

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 595 Motor Vehicle Dealers
SPONSOR(S): Transportation & Infrastructure Subcommittee; Rommel
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 616

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	10 Y, 0 N, As CS	Roth	Vickers
2) Transportation & Tourism Appropriations Subcommittee			
3) Government Accountability Committee			

SUMMARY ANALYSIS

The bill amends various provisions of the motor vehicle dealer licensing law. In summary, the bill:

- Revises the definition of “motor vehicle dealer” by including a list of activities, including leasing motor vehicles, which if performed, qualify a person as a motor vehicle dealer.
- Amends the definitions of “franchised motor vehicle dealer,” “independent motor vehicle dealer,” and “wholesale motor vehicle dealer,” to remove the term “dealing in” motor vehicles.
- Provides that the following are not considered motor vehicle dealers:
 - Persons whose sole dealing in motor vehicles is owning or hosting a publication or website which displays motor vehicles for sale by licensed dealers; and
 - Persons primarily engaged in the business of short-term rentals of motor vehicles (rental terms that do not exceed 12 months), who are not involved in the retail sale of vehicles.
- Removes from the definition of “motor vehicle dealer” persons offering to sell a motor vehicle service agreement at the time of sale or lease of the motor vehicle.
- Amends the definition of “motor vehicle broker” by inserting that any advertisement or solicitation by a motor vehicle broker include notice that the broker is receiving a fee and is not a licensed motor vehicle dealer.
- Provides that a licensed manufacturer, distributor, or importer is not considered a motor vehicle broker.
- Requires motor vehicle brokers to be licensed by the Department of Highway Safety and Motor Vehicles (DHSMV) in order to conduct business in Florida, which includes meeting application requirements, paying licensing fees, and following laws and rules related to licensure.
- Provides an exception for obtaining a license to persons who advertise for sale a motor vehicle belonging to another party by contract with a motor vehicle dealer.
- Removes the initial license application training requirements for all applicants, and rather, requires training for only franchise and independent motor vehicle dealers.
- Revises training requirements for franchise motor vehicle dealers.

The bill will likely have a negative fiscal impact on motor vehicle brokers and licensed dealer training schools, but will have an indeterminate positive fiscal impact on DHSMV and Florida Department of Law Enforcement. See fiscal analysis for additional discussion.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 320.27, F.S., is the section of law that regulates motor vehicle dealers. "Motor vehicle dealer" is defined as any person engaged in the business of buying, selling, or dealing in motor vehicles or offering or displaying motor vehicles for sale at wholesale or retail, or who may service and repair vehicles pursuant to a franchise agreement.¹ A person who buys, sells, leases, or who offers for sale, displays for sale or leases three or more motor vehicles in any 12-month period is presumed to be a motor vehicle dealer.²

The term "motor vehicle dealer" does not include:³

- Persons not engaged in the purpose or sale of motor vehicles as a business who are disposing of vehicles acquired for their own personal or business use, or acquired by foreclosure or operation of law, provided such vehicles are acquired and sold in good faith and not for the purpose of avoiding dealer licensing provisions;
- Persons engaged in the business of manufacturing, selling, or offering or displaying for sale no more than 25 trailers in a 12-month period;
- Public officers performing their official duties;
- Receivers, trustees, administrators, executors, guardians, or other persons appointed by, or acting under the judgement or order of, any court;
- Banks, finance companies, or other loan agencies that acquire motor vehicles as an incident to their regular business;
- Motor vehicle rental and leasing companies that sell motor vehicles to licensed dealers; or
- Motor vehicle brokers.

"Motor vehicle broker" is defined as any person engaged in the business of offering to procure or procuring motor vehicles for the general public, including through solicitation or advertisement, but who does not store, display, or take ownership of any vehicle for the purpose of selling the vehicle. A motor vehicle broker is not required to obtain a motor vehicle dealer license.⁴

Motor Vehicle Dealer Licenses

In order to conduct business, motor vehicle dealers must obtain a license from the Department of Highway Safety and Motor Vehicles (DHSMV). There are six types of motor vehicle dealer licenses:⁵

- Independent Dealer: for persons dealing in used motor vehicles only;
- Franchise Dealer: for a licensee who sells new vehicles under an agreement with a manufacturer;⁶
- Service Facility: for dealerships that perform maintenance or repairs of motor vehicles pursuant to a motor vehicle warranty;
- Wholesale Dealer: for licensees who may only buy from, sell to, and deal at wholesale with licensed dealers;

¹ As defined in s. 320.60(1), F.S., an "agreement" or "franchise agreement" means "a contract, franchise, new motor vehicle franchise, sales and service agreement, or dealer agreement or any other terminology used to describe the contractual relationship between a manufacturer, factory branch, distributor, or importer, and a motor vehicle dealer, pursuant to which the motor vehicle dealer is authorized to transact business pertaining to motor vehicles of a particular line-make.

² Section 320.27(1)(c), F.S.

³ Section 320.27(1)(c), F.S.

⁴ Section 320.27(1)(d), F.S.

⁵ Department of Highway Safety and Motor Vehicles, *Licensing Requirements for Motor Vehicle Dealers* (2011), available at <http://www.flhsmv.gov/dmv/dealer.html> (last visited January 5, 2018).

⁶ Section 320.3202(7), F.S., defines "manufacturer" as any person, firm, corporation, or business entity that engages in the manufacturing of recreational vehicles.

- Auction Dealer: for those licensed to sell vehicles to licensed dealers through the bid process; and,
- Salvage Dealer: for licensees who deal in salvage or wrecked vehicles.

Number of Actively Licensed Motor Vehicle, Mobile Home, and Recreational Dealers in Florida⁷

Type of License	Actively Licensed as of 1/2/2018
Franchised motor vehicle dealer	1,539
Franchised motor vehicle service facility	5
Independent motor vehicle dealer	10,953
Wholesale motor vehicle dealer	96
Motor vehicle auction	58
Salvage motor vehicle dealer	551
Mobile home dealer	1,046
Mobile home broker	140
Recreational vehicle dealer	141
Used Recreational vehicle dealer	243
Manufacturers of motor vehicles	124
Distributors of motor vehicles	78
Importers of motor vehicles	19
Mobile home manufacturers	40
Recreational vehicle manufacturers	115
Recreational vehicle distributors	2
Recreational vehicle importers	0
Installer License for Mobile Homes	265
Dealer Installer License for Mobile Homes	19
GRAND TOTAL	15,434

A person can advertise for sale, vehicles on his or her own behalf. However, a person cannot advertise a motor vehicle for sale, on behalf of another person, without obtaining the appropriate license. The only exceptions are transactions with motor vehicle auctions or sales or as a direct result of a bona fide legal proceeding, court order, settlement of an estate, or by operation of law. Aside from the licensee,⁸ only a bona fide employee of the licensee, acting on the licensee's behalf, may conduct motor vehicle sale transactions as a motor vehicle dealer under the license.⁹

Motor Vehicle Dealer License Application and Fee Requirements¹⁰

The first thing a person must do before entering into the business of selling motor vehicles is have a site approved by a Regional Office Compliance Examiner with DHSMV's Division of Motorist Services Regional Office. Once the site is approved, the person must complete an application¹¹ for a license as a motor vehicle dealer and pay DHSMV a fee of \$300 for each main location. The applicant must certify that the business location is not a residence, provides an adequately equipped office, affords sufficient

⁷ Email from Kevin Jacobs, Deputy Legislative Affairs Director, Department of Highway Safety and Motor Vehicles, RE: HB 595 (January 2, 2018).

⁸ Sections 320.60(8), F.S., defines "licensee" as any person licensed or required to be licensed under s. 320.61.

⁹ Section 320.27(2), F.S.

¹⁰ See s. 320.27(3), F.S., Rule 15C-7.003, F.A.C., and *Supra* FN 5.

¹¹ Department of Highway Safety and Motor Vehicles, *Application for a License as a Motor Vehicle, Mobile Home, or Recreational Vehicle Dealer*, available at <https://www.flhsmv.gov/pdf/forms/86056.pdf> (last visited January 5, 2018).

unoccupied space to store motor vehicles offered and displayed for sale, and is suitable for keeping and maintaining books, records, and files necessary to conduct such business, which shall be available at all reasonable hours to inspection by DHSMV. The applicant also must certify that the business of a motor vehicle dealer is the principal business and will be conducted at that location.

Additionally the applicant must provide proof of:

- An original \$25,000 surety bond or a letter of credit;
- A copy of the business location's lease or proof of ownership;
- A copy of the pre-licensing dealer training course completion certificate;
- A garage liability insurance certificate, or a general liability insurance policy coupled with a business automobile policy;
- A copy of registration of business with Florida's Secretary of State, Division of Corporations;
- A copy of specified corporate papers;
- A sales tax number and Federal Employer Identification number; and
- Fingerprints of the applicants to be submitted to the Florida Department of Law Enforcement for state processing, and then forwarded to the Federal Bureau of Investigation for federal processing.

An applicant for renewal must pay DHSMV \$75 for a 1-year renewal or \$150 for a 2-year renewal, in addition to any other fees required by law. If an applicant applies for a change of location, he or she must pay a fee of \$50 in addition to any other fees required by law.

Dealer Training and Continuing Education Requirements

Each initial license application must be accompanied with verification that, within the preceding six months, the applicant (or designated employee) has attended a training and information seminar conducted by a licensed motor vehicle dealer training school.¹² Such seminar shall review statutory dealer requirements, including required bookkeeping and recordkeeping procedures, and requirements for the collection of sales and use taxes. Any applicant who continuously held a valid motor vehicle dealer's license within the past two years and who remains in good standing with DHSMV is exempt from such pre-licensing requirements.¹³

Applicants applying for an independent motor vehicle dealer license are required to submit verification to DHSMV that, within the preceding six months, the applicant, which includes an owner, partner, officer, director of the applicant, or a full-time, management-level employee of the applicant, has successfully completed¹⁴ training conducted by a motor vehicle dealer training school. Such training includes:

- Training in titling and registration of motor vehicles;
- Training in laws relating to financing, and unfair and deceptive trade practices; and
- Training in other information that DHSMV feels will promote good business practices.¹⁵

Upon renewal of the motor vehicle dealer license (once every two years), an independent motor vehicle dealer must submit certification to DHSMV that the dealer (owner, partner, officer, or director of the licensee, or a full-time employee of the licensee that holds a responsible management-level position) has completed eight hours of continuing education. The education must include at least two hours of legal or legislative issues, one hour of DHSMV issues, and five hours of relevant motor vehicle industry topics.¹⁶

¹² A list of licensed dealer training schools is available on DHSMV's website. See *Licensed Dealer Training Schools* (October 29, 2017), https://www.flhsmv.gov/pdf/dealerservices/l_dealer_trng_sch.pdf (last visited January 5, 2018).

¹³ Section 320.27(4)(a), F.S.

¹⁴ Section 320.27(4)(b), F.S., provides that "successful completion" of the training is determined by an exam administered at the end of the course and attendance of no less than 90 percent of the total hours required by the school.

¹⁵ Section 320.27(4)(b), F.S.

¹⁶ Section 320.27(4)(a), F.S.

Denial, Suspension or Revocation of Motor Vehicle License

Section 320.27, F.S., provides requirements for motor vehicle dealers to maintain their licensed status, as well as conduct for which DHSMV may deny, suspend, or revoke a license. DHSMV may deny, suspend, or revoke such license upon proof that an applicant or licensee has committed fraud or willful misrepresentation in obtaining a license, has been convicted of a felony, or has failed to provide payment to DHSMV.¹⁷ Additionally, DHSMV may deny, suspend, or revoke a license upon proof that a licensee has committed certain acts with sufficient frequency to establish a pattern of wrongdoing on the part of the licensee.¹⁸

Motor vehicle dealers are required to follow numerous state laws and procedures in order to maintain their dealer license. Any person who violates these license requirements can be found guilty of a second-degree misdemeanor¹⁹, and could be liable under civil law in violation of Florida's Deceptive and Unfair Trade Practices Act.²⁰

Proposed Changes

Motor Vehicle Dealer and Broker Definitions

The bill amends the definition of "motor vehicle dealer." Specifically, the bill adds that the term "motor vehicle dealer" also includes any person who:

- Engages in the business of buying, selling, displaying for sale, or leasing three or more motor vehicles in any 12-month period;
- Engages in possessing, storing, or displaying motor vehicles for retail sale or lease;
- Advertises motor vehicles in inventory for retail sale or lease;
- Compensates customers for vehicles at wholesale or retail (trade-ins);
- Negotiates with customers regarding the terms of sale or lease for a motor vehicle;
- Provides test drives of motor vehicles offered for sale or lease;
- Delivers or arranges for delivery a motor vehicle in conjunction with the sale or lease of such motor vehicle; and

The bill clarifies that a person is not a motor vehicle dealer if his or her sole dealing in motor vehicles is owning a publication or hosting a website that displays vehicles for sale by licensed motor vehicle dealers, and allows persons (other than licensed motor vehicle dealers) to advertise vehicles for sale belonging to another party if such person contracts with a motor vehicle dealer.

The bill amends the definition of the term "motor vehicle broker," by defining it as any person engaged in the business of, or who holds himself out as being in the business of, assisting the general public in purchasing or leasing a motor vehicle from a licensed dealer, but does not store, display, or take ownership of any vehicle for the purpose of selling the vehicle. The bill requires any advertisement or solicitation by a motor vehicle broker to include notice that the broker is receiving a fee and clearly state that the broker is not a licensed motor vehicle dealer. Additionally, a licensed manufacturer, distributor, or importer is not considered a motor vehicle broker.

The bill also amends the definitions of "franchised motor vehicle dealer", "independent motor vehicle dealer" and "wholesale motor vehicle dealer," to remove the term "dealing in" motor vehicles. The bill adds that the definition of "franchised motor vehicle dealer" and "independent motor vehicle dealer" includes persons in the business of leasing motor vehicles, but exempts from the term "motor vehicle dealer" persons primarily engaged in the business of short-term vehicle rentals (which do not exceed 12 months) who are not involved in the retail sale of motor vehicles.

¹⁷ Section 320.27(9)(a), F.S.

¹⁸ Section 320.27(9)(b), F.S.

¹⁹ Section 320.27(8), F.S.

²⁰ Part II, ch. 501, F.S.

Motor Vehicle Broker Licensing Requirements

The bill amends s. 320.27(2), F.S., requiring motor vehicle brokers to be licensed to engage in business in the state. Motor vehicle brokers will be required to apply for a license with DHSMV, pay licensing fees, and follow other requirements of licensees provided in law. It is uncertain how DHSMV will implement the bill's new broker licensing requirements, as some requirements for motor vehicle dealers may not be appropriate for motor vehicle brokers.

Pre-licensing Dealer Training and Continuing Education Requirements

The bill removes the requirement that each initial license applicant provide verification to DHSMV that the applicant (or designated employee) attended a training and information seminar conducted by a licensed motor vehicle dealer training school.

Section 320.27(4)(b), F.S., of the bill continues to require initial independent motor vehicle license applicants to submit verification regarding a training and information seminar conducted by a licensed motor vehicle dealer training school. However, the bill removes the existing requirement that the seminar must be successfully completed by the applicant, which includes an owner, partner, officer, director of the applicant, or a full-time, management-level employee of the applicant. Instead, the bill requires an applicant or an applicant's designated employee to attend such seminar.

The bill creates s. 320.27(4)(c)2., F.S., requiring that each franchised motor vehicle dealer certify, every two years, that the dealer operator, owner, partner, director, or general manager of the licensee has completed eight hours of industry certification on legal and legislative issues. Such certification shall be provided by a Florida-based, non-profit, dealer-owned, statewide industry association of franchised motor vehicle dealers with state and federal compliance credentials approved by DHSMV, and such association may charge a fee for providing the industry certification. For licensees belonging to a dealership group,²¹ certification may be satisfied for all licensees by one designated owner, officer, director, or manager of the group. Certification shall be required in a classroom setting in a convenient location within Florida. Designated individuals shall receive certificates of completion, which must be filed with their license renewal form.

The bill makes technical changes throughout s. 320.27(4), F.S., to provide clarity.

B. SECTION DIRECTORY:

Section 1: Amends s. 320.27, F.S., relating to motor vehicle dealers.

Section 2: Provides an effective date of January 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill will likely have an indeterminate positive fiscal impact on DHSMV from the motor vehicle broker initial license fee of \$300 and the renewal fee of \$75.

Additionally, the bill will have an indeterminate positive fiscal impact on Florida Department of Law Enforcement (FDLE) from the motor vehicle brokers' payment for the state and national criminal history check. The record check is \$36, of which \$24 goes into FDLE's Operating Trust Fund.

²¹ The bill defines "dealership group" as "two or more licensed franchise motor vehicle dealers with a common owner which has legal or equitable title of at least 80 percent of each dealer in the group."

2. Expenditures:

DHSMV estimates a negative fiscal impact of \$4,672.50 from hours required for information technology programming and implementing the motor vehicle broker license provisions contained in the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have a negative fiscal impact on motor vehicle brokers who are not currently required to be licensed or pay the \$300 initial licensing fee, \$75 renewal fee, and \$36 state and national criminal history check.

Dealer training schools who offer pre-licensing certification will likely see a negative fiscal impact because of the elimination of pre-licensing requirements for each initial license applicant.

Florida-based, non-profit, dealer-owned, statewide industry association of franchised motor vehicle dealers that provide certification for franchised motor vehicle dealers will likely see a positive fiscal impact.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes DHSMV to adopt rules necessary to establish motor vehicle training curriculum.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 9, 2018, the Transportation & Infrastructure Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Adds that a person who leases three or more vehicles in any 12-month period shall be presumed to be a motor vehicle dealer, and adds references to leasing throughout the “motor vehicle dealer” definition.
- Provides that persons primarily engaged in the business of short-term rentals of motor vehicles (rental terms that do not exceed 12 months), who are not involved in the retail sale of vehicles, are not considered motor vehicle dealers:
- Removes from the definition of “motor vehicle dealer” persons offering to sell a motor vehicle service agreement at the time of sale or lease of the motor vehicle.
- Removes language from s. 320.27(1)(c), F.S., requiring a vehicle to be titled as a used vehicle when a motor vehicle dealer transferring the motor vehicle does not meet certain qualifications.
- Includes in the definition of “independent motor vehicle dealer” persons in the business of leasing motor vehicles.
- Reinserts language previously removed by the bill, which provides that a motor vehicle broker does not store, display, or take ownership of any vehicle for the purpose of selling such vehicles.
- Adds that a licensed manufacturer, distributor, or importer is not considered a motor vehicle broker.
- Includes additional requirements for pre-licensing training for independent motor vehicle dealers that were removed by the bill and are currently required of all motor vehicle dealer applicants.
- Adds that the franchised motor vehicle dealer industry certification be provided by a statewide industry association of franchised motor vehicles dealers, and such association may charge a fee for providing industry certification.
- Provides industry certification requirements for licensees in dealership groups, and defines the term “dealership group” for purposes of s. 320.27, F.S.
- Changes the effective date to January 1, 2019.

This analysis is written to the committee substitute as reported favorably by the Transportation & Infrastructure Subcommittee.