
414 importer.

415 (18) Charge a customer for any predelivery service without
416 having printed on all documents that include a line item for
417 predelivery service the following disclosure: "This charge
418 represents costs and profit to the dealer for items such as
419 inspecting, cleaning, and adjusting vehicles, and preparing
420 documents related to the sale."

421 (19) Fail to disclose damage to a new motor vehicle, as
422 defined in s. 319.001(8), of which the dealer had actual
423 knowledge, if the dealer's actual cost of repairs exceeds the
424 threshold amount, excluding replacement items.

425 (20) Fail to attach a conspicuous label to the window of a
426 motor vehicle specifying any charge for predelivery services if
427 the motor vehicle under consideration by a prospective purchaser
428 is available for physical inspection by the purchaser. The label
429 must include the following disclosure: "This charge represents
430 costs and profit to the dealer for items such as inspecting,

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431 cleaning, and adjusting vehicles and preparing documents related
432 to the sale." This requirement does not apply to the sale of
433 motorcycles.

434

435 In any civil litigation resulting from a violation of this
436 section, when evaluating the reasonableness of an award of
437 attorney's fees to a private person, the trial court shall
438 consider the amount of actual damages in relation to the time
439 spent.

440 Section 5. This act shall take effect July 1, 2008.