

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 595 Motor Vehicle Dealers

SPONSOR(S): Government Accountability Committee; Transportation & Infrastructure Subcommittee; Rommel

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/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	10 Y, 0 N	Cobb	Davis
3) Government Accountability Committee	19 Y, 0 N, As CS	Roth	Williamson

SUMMARY ANALYSIS

Current law regulates motor vehicle dealers and requires such dealers to obtain a license from the Department of Highway Safety and Motor Vehicles (DHSMV) in order to conduct business in Florida.

The bill amends various provisions of the motor vehicle dealer licensing law. The bill revises the definition of "motor vehicle dealer" by including a list of activities, such as leasing motor vehicles, which if performed, qualify a person as a motor vehicle dealer. It 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 also deletes the definition of "motor vehicle broker."

The bill 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 that 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.

The bill requires franchised motor vehicle dealers to receive continuing education from an association of franchised motor vehicle dealers and establishes fees for such training. The bill provides that a motor vehicle dealer wholly owned by a manufacturer, and whose dealer license is revoked, may continue to advertise motor vehicles of the line-make that was previously licensed, as long as the sale or lease occurs through a licensed motor vehicle dealer.

The bill may have a negative fiscal impact on franchised motor vehicle dealers related to dealer training certification requirements and DHSMV may incur additional program costs associated with administration of dealer licensing requirements. See fiscal comments for additional discussion.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 320.27, F.S., regulates motor vehicle dealers. The term “motor vehicle dealer” means 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 for sale, a motor vehicle 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

To become a motor vehicle dealer, an applicant must get a site approved by a DHSMV Regional Office Compliance Examiner. 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 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,

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).

which must 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 one-year renewal or \$150 for a two-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 \$50 fee 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 The seminar must 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, a partner, an officer, a 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 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/_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

The bill amends the definition of "motor vehicle dealer." Specifically, the bill provides 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; or
- Delivers or arranges for delivery a motor vehicle in conjunction with the sale or lease of such motor vehicle.

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 or lease by licensed motor vehicle dealers. Additionally, a licensed motor vehicle manufacturer, factory branch, distributor, or importer²¹ may sell motor vehicles to a franchised motor vehicle dealer without being licensed as a motor vehicle dealer.

The bill modifies the authorization for a person to advertise and offer for sale his or her own vehicle without a motor vehicle dealer license, to add requirements that the vehicles are acquired and sold in good faith and not for avoiding the dealer licensing requirements.

The bill prohibits motor vehicle dealers from transferring a manufacturer's statement of origin for a motor vehicle to any person who intends to sell the motor vehicle in Florida, unless that person is a licensed motor vehicle dealer who is authorized by a franchise agreement to buy, sell, or lease such vehicles.

The bill deletes the definition of "motor vehicle broker" from the motor vehicle dealer licensing law. The bill amends the definitions of the terms "franchised motor vehicle dealer," "independent motor vehicle dealer," and "wholesale motor vehicle dealer" to remove the term "dealing in" motor vehicles.

The bill provides that the definition of the term "independent motor vehicle dealer" includes persons in the business of leasing motor vehicles, but exempts from the term "motor vehicle dealer" persons

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.

²¹ Section 320.61, F.S.

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. It provides that a motor vehicle dealer who, as of July 1, 2018, is wholly owned by a licensed manufacturer and whose dealer license is revoked by a court or administrative order for reasons other than voluntary termination, failure to renew, or disciplinary action may continue to advertise motor vehicles of the line-make that was previously licensed, as long as the sale or lease occurs through a licensed motor vehicle dealer.

The bill revises the requirement for a licensee to file required application documents and fees with the department at least 30 days prior to the license expiration date to provide, instead, that if the required filings are not submitted *prior* to the license expiration date, the licensee must cease to engage in business as a dealer on the expiration date. The bill adds s. 320.27(4)(d), F.S., requiring that each franchised motor vehicle dealer certify in its application for license renewal, that the dealer operator, owner, partner, director, or general manager of the licensee has completed industry certification on legal and legislative issues. The dealer may provide the certification on either an annual or biennial basis, requiring four hours of training for the former and eight for the latter.

Only a Florida-based, non-profit, dealer-owned, statewide industry association of franchised motor vehicle dealers with state and federal compliance credentials approved by DHSMV may provide the certification, and such association may charge a fee for providing the industry certification. The bill specifies that the fee may not exceed \$500 per four hours. Beginning in 2020, the maximum fee must be adjusted annually based on the Consumer Price Index for All Urban Consumers as calculated by the Bureau of Labor Statistics of the U. S. Department of Labor.²²

For licensees that belong to a dealership group,²³ certification may be satisfied for all licensees by one designated owner, officer, director, or manager of the group. Certification must occur in a classroom setting in a convenient location within Florida. Upon completion, a person receives a certificate of completion, which must be filed with his or her license renewal form.

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:

None.

2. Expenditures:

DHSMV may incur additional programming costs associated with administration of dealer licensing requirements.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

²² Additional information on the Consumer Price Index for All Urban Consumers can be found on the U. S. Department of Labor website at: <https://www.bls.gov/cpi/questions-and-answers.htm>, and the latest official CPI data release can be viewed at: <https://www.bls.gov/news.release/cpi.nr0.htm> (sites last visited February 21, 2018).

²³ The bill defines "dealership group" as "two or more licensed franchise motor vehicle dealers with at least one common owner or with common owners which has legal or equitable title of at least 50 percent of each dealer in the group."

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a negative fiscal impact on franchised motor vehicle dealers required to meet continuing education certification requirements to be licensed by DHSMV.

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:

Not applicable. This bill does not appear to affect county or municipal governments.

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:

- Added 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.
- Provided 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.
- Removed 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.
- Removed 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.
- Included in the definition of “independent motor vehicle dealer” persons in the business of leasing motor vehicles.
- Reinserted 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.
- Added that a licensed manufacturer, distributor, or importer is not considered a motor vehicle broker.

- Included 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.
- Added 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.
- Provided industry certification requirements for licensees in dealership groups, and defines the term “dealership group” for purposes of s. 320.27, F.S.
- Changed the effective date to January 1, 2019.

On February 26, 2018, the Government Accountability Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Excluded sales from a manufacturer, factory branch, distributor, or importer licensed to a franchised motor vehicle dealer, from the definition of motor vehicle dealer.
- Prevented a franchised motor vehicle dealer from transferring a manufacturer’s statement of origin for a motor vehicle to any person who intends to sell the motor vehicle in this state unless said person is a licensed motor vehicle dealer, authorized by a franchise agreement to buy, sell, or lease vehicles.
- Required DHSMV to send a statement of required continuing education or industry certification requirements that the licensee must complete along with the notice of license renewal;
- Removed the definition of “motor vehicle broker” and all of the conforming changes relating to the definition.
- Removed from the bill the licensure requirements for motor vehicle brokers.
- Allowed franchised motor vehicle dealers to renew their license on an annual or biennial basis, and provided pro-rated industry certification standards for such filings.
- Allowed a licensed motor vehicle dealer to file his or her renewal application, fees, and other required documents at any time prior to the license expiration date, rather than at least 30 days prior.
- Revised the term “dealership group” to mean two or more licensed franchised motor vehicle dealers with at least one common officer or with common owners having legal or equitable title to at least 50 (rather than 80) percent of each dealer in the group.
- Provided fee caps for the franchised industry certification classes conducted by the industry association.
- Authorized a motor vehicle dealer wholly owned by a licensed manufacturer, whose dealer license is revoked, to continue to advertise motor vehicles of the line-make that was previously licensed, as long as the sale or lease occurs through a licensed motor vehicle dealer.

This analysis is written to the committee substitute as reported favorably by the Government Accountability Committee.