

1                                   A bill to be entitled  
 2           An act relating to motor vehicle dealers; amending s.  
 3           320.27, F.S.; defining the term "independent motor  
 4           vehicle sales agent"; providing requirements for  
 5           obtaining an independent motor vehicle sales agent  
 6           license; providing a fee for licensure; conforming  
 7           provisions to changes made by the act; amending ss.  
 8           316.2935, 319.33, 320.1316, 320.273, 501.021, and  
 9           537.012, F.S.; conforming provisions to changes made  
 10          by the act; providing an effective date.

11  
 12 Be It Enacted by the Legislature of the State of Florida:

13  
 14           Section 1.   Section 320.27, Florida Statutes, is amended to  
 15           read:

16           320.27   Motor vehicle dealers; independent motor vehicle  
 17           sales agents.—

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

22           (a)   "Department" means the Department of Highway Safety  
 23           and Motor Vehicles.

24           (b)   "Motor vehicle" means any motor vehicle of the type  
 25           and kind required to be registered and titled under chapter 319  
 26           and this chapter, except a recreational vehicle, moped,  
 27           motorcycle powered by a motor with a displacement of 50 cubic  
 28           centimeters or less, or mobile home.

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

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57 | qualifications shall be titled as a used vehicle. The  
58 | classifications of motor vehicle dealers are defined as follows:

59 | 1. "Franchised motor vehicle dealer" means any person who  
60 | engages in the business of repairing, servicing, buying,  
61 | selling, or dealing in motor vehicles pursuant to an agreement  
62 | as defined in s. 320.60(1).

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

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

83 | 4. "Motor vehicle auction" means any person offering motor  
84 | vehicles or recreational vehicles for sale to the highest bidder

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85 | where buyers are licensed motor vehicle dealers. Such person  
86 | shall not sell a vehicle to anyone other than a licensed motor  
87 | vehicle dealer.

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

91 |  
92 | The term "motor vehicle dealer" does not include persons not  
93 | engaged in the purchase or sale of motor vehicles as a business  
94 | who are disposing of vehicles acquired for their own use or for  
95 | use in their business or acquired by foreclosure or by operation  
96 | of law, provided such vehicles are acquired and sold in good  
97 | faith and not for the purpose of avoiding the provisions of this  
98 | law; persons engaged in the business of manufacturing, selling,  
99 | or offering or displaying for sale at wholesale or retail no  
100 | more than 25 trailers in a 12-month period; public officers  
101 | while performing their official duties; receivers; trustees,  
102 | administrators, executors, guardians, or other persons appointed  
103 | by, or acting under the judgment or order of, any court; banks,  
104 | finance companies, or other loan agencies that acquire motor  
105 | vehicles as an incident to their regular business; motor vehicle  
106 | brokers; and motor vehicle rental and leasing companies that  
107 | sell motor vehicles to motor vehicle dealers licensed under this  
108 | section. Vehicles owned under circumstances described in this  
109 | paragraph may be disposed of at retail, wholesale, or auction,  
110 | unless otherwise restricted. A manufacturer of fire trucks,  
111 | ambulances, or school buses may sell such vehicles directly to  
112 | governmental agencies or to persons who contract to perform or

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113 provide firefighting, ambulance, or school transportation  
114 services exclusively to governmental agencies without processing  
115 such sales through dealers if such fire trucks, ambulances,  
116 school buses, or similar vehicles are not presently available  
117 through motor vehicle dealers licensed by the department.

118 (d) "Motor vehicle broker" means any person engaged in the  
119 business of offering to procure or procuring motor vehicles for  
120 the general public, or who holds himself or herself out through  
121 solicitation, advertisement, or otherwise as one who offers to  
122 procure or procures motor vehicles for the general public, and  
123 who does not store, display, or take ownership of any vehicles  
124 for the purpose of selling such vehicles.

125 (e) "Person" means any natural person, firm, partnership,  
126 association, or corporation.

127 (f) "Bona fide employee" means a person who is employed by  
128 a licensed motor vehicle dealer and receives annually an  
129 Internal Revenue Service Form W-2, or an independent contractor  
130 who has a written contract with a licensed motor vehicle dealer  
131 and receives annually an Internal Revenue Service Form 1099, for  
132 the purpose of acting in the capacity of or conducting motor  
133 vehicle sales transactions as a motor vehicle dealer.

134 (g) "Independent motor vehicle sales agent" means any  
135 person other than a bona fide employee who is associated with a  
136 motor vehicle dealer and is acting in the capacity of or  
137 conducting motor vehicle sales transactions as a motor vehicle  
138 dealer. An independent motor vehicle sales agent purchases a  
139 motor vehicle using his or her own investment.

140 (2) (a) LICENSE REQUIRED.—No person shall engage in

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141 business as, serve in the capacity of, or act as a motor vehicle  
142 dealer in this state without first obtaining a license therefor  
143 in the appropriate classification as provided in this section.  
144 With the exception of transactions with motor vehicle auctions,  
145 no person other than a licensed motor vehicle dealer may  
146 advertise for sale any motor vehicle belonging to another party  
147 unless as a direct result of a bona fide legal proceeding, court  
148 order, settlement of an estate, or by operation of law. However,  
149 owners of motor vehicles titled in their names may advertise and  
150 offer vehicles for sale on their own behalf. It shall be  
151 unlawful for a licensed motor vehicle dealer to allow any person  
152 other than a bona fide employee to use the motor vehicle dealer  
153 license for the purpose of acting in the capacity of or  
154 conducting motor vehicle sales transactions as a motor vehicle  
155 dealer. Any person selling or offering a motor vehicle for sale  
156 in violation of the licensing requirements of this subsection,  
157 or who misrepresents to any person its relationship with any  
158 manufacturer, importer, or distributor, in addition to the  
159 penalties provided herein, shall be deemed guilty of an unfair  
160 and deceptive trade practice as defined in part II of chapter  
161 501 and shall be subject to the provisions of subsections (8)  
162 and (9).

163 (b) To serve in the capacity of or act as an independent  
164 motor vehicle sales agent in this state, an agent shall be  
165 licensed separately from a motor vehicle dealer. To obtain an  
166 independent motor vehicle sales agent license, an agent must:

- 167 1. Possess a valid driver license.  
168 2. Complete a 6-hour training course containing material

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169 similar to material in the course required for a motor vehicle  
170 dealer license, as provided in paragraph (4) (b).

171 3. Receive a passing grade on a test measuring mastery of  
172 the course required in subparagraph 2.

173 4. Work under one or more licensed motor vehicle dealers.

174 5. Be insured under one of the associated motor vehicle  
175 dealer's garage liability insurance.

176 6. Not have a felony conviction in the last 10 years.

177 7. Pay a fee, which fee shall be no more than 50 percent  
178 of the fee required to obtain a motor vehicle dealer license as  
179 provided in subsection (3).

180 (3) APPLICATION AND FEE.—The application for the motor  
181 vehicle dealer license shall be in such form as may be  
182 prescribed by the department and shall be subject to such rules  
183 with respect thereto as may be so prescribed by it. Such  
184 application shall be verified by oath or affirmation and shall  
185 contain a full statement of the name and birth date of the  
186 person or persons applying therefor; the name of the firm or  
187 copartnership, with the names and places of residence of all  
188 members thereof, if such applicant is a firm or copartnership;  
189 the names and places of residence of the principal officers, if  
190 the applicant is a body corporate or other artificial body; the  
191 name of the state under whose laws the corporation is organized;  
192 the present and former place or places of residence of the  
193 applicant; and prior business in which the applicant has been  
194 engaged and the location thereof. Such application shall  
195 describe the exact location of the place of business and shall  
196 state whether the place of business is owned by the applicant

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197 and when acquired, or, if leased, a true copy of the lease shall  
198 be attached to the application. The applicant shall certify that  
199 the location provides an adequately equipped office and is not a  
200 residence; that the location affords sufficient unoccupied space  
201 upon and within which adequately to store all motor vehicles  
202 offered and displayed for sale; and that the location is a  
203 suitable place where the applicant can in good faith carry on  
204 such business and keep and maintain books, records, and files  
205 necessary to conduct such business, which shall be available at  
206 all reasonable hours to inspection by the department or any of  
207 its inspectors or other employees. The applicant shall certify  
208 that the business of a motor vehicle dealer is the principal  
209 business which shall be conducted at that location. The  
210 application shall contain a statement that the applicant is  
211 either franchised by a manufacturer of motor vehicles, in which  
212 case the name of each motor vehicle that the applicant is  
213 franchised to sell shall be included, or an independent  
214 (nonfranchised) motor vehicle dealer. The application shall  
215 contain other relevant information as may be required by the  
216 department, including evidence that the applicant is insured  
217 under a garage liability insurance policy or a general liability  
218 insurance policy coupled with a business automobile policy,  
219 which shall include, at a minimum, \$25,000 combined single-limit  
220 liability coverage including bodily injury and property damage  
221 protection and \$10,000 personal injury protection. However, a  
222 salvage motor vehicle dealer as defined in subparagraph (1)(c)5.  
223 is exempt from the requirements for garage liability insurance  
224 and personal injury protection insurance on those vehicles that

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225 cannot be legally operated on roads, highways, or streets in  
226 this state. Franchise dealers must submit a garage liability  
227 insurance policy, and all other dealers must submit a garage  
228 liability insurance policy or a general liability insurance  
229 policy coupled with a business automobile policy. Such policy  
230 shall be for the license period, and evidence of a new or  
231 continued policy shall be delivered to the department at the  
232 beginning of each license period. Upon making initial  
233 application, the applicant shall pay to the department a fee of  
234 \$300 in addition to any other fees now required by law. Upon  
235 making a subsequent renewal application, the applicant shall pay  
236 to the department a fee of \$75 in addition to any other fees now  
237 required by law. Upon making an application for a change of  
238 location, the person shall pay a fee of \$50 in addition to any  
239 other fees now required by law. The department shall, in the  
240 case of every application for initial licensure, verify whether  
241 certain facts set forth in the application are true. Each  
242 applicant, general partner in the case of a partnership, or  
243 corporate officer and director in the case of a corporate  
244 applicant, must file a set of fingerprints with the department  
245 for the purpose of determining any prior criminal record or any  
246 outstanding warrants. The department shall submit the  
247 fingerprints to the Department of Law Enforcement for state  
248 processing and forwarding to the Federal Bureau of Investigation  
249 for federal processing. The actual cost of state and federal  
250 processing shall be borne by the applicant and is in addition to  
251 the fee for licensure. The department may issue a license to an  
252 applicant pending the results of the fingerprint investigation,

253 | which license is fully revocable if the department subsequently  
 254 | determines that any facts set forth in the application are not  
 255 | true or correctly represented.

256 | (4) LICENSE CERTIFICATE.—

257 | (a) A license certificate shall be issued by the  
 258 | department in accordance with such application when the  
 259 | application is regular in form and in compliance with the  
 260 | provisions of this section. The license certificate may be in  
 261 | the form of a document or a computerized card as determined by  
 262 | the department. The actual cost of each original, additional, or  
 263 | replacement computerized card shall be borne by the licensee and  
 264 | is in addition to the fee for licensure. Such license, when so  
 265 | issued, entitles the licensee to carry on and conduct the  
 266 | business of a motor vehicle dealer. Each license issued to a  
 267 | franchise motor vehicle dealer expires annually on December 31  
 268 | unless revoked or suspended before ~~prior to~~ that date. Each  
 269 | license issued to an independent or wholesale dealer or auction  
 270 | or independent motor vehicle sales agent expires annually on  
 271 | April 30 unless revoked or suspended before ~~prior to~~ that date.  
 272 | At least ~~Not less than~~ 60 days before ~~prior to~~ the license  
 273 | expiration date, the department shall deliver or mail to each  
 274 | licensee the necessary renewal forms. Each independent dealer  
 275 | shall certify that the dealer (owner, partner, officer, or  
 276 | director of the licensee, or a full-time employee of the  
 277 | licensee that holds a responsible management-level position) has  
 278 | completed 8 hours of continuing education before ~~prior to~~ filing  
 279 | the renewal forms with the department. Such certification shall  
 280 | be filed once every 2 years. The continuing education shall

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281 include at least 2 hours of legal or legislative issues, 1 hour  
282 of department issues, and 5 hours of relevant motor vehicle  
283 industry topics. Continuing education shall be provided by  
284 dealer schools licensed under paragraph (b) either in a  
285 classroom setting or by correspondence. Such schools shall  
286 provide certificates of completion to the department and the  
287 customer which shall be filed with the license renewal form, and  
288 such schools may charge a fee for providing continuing  
289 education. Any licensee who does not file his or her application  
290 and fees and any other requisite documents, as required by law,  
291 with the department at least 30 days before ~~prior to~~ the license  
292 expiration date shall cease to engage in business as a motor  
293 vehicle dealer or independent motor vehicle sales agent on the  
294 license expiration date. A renewal filed with the department  
295 within 45 days after the expiration date shall be accompanied by  
296 a delinquent fee of \$100. Thereafter, a new application is  
297 required, accompanied by the initial license fee. A license  
298 certificate duly issued by the department may be modified by  
299 endorsement to show a change in the name of the licensee,  
300 provided, as shown by affidavit of the licensee, the majority  
301 ownership interest of the licensee has not changed or the name  
302 of the person appearing as franchisee on the sales and service  
303 agreement has not changed. Modification of a license certificate  
304 to show any name change as herein provided shall not require  
305 initial licensure or reissuance of dealer tags; however, any  
306 dealer obtaining a name change shall transact all business in  
307 and be properly identified by that name. All documents relative  
308 to licensure shall reflect the new name. In the case of a

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309 franchise dealer, the name change shall be approved by the  
310 manufacturer, distributor, or importer. A licensee applying for  
311 a name change endorsement shall pay a fee of \$25 which fee shall  
312 apply to the change in the name of a main location and all  
313 additional locations licensed under the provisions of subsection  
314 (5). Each initial license application received by the department  
315 shall be accompanied by verification that, within the preceding  
316 6 months, the applicant, or one or more of his or her designated  
317 employees, or an independent motor vehicle sales agent, has  
318 attended a training and information seminar conducted by a  
319 licensed motor vehicle dealer training school. Any applicant for  
320 a new franchised motor vehicle dealer license who has held a  
321 valid franchised motor vehicle dealer license continuously for  
322 the past 2 years and who remains in good standing with the  
323 department is exempt from the prelicensing training requirement.  
324 Such seminar shall include, but is not limited to, statutory  
325 dealer requirements, which requirements include required  
326 bookkeeping and recordkeeping procedures, requirements for the  
327 collection of sales and use taxes, and such other information  
328 that in the opinion of the department will promote good business  
329 practices. No seminar may exceed 8 hours in length.

330 (b) Each initial license application received by the  
331 department for licensure under subparagraph (1)(c)2. shall be  
332 accompanied by verification that, within the preceding 6 months,  
333 the applicant (owner, partner, officer, or director of the  
334 applicant, or a full-time employee of the applicant that holds a  
335 responsible management-level position) has successfully  
336 completed training conducted by a licensed motor vehicle dealer

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337 training school. Such training must include training in titling  
338 and registration of motor vehicles, laws relating to unfair and  
339 deceptive trade practices, laws relating to financing with  
340 regard to buy-here, pay-here operations, and such other  
341 information that in the opinion of the department will promote  
342 good business practices. Successful completion of this training  
343 shall be determined by examination administered at the end of  
344 the course and attendance of no less than 90 percent of the  
345 total hours required by such school. Any applicant who had held  
346 a valid motor vehicle dealer or independent motor vehicle sales  
347 agent ~~dealer's~~ license continuously within the past 2 years and  
348 who remains in good standing with the department is exempt from  
349 the prelicensing requirements of this section. The department  
350 shall have the authority to adopt any rule necessary for  
351 establishing the training curriculum; length of training, which  
352 shall not exceed 8 hours for required department topics and  
353 shall not exceed an additional 24 hours for topics related to  
354 other regulatory agencies' instructor qualifications; and any  
355 other requirements under this section. The curriculum for other  
356 subjects shall be approved by any and all other regulatory  
357 agencies having jurisdiction over specific subject matters;  
358 however, the overall administration of the licensing of these  
359 dealer schools and their instructors shall remain with the  
360 department. Such schools are authorized to charge a fee.

361 (5) SUPPLEMENTAL LICENSE.—Any person licensed hereunder  
362 shall obtain a supplemental license for each permanent  
363 additional place or places of business not contiguous to the  
364 premises for which the original license is issued, on a form to

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365 be furnished by the department, and upon payment of a fee of \$50  
366 for each such additional location. Upon making renewal  
367 applications for such supplemental licenses, such applicant  
368 shall pay \$50 for each additional location. A supplemental  
369 license authorizing off-premises sales shall be issued, at no  
370 charge to the dealer, for a period not to exceed 10 consecutive  
371 calendar days. To obtain such a temporary supplemental license  
372 for off-premises sales, the applicant must be a licensed dealer;  
373 must notify the applicable local department office of the  
374 specific dates and location for which such license is requested,  
375 display a sign at the licensed location clearly identifying the  
376 dealer, and provide staff to work at the temporary location for  
377 the duration of the off-premises sale; must meet any local  
378 government permitting requirements; and must have permission of  
379 the property owner to sell at that location. In the case of an  
380 off-premises sale by a motor vehicle dealer licensed under  
381 subparagraph (1)(c)1. for the sale of new motor vehicles, the  
382 applicant must also include documentation notifying the  
383 applicable licensee licensed under s. 320.61 of the intent to  
384 engage in an off-premises sale 5 working days before ~~prior to~~  
385 the date of the off-premises sale. The licensee shall either  
386 approve or disapprove of the off-premises sale within 2 working  
387 days after receiving notice; otherwise, it will be deemed  
388 approved. This section does not apply to a nonselling motor  
389 vehicle show or public display of new motor vehicles.

390 (6) RECORDS TO BE KEPT BY LICENSEE.—Every licensee shall  
391 keep a book or record in either paper or electronic form as  
392 prescribed or approved by the department for a period of 5

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393 | years, in which the licensee shall keep a record of the  
394 | purchase, sale, or exchange, or receipt for the purpose of sale,  
395 | of any motor vehicle, the date upon which any temporary tag was  
396 | issued, the date of title transfer, and a description of such  
397 | motor vehicle together with the name and address of the seller,  
398 | the purchaser, and the alleged owner or other person from whom  
399 | such motor vehicle was purchased or received or to whom it was  
400 | sold or delivered, as the case may be. Such description shall  
401 | include the identification or engine number, maker's number, if  
402 | any, chassis number, if any, and such other numbers or  
403 | identification marks as may be thereon and shall also include a  
404 | statement that a number has been obliterated, defaced, or  
405 | changed, if such is the fact. When a licensee chooses to  
406 | maintain electronic records, the original paper documents may be  
407 | destroyed after the licensee successfully transfers title and  
408 | registration to the purchaser as required by chapter 319 for any  
409 | purchaser who titles and registers the motor vehicle in this  
410 | state. In the case of a sale to a purchaser who will title and  
411 | register the motor vehicle in another state or country, the  
412 | licensee may destroy the original paper documents after  
413 | successfully delivering a lawfully reassigned title or  
414 | manufacturer's certificate or statement of origin to the  
415 | purchaser and after producing electronic images of all documents  
416 | related to the sale.

417 |       (7) CERTIFICATE OF TITLE REQUIRED.—For each used motor  
418 | vehicle in the possession of a licensee and offered for sale by  
419 | him or her, the licensee either shall have in his or her  
420 | possession or control a duly assigned certificate of title from

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421 the owner in accordance with the provisions of chapter 319, from  
422 the time when the motor vehicle is delivered to the licensee and  
423 offered for sale by him or her until it has been disposed of by  
424 the licensee, or shall have reasonable indicia of ownership or  
425 right of possession, or shall have made proper application for a  
426 certificate of title or duplicate certificate of title in  
427 accordance with the provisions of chapter 319. A motor vehicle  
428 dealer or independent motor vehicle sales agent may not sell or  
429 offer for sale a vehicle in his or her possession unless the  
430 dealer satisfies the requirements of this subsection. Reasonable  
431 indicia of ownership shall include a duly assigned certificate  
432 of title; in the case of a new motor vehicle, a manufacturer's  
433 certificate of origin issued to or reassigned to the dealer; a  
434 consignment contract between the owner and the dealer along with  
435 a secure power of attorney from the owner to the dealer  
436 authorizing the dealer to apply for a duplicate certificate of  
437 title and assign the title on behalf of the owner; a court order  
438 awarding title to the vehicle to the dealer; a salvage  
439 certificate of title; a photocopy of a duly assigned certificate  
440 of title being held by a financial institution as collateral for  
441 a business loan of money to the dealer ("floor plan"); a copy of  
442 a canceled check or other documentation evidencing that an  
443 outstanding lien on a vehicle taken in trade by a licensed  
444 dealer has been satisfied and that the certificate of title will  
445 be, but has not yet been, received by the dealer; a vehicle  
446 purchase order or installment contract for a specific vehicle  
447 identifying that vehicle as a trade-in on a replacement vehicle;  
448 or a duly executed odometer disclosure statement as required by

449 Title IV of the Motor Vehicle Information and Cost Savings Act  
 450 of 1972 (Pub. L. No. 92-513, as amended by Pub. L. No. 94-364  
 451 and Pub. L. No. 100-561) and by 49 C.F.R. part 580 bearing the  
 452 signatures of the titled owners of a traded-in vehicle.

453 (8) PENALTY.—Any person found guilty of violating any of  
 454 the provisions of this section is guilty of a misdemeanor of the  
 455 second degree, punishable as provided in s. 775.082 or s.  
 456 775.083.

457 (9) DENIAL, SUSPENSION, OR REVOCATION.—

458 (a) The department may deny, suspend, or revoke any  
 459 license issued hereunder or under the provisions of s. 320.77 or  
 460 s. 320.771 upon proof that an applicant or a licensee has:

- 461 1. Committed fraud or willful misrepresentation in  
 462 application for or in obtaining a license.
- 463 2. Been convicted of a felony.
- 464 3. Failed to honor a bank draft or check given to a motor  
 465 vehicle dealer or independent motor vehicle sales agent for the  
 466 purchase of a motor vehicle by another motor vehicle dealer or  
 467 independent motor vehicle sales agent within 10 days after  
 468 notification that the bank draft or check has been dishonored.  
 469 If the transaction is disputed, the maker of the bank draft or  
 470 check shall post a bond in accordance with the provisions of s.  
 471 559.917, and no proceeding for revocation or suspension shall be  
 472 commenced until the dispute is resolved.

473 4.a. Failed to provide payment within 10 business days to  
 474 the department for a check payable to the department that was  
 475 dishonored due to insufficient funds in the amount due plus any  
 476 statutorily authorized fee for uttering a worthless check. The

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477 department shall notify an applicant or licensee when the  
478 applicant or licensee makes payment to the department by a check  
479 that is subsequently dishonored by the bank due to insufficient  
480 funds. The applicant or licensee shall, within 10 business days  
481 after receiving the notice, provide payment to the department in  
482 the form of cash in the amount due plus any statutorily  
483 authorized fee. If the applicant or licensee fails to make such  
484 payment within 10 business days, the department may deny,  
485 suspend, or revoke the applicant's or licensee's motor vehicle  
486 dealer or independent motor vehicle sales agent license.

487 b. Stopped payment on a check payable to the department,  
488 issued a check payable to the department from an account that  
489 has been closed, or charged back a credit card transaction to  
490 the department. If an applicant or licensee commits any such  
491 act, the department may deny, suspend, or revoke the applicant's  
492 or licensee's motor vehicle dealer or independent motor vehicle  
493 sales agent license.

494 (b) The department may deny, suspend, or revoke any  
495 license issued hereunder or under the provisions of s. 320.77 or  
496 s. 320.771 upon proof that a licensee has committed, with  
497 sufficient frequency so as to establish a pattern of wrongdoing  
498 on the part of a licensee, violations of one or more of the  
499 following activities:

500 1. Representation that a demonstrator is a new motor  
501 vehicle, or the attempt to sell or the sale of a demonstrator as  
502 a new motor vehicle without written notice to the purchaser that  
503 the vehicle is a demonstrator. For the purposes of this section,  
504 a "demonstrator," a "new motor vehicle," and a "used motor

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505 | vehicle" shall be defined as under s. 320.60.

506 |         2. Unjustifiable refusal to comply with a licensee's  
507 | responsibility under the terms of the new motor vehicle warranty  
508 | issued by its respective manufacturer, distributor, or importer.  
509 | However, if such refusal is at the direction of the  
510 | manufacturer, distributor, or importer, such refusal shall not  
511 | be a ground under this section.

512 |         3. Misrepresentation or false, deceptive, or misleading  
513 | statements with regard to the sale or financing of motor  
514 | vehicles which any motor vehicle dealer or independent motor  
515 | vehicle sales agent has, or causes to have, advertised, printed,  
516 | displayed, published, distributed, broadcast, televised, or made  
517 | in any manner with regard to the sale or financing of motor  
518 | vehicles.

519 |         4. Failure by any motor vehicle dealer or independent  
520 | motor vehicle sales agent to provide a customer or purchaser  
521 | with an odometer disclosure statement and a copy of any bona  
522 | fide written, executed sales contract or agreement of purchase  
523 | connected with the purchase of the motor vehicle purchased by  
524 | the customer or purchaser.

525 |         5. Failure of any motor vehicle dealer or independent  
526 | motor vehicle sales agent to comply with the terms of any bona  
527 | fide written, executed agreement, pursuant to the sale of a  
528 | motor vehicle.

529 |         6. Failure to apply for transfer of a title as prescribed  
530 | in s. 319.23(6).

531 |         7. Use of the dealer license identification number by any  
532 | person other than the licensed dealer or his or her designee.

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533 8. Failure to continually meet the requirements of the  
534 licensure law.

535 9. Representation to a customer or any advertisement to  
536 the public representing or suggesting that a motor vehicle is a  
537 new motor vehicle if such vehicle lawfully cannot be titled in  
538 the name of the customer or other member of the public by the  
539 seller using a manufacturer's statement of origin as permitted  
540 in s. 319.23(1).

541 10. Requirement by any motor vehicle dealer or independent  
542 motor vehicle sales agent that a customer or purchaser accept  
543 equipment on his or her motor vehicle which was not ordered by  
544 the customer or purchaser.

545 11. Requirement by any motor vehicle dealer or independent  
546 motor vehicle sales agent that any customer or purchaser finance  
547 a motor vehicle with a specific financial institution or  
548 company.

549 12. Requirement by any motor vehicle dealer or independent  
550 motor vehicle sales agent that the purchaser of a motor vehicle  
551 contract with the dealer for physical damage insurance.

552 13. Perpetration of a fraud upon any person as a result of  
553 dealing in motor vehicles, including, without limitation, the  
554 misrepresentation to any person by the licensee of the  
555 licensee's relationship to any manufacturer, importer, or  
556 distributor.

557 14. Violation of any of the provisions of s. 319.35 by any  
558 motor vehicle dealer or independent motor vehicle sales agent.

559 15. Sale by a motor vehicle dealer or independent motor  
560 vehicle sales agent of a vehicle offered in trade by a customer

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561 before ~~prior to~~ consummation of the sale, exchange, or transfer  
562 of a newly acquired vehicle to the customer, unless the customer  
563 provides written authorization for the sale of the trade-in  
564 vehicle before ~~prior to~~ delivery of the newly acquired vehicle.

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

567 17. Violation of chapter 319, this chapter, or ss.  
568 559.901-559.9221, which has to do with dealing in or repairing  
569 motor vehicles or mobile homes. Additionally, in the case of  
570 used motor vehicles, the willful violation of the federal law  
571 and rule in 15 U.S.C. s. 2304, 16 C.F.R. part 455, pertaining to  
572 the consumer sales window form.

573 18. Failure to maintain evidence of notification to the  
574 owner or coowner of a vehicle regarding registration or titling  
575 fees owed as required in s. 320.02(16).

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

578 (c) When a motor vehicle dealer or independent motor  
579 vehicle sales agent is convicted of a crime which results in his  
580 or her being prohibited from continuing in that capacity, the  
581 dealer may not continue in any capacity within the industry. The  
582 offender shall have no financial interest, management, sales, or  
583 other role in the operation of a dealership. Further, the  
584 offender may not derive income from the dealership beyond  
585 reasonable compensation for the sale of his or her ownership  
586 interest in the business.

587 (10) SURETY BOND OR IRREVOCABLE LETTER OF CREDIT  
588 REQUIRED.—

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589 (a) Annually, before any license shall be issued to a  
590 motor vehicle dealer, the applicant-dealer of new or used motor  
591 vehicles shall deliver to the department a good and sufficient  
592 surety bond or irrevocable letter of credit, executed by the  
593 applicant-dealer as principal, in the sum of \$25,000.

594 (b) Surety bonds and irrevocable letters of credit shall  
595 be in a form to be approved by the department and shall be  
596 conditioned that the motor vehicle dealer shall comply with the  
597 conditions of any written contract made by such dealer in  
598 connection with the sale or exchange of any motor vehicle and  
599 shall not violate any of the provisions of chapter 319 and this  
600 chapter in the conduct of the business for which the dealer is  
601 licensed. Such bonds and letters of credit shall be to the  
602 department and in favor of any person in a retail or wholesale  
603 transaction who shall suffer any loss as a result of any  
604 violation of the conditions hereinabove contained. When the  
605 department determines that a person has incurred a loss as a  
606 result of a violation of chapter 319 or this chapter, it shall  
607 notify the person in writing of the existence of the bond or  
608 letter of credit. Such bonds and letters of credit shall be for  
609 the license period, and a new bond or letter of credit or a  
610 proper continuation certificate shall be delivered to the  
611 department at the beginning of each license period. However, the  
612 aggregate liability of the surety in any one year shall in no  
613 event exceed the sum of the bond or, in the case of a letter of  
614 credit, the aggregate liability of the issuing bank shall not  
615 exceed the sum of the credit.

616 (c) Surety bonds shall be executed by a surety company

617 | authorized to do business in the state as surety, and  
 618 | irrevocable letters of credit shall be issued by a bank  
 619 | authorized to do business in the state as a bank.

620 |       (d) Irrevocable letters of credit shall be engaged by a  
 621 | bank as an agreement to honor demands for payment as specified  
 622 | in this section.

623 |       (e) The department shall, upon denial, suspension, or  
 624 | revocation of any license, notify the surety company of the  
 625 | licensee, or bank issuing an irrevocable letter of credit for  
 626 | the licensee, in writing, that the license has been denied,  
 627 | suspended, or revoked and shall state the reason for such  
 628 | denial, suspension, or revocation.

629 |       (f) Any surety company which pays any claim against the  
 630 | bond of any licensee or any bank which honors a demand for  
 631 | payment as a condition specified in a letter of credit of a  
 632 | licensee shall notify the department in writing that such action  
 633 | has been taken and shall state the amount of the claim or  
 634 | payment.

635 |       (g) Any surety company which cancels the bond of any  
 636 | licensee or any bank which cancels an irrevocable letter of  
 637 | credit shall notify the department in writing of such  
 638 | cancellation, giving reason for the cancellation.

639 |       (11) INJUNCTION.—In addition to the remedies provided in  
 640 | this chapter and notwithstanding the existence of any adequate  
 641 | remedy at law, the department is authorized to make application  
 642 | to any circuit court of the state, and such circuit court shall  
 643 | have jurisdiction, upon a hearing and for cause shown, to grant  
 644 | a temporary or permanent injunction, or both, restraining any

645 | person from acting as a motor vehicle dealer or independent  
 646 | motor vehicle sales agent under the terms of this section  
 647 | without being properly licensed hereunder, from violating or  
 648 | continuing to violate any of the provisions of chapter 319, this  
 649 | chapter, or ss. 559.901-559.9221, or for failing or refusing to  
 650 | comply with the requirements of chapter 319, this chapter, or  
 651 | ss. 559.901-559.9221, or any rule or regulation adopted  
 652 | thereunder, such injunction to be issued without bond. A single  
 653 | act in violation of the provisions of chapter 319, this chapter,  
 654 | or chapter 559 shall be sufficient to authorize the issuance of  
 655 | an injunction.

656 |       (12) CIVIL FINES; PROCEDURE.—In addition to the exercise  
 657 | of other powers provided in this section, the department may  
 658 | levy and collect a civil fine, in an amount not to exceed \$1,000  
 659 | for each violation, against any licensee if it finds that the  
 660 | licensee has violated any provision of this section or has  
 661 | violated any other law of this state or the federal law and  
 662 | administrative rule set forth in paragraph (9) (a) related to  
 663 | dealing in motor vehicles. Any licensee shall be entitled to a  
 664 | hearing pursuant to chapter 120 if the licensee contests the  
 665 | fine levied, or about to be levied, upon him or her.

666 |       (13) DEPOSIT AND USE OF FEES.—The fees charged applicants  
 667 | for both the required background investigation and the  
 668 | computerized card as provided in this section shall be deposited  
 669 | into the Highway Safety Operating Trust Fund and shall be used  
 670 | to cover the cost of such service.

671 |       (14) EXEMPTION.—The provisions of this section do not  
 672 | apply to persons who sell or deliver motorized disability access

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673 vehicles as defined in s. 320.01.

674 Section 2. Paragraph (a) of subsection (1) and paragraph  
675 (b) of subsection (5) of section 316.2935, Florida Statutes, are  
676 amended to read:

677 316.2935 Air pollution control equipment; tampering  
678 prohibited; penalty.—

679 (1)(a) It is unlawful for any person or motor vehicle  
680 dealer or independent motor vehicle sales agent as defined in s.  
681 320.27 to offer or display for retail sale or lease, sell,  
682 lease, or transfer title to, a motor vehicle in Florida that has  
683 been tampered with in violation of this section, as determined  
684 pursuant to subsection (7). Tampering is defined as the  
685 dismantling, removal, or rendering ineffective of any air  
686 pollution control device or system which has been installed on a  
687 motor vehicle by the vehicle manufacturer except to replace such  
688 device or system with a device or system equivalent in design  
689 and function to the part that was originally installed on the  
690 motor vehicle. All motor vehicles sold, reassigned, or traded to  
691 a licensed motor vehicle dealer are exempt from this paragraph.

692 (5) Any person who knowingly and willfully violates  
693 subsection (1) shall be punished as follows:

694 (b) For a second or subsequent offense, violators,  
695 including motor vehicle dealers or independent motor vehicle  
696 sales agents, shall be guilty of a misdemeanor of the first  
697 degree, punishable as provided in s. 775.082 or s. 775.083. In  
698 addition, the Department of Highway Safety and Motor Vehicles  
699 may temporarily or permanently revoke or suspend the motor  
700 vehicle dealer or independent motor vehicle sales agent license

701 authorized pursuant to the provisions of s. 320.27.

702 Section 3. Paragraph (a) of subsection (7) of section  
703 319.33, Florida Statutes, is amended to read:

704 319.33 Offenses involving vehicle identification numbers,  
705 applications, certificates, papers; penalty.—

706 (7)(a) If all identifying numbers of a motor vehicle or  
707 mobile home do not exist or have been destroyed, removed,  
708 covered, altered, or defaced, or if the real identity of the  
709 motor vehicle or mobile home cannot be determined, the motor  
710 vehicle or mobile home shall constitute contraband and shall be  
711 subject to forfeiture by a seizing law enforcement agency,  
712 pursuant to applicable provisions of ss. 932.701-932.704. Such  
713 motor vehicle shall not be operated on the streets and highways  
714 of the state unless, by written order of a court of competent  
715 jurisdiction, the department is directed to assign to the  
716 vehicle a replacement vehicle identification number which shall  
717 thereafter be used for identification purposes. If the motor  
718 vehicle is confiscated from a licensed motor vehicle dealer or  
719 independent motor vehicle sales agent as defined in s. 320.27,  
720 the dealer or sales agent ~~dealer's~~ license shall be revoked.

721 Section 4. Subsection (3) of section 320.1316, Florida  
722 Statutes, is amended to read:

723 320.1316 Failure to surrender vehicle or vessel.—

724 (3) The registered owner of the vehicle may dispute a  
725 notice to surrender the vehicle by notifying the department of  
726 the dispute in writing on forms provided by the department and  
727 presenting proof that the vehicle was sold to a motor vehicle  
728 dealer or independent motor vehicle sales agent licensed under

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729 s. 320.27, a mobile home dealer licensed under s. 320.77, or a  
730 recreational vehicle dealer licensed under s. 320.771.

731 Section 5. Section 320.273, Florida Statutes, is amended  
732 to read:

733 320.273 Reinstatement of license of motor vehicle  
734 dealers.—When the license of a motor vehicle dealer or  
735 independent motor vehicle sales agent has been revoked or  
736 suspended by the department pursuant to the provisions of s.  
737 320.27, the department may for good cause reinstate the license  
738 of any former licensee under this law if it determines that said  
739 former licensee is rehabilitated, meets the requirements of s.  
740 320.27, files an application for license pursuant to s.  
741 320.27(3), and complies with said section.

742 Section 6. Subsection (1) of section 501.021, Florida  
743 Statutes, is amended to read:

744 501.021 Home solicitation sale; definitions.—As used in  
745 ss. 501.021-501.055:

746 (1) "Home solicitation sale" means a sale, lease, or  
747 rental of consumer goods or services with a purchase price in  
748 excess of \$25 which includes all interest, service charges,  
749 finance charges, postage, freight, insurance, and service or  
750 handling charges, whether under single or multiple contracts,  
751 made pursuant to an installment contract, a loan agreement,  
752 other evidence of indebtedness, or a cash transaction or other  
753 consumer credit transaction, in which:

754 (a) The seller or a person acting for him or her engages  
755 in a personal solicitation of the sale, lease, or rental at a  
756 place other than at the seller's fixed location business

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757 establishment where goods or services are offered or exhibited  
758 for sale, lease, or rental, and

759 (b) The buyer's agreement or offer to purchase is given to  
760 the seller and the sale, lease, or rental is consummated at a  
761 place other than at the seller's fixed location business  
762 establishment,

763  
764 including a transaction unsolicited by the consumer and  
765 consummated by telephone and without any other contact between  
766 the buyer and the seller or its representative before ~~prior to~~  
767 delivery of the goods or performance of the services. It does  
768 not include a sale, lease, or rental made at any fair or similar  
769 commercial exhibit or a sale, lease, or rental that results from  
770 a request for specific goods or services by the purchaser or  
771 lessee or a sale made by a motor vehicle dealer or independent  
772 motor vehicle sales agent licensed under s. 320.27 which occurs  
773 at a location or facility open to the general public or to a  
774 designated group.

775 Section 7. Subsection (3) of section 537.012, Florida  
776 Statutes, is amended to read:

777 537.012 Repossession, disposal of pledged property; excess  
778 proceeds.—

779 (3) Upon taking possession of titled personal property,  
780 the lender may dispose of the titled personal property by sale  
781 but may do so only through a motor vehicle dealer or independent  
782 motor vehicle sales agent licensed under s. 320.27. At least 10  
783 days before ~~prior to~~ sale, the lender shall notify the borrower  
784 of the date, time, and place of the sale and provide the

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785 borrower with a written accounting of the principal amount due  
786 on the title loan, interest accrued through the date the lender  
787 takes possession of the titled personal property, and any  
788 reasonable expenses incurred to date by the lender in taking  
789 possession of, preparing for sale, and selling the titled  
790 personal property. At any time before ~~prior to~~ such sale, the  
791 lender shall permit the borrower to redeem the titled personal  
792 property by tendering a money order or certified check for the  
793 principal amount of the title loan, interest accrued through the  
794 date the lender takes possession, and any reasonable expenses  
795 incurred to date by the lender in taking possession of,  
796 preparing for sale, and selling the titled personal property.  
797 Nothing in this act nor in any title loan agreement shall  
798 preclude a borrower from purchasing the titled personal property  
799 at any sale.

800 Section 8. This act shall take effect July 1, 2013.