HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 827 Motor Vehicle Dealers

SPONSOR(S): McKeel

TIED BILLS: **IDEN./SIM. BILLS:** SB 2150

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Infrastructure	9 Y, 1 N	Brown	Miller
2) Economic Expansion & Infrastructure Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 827 modifies the definition of "motor vehicle dealer" to clarify that non-franchised dealers cannot apply for a certificate of title using a Manufacturer's Statement of Origin (MSO), and to remove vehicles built on truck chassis from an exception to the MSO requirements. The bill 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

HB 827 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 is also granted enforcement rights regarding the new 'unlawful location' provisions.

The bill is effective October 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The bill creates new oversight obligations for the Department, regarding certain motor vehicle dealers. The bill also creates a private right of action, potentially reducing Department-initiated investigation and/or litigation.

B. EFFECT OF PROPOSED CHANGES:

Motor Vehicle Dealers

Current Situation

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" contained in section 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 prescription above, that only franchised dealers may use a manufacturer's statement of origin (MSO) to title a vehicle, the statute subsequently states that a transfer of a vehicle not meeting the qualifications listed above must be titled as "used." This statement appears to suggest that a dealer without a franchise agreement can use an MSO to title a vehicle, if the vehicle is registered as used.

Proposed Changes

HB 827 modifies the definition of "motor vehicle dealer" in section 320.27(1)(c), F.S., by deleting the statement that a vehicle transferred by a dealer not meeting the stated qualifications may be titled as used. It also limits the exception by removing "other motor vehicle[s] manufactured on a truck chassis."

Motor Vehicle Dealership Locations

Current Situation

Section 320.642, F.S., provides that 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 section 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 15C-7.005, Fla. Admin. Code, to further address dealer locations. The rule, "Unauthorized Supplemental Dealership Locations," provides that 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 section 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 that it does not create a private right of action for any individual between dealers; it reserves all remedies to the Department and adversely-affected competing dealers.

On April 20th, 2007, an Administrative Law Judge (ALJ) ruled that, in promulgating 15C-7.005, Fla. Admin. Code, the Department exceeded its rulemaking authority in violation of section 120.58(8)(b), F.S. The ALJ also deemed the rule to be an invalid exercise of delegated legislative authority.

Proposed Changes

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

HB 827 also determines that 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 bill asserts that nothing in the new statute prohibits one franchised dealer from selling vehicles to another dealer franchised to sell the same line-make vehicle.

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 that 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;

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

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

- 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 section 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 Chapter 319 (Title Certificates), Chapter 320 (Motor Vehicle Licenses), certain provisions regarding motor vehicles and mobile homes in Chapter 559,[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.

Proposed Changes

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

The bill also grants motor vehicle dealers a private right of action against other dealers engaged in violations of the newly created section 320.6425, F.S. The burden of proof is the same as the Department's burden, to prove that the dealer has committed a violation, "with sufficient frequency 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.

C. SECTION DIRECTORY:

Section 1 Amends section 320.27, F.S., revising the definition of "motor vehicle dealer;" removing an exception to certain registration requirements; removing a requirement that the transfer of a vehicle by a dealer must be titled as a used vehicle; and providing for suspension of a license for unlawful operation of additional locations; provides for a private right of action regarding unlawful additional locations.

Section 2 Creates section 320.6425, F.S., providing conditions that constitute an unlawful additional motor vehicle dealer location; providing that a dealer supplying vehicles to an unlawful location is deemed to have established the unlawful location as distributor; providing remedies to certain dealers.

Section 3 Provides an effective date of October 1, 2008.

[3] Sections 559.901 – 559.9221, F.S.

[4] The referenced statute is the "unlawful additional dealership" created by the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because the bill does not appear to: require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 13, 2008, the Committee on Infrastructure favorably reported the bill with one amendment. The amendment clarifies that dealers may seek damages against “any motor vehicle dealer “deemed to be ‘distributor’ or ‘licensee’ by the provisions of subsection (3).”