

By Senator Latvala

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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.; 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 and
23 Motor Vehicles.

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

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

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

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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
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.

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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
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

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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 of 50 percent or
140 more of the total cost of the motor vehicle.

141 (2) (a) LICENSE REQUIRED.—No person shall engage in business
142 as, serve in the capacity of, or act as a motor vehicle dealer
143 in this state without first obtaining a license therefor in the
144 appropriate classification as provided in this section. With the
145 exception of transactions with motor vehicle auctions, no person

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146 other than a licensed motor vehicle dealer may advertise for
147 sale any motor vehicle belonging to another party unless as a
148 direct result of a bona fide legal proceeding, court order,
149 settlement of an estate, or by operation of law. However, owners
150 of motor vehicles titled in their names may advertise and offer
151 vehicles for sale on their own behalf. It shall be unlawful for
152 a licensed motor vehicle dealer to allow any person other than a
153 bona fide employee to use the motor vehicle dealer license for
154 the purpose of acting in the capacity of or conducting motor
155 vehicle sales transactions as a motor vehicle dealer. Any person
156 selling or offering a motor vehicle for sale in violation of the
157 licensing requirements of this subsection, or who misrepresents
158 to any person its relationship with any manufacturer, importer,
159 or distributor, in addition to the penalties provided herein,
160 shall be deemed guilty of an unfair and deceptive trade practice
161 as defined in part II of chapter 501 and shall be subject to the
162 provisions of subsections (8) 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 must 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
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. Be insured under the associated motor vehicle dealer's
174 garage liability insurance.

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175 5. Not have a felony conviction in the last 10 years.

176 (3) APPLICATION AND FEE.—The application for the license
177 shall be in such form as may be prescribed by the department and
178 shall be subject to such rules with respect thereto as may be so
179 prescribed by it. Such application shall be verified by oath or
180 affirmation and shall contain a full statement of the name and
181 birth date of the person or persons applying therefor; the name
182 of the firm or copartnership, with the names and places of
183 residence of all members thereof, if such applicant is a firm or
184 copartnership; the names and places of residence of the
185 principal officers, if the applicant is a body corporate or
186 other artificial body; the name of the state under whose laws
187 the corporation is organized; the present and former place or
188 places of residence of the applicant; and prior business in
189 which the applicant has been engaged and the location thereof.
190 Such application shall describe the exact location of the place
191 of business and shall state whether the place of business is
192 owned by the applicant and when acquired, or, if leased, a true
193 copy of the lease shall be attached to the application. The
194 applicant shall certify that the location provides an adequately
195 equipped office and is not a residence; that the location
196 affords sufficient unoccupied space upon and within which
197 adequately to store all motor vehicles offered and displayed for
198 sale; and that the location is a suitable place where the
199 applicant can in good faith carry on such business and keep and
200 maintain books, records, and files necessary to conduct such
201 business, which shall be available at all reasonable hours to
202 inspection by the department or any of its inspectors or other
203 employees. The applicant shall certify that the business of a

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204 motor vehicle dealer or independent motor vehicle sales agent is
205 the principal business which shall be conducted at that
206 location. The application shall contain a statement that the
207 applicant is either franchised by a manufacturer of motor
208 vehicles, in which case the name of each motor vehicle that the
209 applicant is franchised to sell shall be included, or an
210 independent, (nonfranchised) motor vehicle dealer or independent
211 motor vehicle sales agent. The application shall contain other
212 relevant information as may be required by the department,
213 including evidence that the applicant is insured under a garage
214 liability insurance policy or a general liability insurance
215 policy coupled with a business automobile policy, which shall
216 include, at a minimum, \$25,000 combined single-limit liability
217 coverage including bodily injury and property damage protection
218 and \$10,000 personal injury protection. However, a salvage motor
219 vehicle dealer as defined in subparagraph (1)(c)5. is exempt
220 from the requirements for garage liability insurance and
221 personal injury protection insurance on those vehicles that
222 cannot be legally operated on roads, highways, or streets in
223 this state. Franchise dealers must submit a garage liability
224 insurance policy, and all other dealers must submit a garage
225 liability insurance policy or a general liability insurance
226 policy coupled with a business automobile policy. Such policy
227 shall be for the license period, and evidence of a new or
228 continued policy shall be delivered to the department at the
229 beginning of each license period. Upon making initial
230 application, the applicant shall pay to the department a fee of
231 \$300 in addition to any other fees now required by law. The fee
232 for an applicant for an independent motor vehicle sales agent

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233 license shall be no more than 50 percent of the fee to obtain a
234 motor vehicle dealer license. Upon making a subsequent renewal
235 application, the applicant shall pay to the department a fee of
236 \$75 in addition to any other fees now required by law. Upon
237 making an application for a change of location, the person shall
238 pay a fee of \$50 in addition to any other fees now required by
239 law. The department shall, in the case of every application for
240 initial licensure, verify whether certain facts set forth in the
241 application are true. Each applicant, general partner in the
242 case of a partnership, or corporate officer and director in the
243 case of a corporate applicant, must file a set of fingerprints
244 with the department for the purpose of determining any prior
245 criminal record or any outstanding warrants. The department
246 shall submit the fingerprints to the Department of Law
247 Enforcement for state processing and forwarding to the Federal
248 Bureau of Investigation for federal processing. The actual cost
249 of state and federal processing shall be borne by the applicant
250 and is in addition to the fee for licensure. The department may
251 issue a license to an applicant pending the results of the
252 fingerprint investigation, which license is fully revocable if
253 the department subsequently determines that any facts set forth
254 in the application are not true or correctly represented.

255 (4) LICENSE CERTIFICATE.—

256 (a) A license certificate shall be issued by the department
257 in accordance with such application when the application is
258 regular in form and in compliance with the provisions of this
259 section. The license certificate may be in the form of a
260 document or a computerized card as determined by the department.
261 The actual cost of each original, additional, or replacement

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262 computerized card shall be borne by the licensee and is in
263 addition to the fee for licensure. Such license, when so issued,
264 entitles the licensee to carry on and conduct the business of a
265 motor vehicle dealer. Each license issued to a franchise motor
266 vehicle dealer expires annually on December 31 unless revoked or
267 suspended before ~~prior to~~ that date. Each license issued to an
268 independent or wholesale dealer or auction or independent motor
269 vehicle sales agent expires annually on April 30 unless revoked
270 or suspended before ~~prior to~~ that date. At least ~~Not less than~~
271 60 days before ~~prior to~~ the license expiration date, the
272 department shall deliver or mail to each licensee the necessary
273 renewal forms. Each independent dealer shall certify that the
274 dealer (owner, partner, officer, or director of the licensee, or
275 a full-time employee of the licensee that holds a responsible
276 management-level position) has completed 8 hours of continuing
277 education before ~~prior to~~ filing the renewal forms with the
278 department. Such certification shall be filed once every 2
279 years. The continuing education shall include at least 2 hours
280 of legal or legislative issues, 1 hour of department issues, and
281 5 hours of relevant motor vehicle industry topics. Continuing
282 education shall be provided by dealer schools licensed under
283 paragraph (b) either in a classroom setting or by
284 correspondence. Such schools shall provide certificates of
285 completion to the department and the customer which shall be
286 filed with the license renewal form, and such schools may charge
287 a fee for providing continuing education. Any licensee who does
288 not file his or her application and fees and any other requisite
289 documents, as required by law, with the department at least 30
290 days before ~~prior to~~ the license expiration date shall cease to

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291 engage in business as a motor vehicle dealer or independent
292 motor vehicle sales agent on the license expiration date. A
293 renewal filed with the department within 45 days after the
294 expiration date shall be accompanied by a delinquent fee of
295 \$100. Thereafter, a new application is required, accompanied by
296 the initial license fee. A license certificate duly issued by
297 the department may be modified by endorsement to show a change
298 in the name of the licensee, provided, as shown by affidavit of
299 the licensee, the majority ownership interest of the licensee
300 has not changed or the name of the person appearing as
301 franchisee on the sales and service agreement has not changed.
302 Modification of a license certificate to show any name change as
303 herein provided shall not require initial licensure or
304 reissuance of dealer tags; however, any dealer obtaining a name
305 change shall transact all business in and be properly identified
306 by that name. All documents relative to licensure shall reflect
307 the new name. In the case of a franchise dealer, the name change
308 shall be approved by the manufacturer, distributor, or importer.
309 A licensee applying for a name change endorsement shall pay a
310 fee of \$25 which fee shall apply to the change in the name of a
311 main location and all additional locations licensed under the
312 provisions of subsection (5). Each initial license application
313 received by the department shall be accompanied by verification
314 that, within the preceding 6 months, the applicant, or one or
315 more of his or her designated employees, has attended a training
316 and information seminar conducted by a licensed motor vehicle
317 dealer or independent motor vehicle sales agent training school.
318 Any applicant for a new franchised motor vehicle dealer license
319 who has held a valid franchised motor vehicle dealer license

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320 continuously for the past 2 years and who remains in good
321 standing with the department is exempt from the prelicensing
322 training requirement. Such seminar shall include, but is not
323 limited to, statutory dealer requirements, which requirements
324 include required bookkeeping and recordkeeping procedures,
325 requirements for the collection of sales and use taxes, and such
326 other information that in the opinion of the department will
327 promote good business practices. No seminar may exceed 8 hours
328 in length.

329 (b) Each initial license application received by the
330 department for licensure under subparagraph (1)(c)2. shall be
331 accompanied by verification that, within the preceding 6 months,
332 the applicant (owner, partner, officer, or director of the
333 applicant, or a full-time employee of the applicant that holds a
334 responsible management-level position) has successfully
335 completed training conducted by a licensed motor vehicle dealer
336 or independent motor vehicle sales agent training school. Such
337 training must include training in titling and registration of
338 motor vehicles, laws relating to unfair and deceptive trade
339 practices, laws relating to financing with regard to buy-here,
340 pay-here operations, and such other information that in the
341 opinion of the department will promote good business practices.
342 Successful completion of this training shall be determined by
343 examination administered at the end of the course and attendance
344 of no less than 90 percent of the total hours required by such
345 school. Any applicant who had held a valid motor vehicle dealer
346 or independent motor vehicle sales agent ~~dealer's~~ license
347 continuously within the past 2 years and who remains in good
348 standing with the department is exempt from the prelicensing

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349 requirements of this section. The department shall have the
350 authority to adopt any rule necessary for establishing the
351 training curriculum; length of training, which shall not exceed
352 8 hours for required department topics and shall not exceed an
353 additional 24 hours for topics related to other regulatory
354 agencies' instructor qualifications; and any other requirements
355 under this section. The curriculum for other subjects shall be
356 approved by any and all other regulatory agencies having
357 jurisdiction over specific subject matters; however, the overall
358 administration of the licensing of these dealer schools and
359 their instructors shall remain with the department. Such schools
360 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
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

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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
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

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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
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

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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 license
459 issued hereunder or under the provisions of s. 320.77 or s.
460 320.771 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

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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
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.

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494 (b) The department may deny, suspend, or revoke any license
495 issued hereunder or under the provisions of s. 320.77 or s.
496 320.771 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
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 motor
520 vehicle sales agent to provide a customer or purchaser with an
521 odometer disclosure statement and a copy of any bona fide
522 written, executed sales contract or agreement of purchase

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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 motor
526 vehicle sales agent to comply with the terms of any bona fide
527 written, executed agreement, pursuant to the sale of a motor
528 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.

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

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

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

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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 REQUIRED.—

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

594 (b) Surety bonds and irrevocable letters of credit shall be
595 in a form to be approved by the department and shall be
596 conditioned that the motor vehicle dealer or independent motor
597 vehicle sales agent shall comply with the conditions of any
598 written contract made by such dealer or sales agent in
599 connection with the sale or exchange of any motor vehicle and
600 shall not violate any of the provisions of chapter 319 and this
601 chapter in the conduct of the business for which the dealer or
602 sales agent is licensed. Such bonds and letters of credit shall
603 be to the department and in favor of any person in a retail or
604 wholesale transaction who shall suffer any loss as a result of
605 any violation of the conditions hereinabove contained. When the
606 department determines that a person has incurred a loss as a
607 result of a violation of chapter 319 or this chapter, it shall
608 notify the person in writing of the existence of the bond or
609 letter of credit. Such bonds and letters of credit shall be for

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610 the license period, and a new bond or letter of credit or a
611 proper continuation certificate shall be delivered to the
612 department at the beginning of each license period. However, the
613 aggregate liability of the surety in any one year shall in no
614 event exceed the sum of the bond or, in the case of a letter of
615 credit, the aggregate liability of the issuing bank shall not
616 exceed the sum of the credit.

617 (c) Surety bonds shall be executed by a surety company
618 authorized to do business in the state as surety, and
619 irrevocable letters of credit shall be issued by a bank
620 authorized to do business in the state as a bank.

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

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

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

636 (g) Any surety company which cancels the bond of any
637 licensee or any bank which cancels an irrevocable letter of
638 credit shall notify the department in writing of such

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639 cancellation, giving reason for the cancellation.

640 (11) INJUNCTION.—In addition to the remedies provided in
641 this chapter and notwithstanding the existence of any adequate
642 remedy at law, the department is authorized to make application
643 to any circuit court of the state, and such circuit court shall
644 have jurisdiction, upon a hearing and for cause shown, to grant
645 a temporary or permanent injunction, or both, restraining any
646 person from acting as a motor vehicle dealer or independent
647 motor vehicle sales agent under the terms of this section
648 without being properly licensed hereunder, from violating or
649 continuing to violate any of the provisions of chapter 319, this
650 chapter, or ss. 559.901-559.9221, or for failing or refusing to
651 comply with the requirements of chapter 319, this chapter, or
652 ss. 559.901-559.9221, or any rule or regulation adopted
653 thereunder, such injunction to be issued without bond. A single
654 act in violation of the provisions of chapter 319, this chapter,
655 or chapter 559 shall be sufficient to authorize the issuance of
656 an injunction.

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

667 (13) DEPOSIT AND USE OF FEES.—The fees charged applicants

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668 for both the required background investigation and the
669 computerized card as provided in this section shall be deposited
670 into the Highway Safety Operating Trust Fund and shall be used
671 to cover the cost of such service.

672 (14) EXEMPTION.—The provisions of this section do not apply
673 to persons who sell or deliver motorized disability access
674 vehicles as defined in s. 320.01.

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

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

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

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

695 (b) For a second or subsequent offense, violators,
696 including motor vehicle dealers or independent motor vehicle

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697 sales agents, shall be guilty of a misdemeanor of the first
698 degree, punishable as provided in s. 775.082 or s. 775.083. In
699 addition, the Department of Highway Safety and Motor Vehicles
700 may temporarily or permanently revoke or suspend the motor
701 vehicle dealer or independent motor vehicle sales agent license
702 authorized pursuant to the provisions of s. 320.27.

703 Section 3. Paragraph (a) of subsection (7) of section
704 319.33, Florida Statutes, is amended to read:

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

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

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

724 320.1316 Failure to surrender vehicle or vessel.—

725 (3) The registered owner of the vehicle may dispute a

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726 notice to surrender the vehicle by notifying the department of
727 the dispute in writing on forms provided by the department and
728 presenting proof that the vehicle was sold to a motor vehicle
729 dealer or independent motor vehicle sales agent licensed under
730 s. 320.27, a mobile home dealer licensed under s. 320.77, or a
731 recreational vehicle dealer licensed under s. 320.771.

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

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

743 Section 6. Section 501.021, Florida Statutes, is amended to
744 read:

745 501.021 Home solicitation sale; definitions.—As used in ss.
746 501.021-501.055:

747 (1) "Home solicitation sale" means a sale, lease, or rental
748 of consumer goods or services with a purchase price in excess of
749 \$25 which includes all interest, service charges, finance
750 charges, postage, freight, insurance, and service or handling
751 charges, whether under single or multiple contracts, made
752 pursuant to an installment contract, a loan agreement, other
753 evidence of indebtedness, or a cash transaction or other
754 consumer credit transaction, in which:501.021 Home solicitation

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755 sale; definitions.—As used in ss. 501.021-501.055:

756 (a) The seller or a person acting for him or her engages in
757 a personal solicitation of the sale, lease, or rental at a place
758 other than at the seller's fixed location business establishment
759 where goods or services are offered or exhibited for sale,
760 lease, or rental, and

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

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

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

779 537.012 Repossession, disposal of pledged property; excess
780 proceeds.—

781 (3) Upon taking possession of titled personal property, the
782 lender may dispose of the titled personal property by sale but
783 may do so only through a motor vehicle dealer or independent

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784 motor vehicle sales agent licensed under s. 320.27. At least 10
785 days before ~~prior to~~ sale, the lender shall notify the borrower
786 of the date, time, and place of the sale and provide the
787 borrower with a written accounting of the principal amount due
788 on the title loan, interest accrued through the date the lender
789 takes possession of the titled personal property, and any
790 reasonable expenses incurred to date by the lender in taking
791 possession of, preparing for sale, and selling the titled
792 personal property. At any time before ~~prior to~~ such sale, the
793 lender shall permit the borrower to redeem the titled personal
794 property by tendering a money order or certified check for the
795 principal amount of the title loan, interest accrued through the
796 date the lender takes possession, and any reasonable expenses
797 incurred to date by the lender in taking possession of,
798 preparing for sale, and selling the titled personal property.
799 Nothing in this act nor in any title loan agreement shall
800 preclude a borrower from purchasing the titled personal property
801 at any sale.

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