

CS/HB 827

2008

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"; removing an exception to certain registration
5 requirements for certain motor vehicles manufactured on
6 truck chassis; removing a requirement that the transfer of
7 a motor vehicle by a dealer not meeting specified
8 qualifications must be titled as a used vehicle; providing
9 for denial, suspension, or revocation of license for
10 operation of an unlawful additional motor vehicle
11 dealership location or unlawful supply of motor vehicles;
12 providing for a cause of action against a motor vehicle
13 dealer who engages in the business of an unauthorized and
14 unlawful additional motor vehicle dealership location;
15 creating s. 320.6425, F.S.; providing conditions that
16 constitute the establishment of an unlawful and additional
17 motor vehicle dealership location; providing that a motor
18 vehicle dealer that supplies a motor vehicle to the
19 unlawful and additional motor vehicle dealership location
20 shall be deemed to have unlawfully established an
21 additional motor vehicle dealership location and
22 unlawfully conducted business within this state as a
23 distributor and licensee; providing that certain dealers
24 may seek damages; providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:
27

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

31 320.27 Motor vehicle dealers.--

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

36 (c) "Motor vehicle dealer" means any person engaged in the
 37 business of buying, selling, or dealing in motor vehicles or
 38 offering or displaying motor vehicles for sale at wholesale or
 39 retail, or who may service and repair motor vehicles pursuant to
 40 an agreement as defined in s. 320.60(1). Any person who buys,
 41 sells, or deals in three or more motor vehicles in any 12-month
 42 period or who offers or displays for sale three or more motor
 43 vehicles in any 12-month period shall be prima facie presumed to
 44 be engaged in such business. The terms "selling" and "sale"
 45 include lease-purchase transactions. A motor vehicle dealer may,
 46 at retail or wholesale, sell a recreational vehicle as described
 47 in s. 320.01(1)(b)1.-6. and 8., acquired in exchange for the
 48 sale of a motor vehicle, provided such acquisition is incidental
 49 to the principal business of being a motor vehicle dealer.
 50 However, a motor vehicle dealer may not buy a recreational
 51 vehicle for the purpose of resale unless licensed as a
 52 recreational vehicle dealer pursuant to s. 320.771. A motor
 53 vehicle dealer may apply for a certificate of title to a motor
 54 vehicle required to be registered under s. 320.08(2)(b), (c),
 55 and (d), using a manufacturer's statement of origin as permitted

56 by s. 319.23(1), only if such dealer is authorized by a
57 franchised agreement as defined in s. 320.60(1), to buy, sell,
58 or deal in such vehicle and is authorized by such agreement to
59 perform delivery and preparation obligations and warranty defect
60 adjustments on the motor vehicle; however, ~~provided~~ this
61 limitation shall not apply to recreational vehicles or, van
62 conversions, ~~or any other motor vehicle manufactured on a truck~~
63 ~~chassis. The transfer of a motor vehicle by a dealer not meeting~~
64 ~~these qualifications shall be titled as a used vehicle.~~ The
65 classifications of motor vehicle dealers are defined as follows:

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

70 2. "Independent motor vehicle dealer" means any person
71 other than a franchised or wholesale motor vehicle dealer who
72 engages in the business of buying, selling, or dealing in motor
73 vehicles, and who may service and repair motor vehicles.

74 3. "Wholesale motor vehicle dealer" means any person who
75 engages exclusively in the business of buying, selling, or
76 dealing in motor vehicles at wholesale or with motor vehicle
77 auctions. Such person shall be licensed to do business in this
78 state, shall not sell or auction a vehicle to any person who is
79 not a licensed dealer, and shall not have the privilege of the
80 use of dealer license plates. Any person who buys, sells, or
81 deals in motor vehicles at wholesale or with motor vehicle
82 auctions on behalf of a licensed motor vehicle dealer and as a
83 bona fide employee of such licensed motor vehicle dealer is not

84 required to be licensed as a wholesale motor vehicle dealer. In
85 such cases it shall be prima facie presumed that a bona fide
86 employer-employee relationship exists. A wholesale motor vehicle
87 dealer shall be exempt from the display provisions of this
88 section but shall maintain an office wherein records are kept in
89 order that those records may be inspected.

90 4. "Motor vehicle auction" means any person offering motor
91 vehicles or recreational vehicles for sale to the highest bidder
92 where buyers are licensed motor vehicle dealers. Such person
93 shall not sell a vehicle to anyone other than a licensed motor
94 vehicle dealer.

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

98
99 The term "motor vehicle dealer" does not include persons not
100 engaged in the purchase or sale of motor vehicles as a business
101 who are disposing of vehicles acquired for their own use or for
102 use in their business or acquired by foreclosure or by operation
103 of law, provided such vehicles are acquired and sold in good
104 faith and not for the purpose of avoiding the provisions of this
105 law; persons engaged in the business of manufacturing, selling,
106 or offering or displaying for sale at wholesale or retail no
107 more than 25 trailers in a 12-month period; public officers
108 while performing their official duties; receivers; trustees,
109 administrators, executors, guardians, or other persons appointed
110 by, or acting under the judgment or order of, any court; banks,
111 finance companies, or other loan agencies that acquire motor

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

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

126 (b) The department may deny, suspend, or revoke any
127 license issued hereunder or under the provisions of s. 320.77 or
128 s. 320.771 upon proof that a licensee has committed, with
129 sufficient frequency so as to establish a pattern of wrongdoing
130 on the part of a licensee, violations of one or more of the
131 following activities:

132 1. Representation that a demonstrator is a new motor
133 vehicle, or the attempt to sell or the sale of a demonstrator as
134 a new motor vehicle without written notice to the purchaser that
135 the vehicle is a demonstrator. For the purposes of this section,
136 a "demonstrator," a "new motor vehicle," and a "used motor
137 vehicle" shall be defined as under s. 320.60.

138 2. Unjustifiable refusal to comply with a licensee's
139 responsibility under the terms of the new motor vehicle warranty

140 issued by its respective manufacturer, distributor, or importer.
141 However, if such refusal is at the direction of the
142 manufacturer, distributor, or importer, such refusal shall not
143 be a ground under this section.

144 3. Misrepresentation or false, deceptive, or misleading
145 statements with regard to the sale or financing of motor
146 vehicles which any motor vehicle dealer has, or causes to have,
147 advertised, printed, displayed, published, distributed,
148 broadcast, televised, or made in any manner with regard to the
149 sale or financing of motor vehicles.

150 4. Failure by any motor vehicle dealer to provide a
151 customer or purchaser with an odometer disclosure statement and
152 a copy of any bona fide written, executed sales contract or
153 agreement of purchase connected with the purchase of the motor
154 vehicle purchased by the customer or purchaser.

155 5. Failure of any motor vehicle dealer to comply with the
156 terms of any bona fide written, executed agreement, pursuant to
157 the sale of a motor vehicle.

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

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

162 8. Failure to continually meet the requirements of the
163 licensure law.

164 9. Representation to a customer or any advertisement to
165 the public representing or suggesting that a motor vehicle is a
166 new motor vehicle if such vehicle lawfully cannot be titled in
167 the name of the customer or other member of the public by the

168 seller using a manufacturer's statement of origin as permitted
 169 in s. 319.23(1).

170 10. Requirement by any motor vehicle dealer that a
 171 customer or purchaser accept equipment on his or her motor
 172 vehicle which was not ordered by the customer or purchaser.

173 11. Requirement by any motor vehicle dealer that any
 174 customer or purchaser finance a motor vehicle with a specific
 175 financial institution or company.

176 12. Requirement by any motor vehicle dealer that the
 177 purchaser of a motor vehicle contract with the dealer for
 178 physical damage insurance.

179 13. Perpetration of a fraud upon any person as a result of
 180 dealing in motor vehicles, including, without limitation, the
 181 misrepresentation to any person by the licensee of the
 182 licensee's relationship to any manufacturer, importer, or
 183 distributor.

184 14. Violation of any of the provisions of s. 319.35 by any
 185 motor vehicle dealer.

186 15. Sale by a motor vehicle dealer of a vehicle offered in
 187 trade by a customer prior to consummation of the sale, exchange,
 188 or transfer of a newly acquired vehicle to the customer, unless
 189 the customer provides written authorization for the sale of the
 190 trade-in vehicle prior to delivery of the newly acquired
 191 vehicle.

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

194 17. Violation of chapter 319, this chapter, or ss.
 195 559.901-559.9221, which has to do with dealing in or repairing

196 motor vehicles or mobile homes. Additionally, in the case of
 197 used motor vehicles, the willful violation of the federal law
 198 and rule in 15 U.S.C. s. 2304, 16 C.F.R. part 455, pertaining to
 199 the consumer sales window form.

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

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

205 20. Any violation of s. 320.6425 by any motor vehicle
 206 dealer, including the operation of an unlawful additional motor
 207 vehicle dealership location or unlawful supply of motor
 208 vehicles.

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

218 Section 2. Section 320.6425, Florida Statutes, is created
 219 to read:

220 320.6425 Unauthorized and additional motor vehicle
 221 dealerships.--

222 (1) An unlawful and additional motor vehicle dealership
 223 location, as contemplated by s. 320.642, shall be deemed to be

224 established when motor vehicles are sold from a location in this
 225 state for retail purposes if the motor vehicle dealer
 226 transacting such sales:

227 (a) Is not located in this state;

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

231 (c) Is a licensed motor vehicle dealer authorized by a
 232 franchise agreement to sell the specific line-make of vehicle,
 233 but such sales are transacted at a location other than that
 234 permitted by a license issued to the motor vehicle dealer by the
 235 department.

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

246 (3) Any motor vehicle dealer, whether located in this
 247 state or not, which supplies any motor vehicle to the unlawful
 248 and additional motor vehicle dealership location established in
 249 subsection (1) shall be deemed to have unlawfully:

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

CS/HB 827

2008

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

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

262 (5) Nothing in this section shall prohibit the transfer of
263 a motor vehicle, by sale or trade, from one franchised dealer to
264 another dealer authorized by franchise agreement to sell the
265 same line-make of motor vehicles.

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