



325944

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/23/2018	.	
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	.	

The Committee on Rules (Passidomo) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraphs (c) and (d) of subsection (1) and
subsections (2) and (4) of section 320.27, Florida Statutes, are
amended to read:

320.27 Motor vehicle dealers.—

(1) DEFINITIONS.—The following words, terms, and phrases
when used in this section have the meanings respectively
ascribed to them in this subsection, except where the context



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12 clearly indicates a different meaning:

13 (c) "Motor vehicle dealer" means any person engaged in the
14 business of buying, selling, or leasing ~~dealing in~~ motor
15 vehicles or offering or displaying motor vehicles for sale or
16 lease at wholesale, excluding sales from a manufacturer, factory
17 branch, distributor, or importer licensed pursuant to s. 320.61
18 to a franchised motor vehicle dealer licensed pursuant to this
19 section, or at retail, or who may service and repair motor
20 vehicles pursuant to an agreement as defined in s. 320.60(1).
21 Any person who buys, sells, or leases ~~deals in~~ three or more
22 motor vehicles in any 12-month period or who offers or displays
23 for sale or lease three or more motor vehicles in any 12-month
24 period is shall be prima facie presumed to be a motor vehicle
25 dealer. Any person who engages in any of the following
26 activities is deemed to be a motor vehicle dealer: possessing,
27 storing, advertising, or displaying motor vehicles that such
28 person offers for retail sale or lease; compensating customers
29 for vehicles at wholesale or retail, also known as trade-ins;
30 negotiating with customers regarding the terms of sale or lease
31 for a motor vehicle offered for retail sale or lease by such
32 person; providing test drives of motor vehicles that such person
33 offers for retail sale or lease; delivering or arranging for the
34 delivery of a motor vehicle in conjunction with the retail sale
35 or lease of the motor vehicle by such person engaged in such
36 business. The terms "selling" and "sale" include lease purchase
37 transactions. A motor vehicle dealer may, at retail or
38 wholesale, sell a recreational vehicle as described in s.
39 320.01(1)(b)1.-6. and 8., acquired in exchange for the sale or
40 lease of a motor vehicle, provided such acquisition is



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41 incidental to the principal business of being a motor vehicle
42 dealer. However, a motor vehicle dealer may not buy a
43 recreational vehicle for the purpose of resale unless licensed
44 as a recreational vehicle dealer pursuant to s. 320.771. ~~A motor
45 vehicle dealer may apply for a certificate of title to a motor
46 vehicle required to be registered under s. 320.08(2)(b), (c),
47 and (d), using a manufacturer's statement of origin as permitted
48 by s. 319.23(1), only if such dealer is authorized by a
49 franchised agreement as defined in s. 320.60(1), to buy, sell,
50 or deal in such vehicle and is authorized by such agreement to
51 perform delivery and preparation obligations and warranty defect
52 adjustments on the motor vehicle; provided this limitation shall
53 not apply to recreational vehicles, van conversions, or any
54 other motor vehicle manufactured on a truck chassis. The
55 transfer of a motor vehicle by a dealer not meeting these
56 qualifications shall be titled as a used vehicle. The~~
57 classifications of motor vehicle dealers are defined as follows:

58 1. "Franchised motor vehicle dealer" means any person who
59 engages in the business of repairing, servicing, buying,
60 selling, or leasing ~~dealing in~~ motor vehicles pursuant to an
61 agreement as defined in s. 320.60(1). A motor vehicle dealer may
62 apply for a certificate of title to a motor vehicle required to
63 be registered under s. 320.08(2)(b), (c), and (d) or s.
64 320.08(3)(a), (b), or (c), using a manufacturer's statement of
65 origin as permitted by s. 319.23(1), only if such dealer is
66 authorized by a franchise agreement as defined in s. 320.60(1)
67 to buy, sell, or lease such vehicles and to perform delivery and
68 preparation obligations and warranty defect adjustments on the
69 motor vehicle. This limitation does not apply to recreational



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70 vehicles, van conversions, or any other motor vehicle
71 manufactured on a truck chassis. A motor vehicle dealer may not
72 transfer a manufacturer's statement of origin for a motor
73 vehicle to any person who intends to sell such motor vehicle in
74 this state unless such person is a licensed motor vehicle dealer
75 authorized by a franchise agreement to buy, sell, or lease such
76 vehicles.

77 2. "Independent motor vehicle dealer" means any person
78 other than a franchised or wholesale motor vehicle dealer who
79 engages in the business of buying, selling, or leasing ~~dealing~~
80 ~~in~~ motor vehicles, and who may service and repair motor
81 vehicles.

82 3. "Wholesale motor vehicle dealer" means any person who
83 engages exclusively in the business of buying or ~~selling~~ ~~or~~
84 ~~dealing in~~ motor vehicles at wholesale or with motor vehicle
85 auctions. Such person shall be licensed to do business in this
86 state, shall not sell or auction a vehicle to any person who is
87 not a licensed dealer, and shall not have the privilege of the
88 use of dealer license plates. Any person who buys, sells, or
89 deals in motor vehicles at wholesale or with motor vehicle
90 auctions on behalf of a licensed motor vehicle dealer and as a
91 bona fide employee of such licensed motor vehicle dealer is not
92 required to be licensed as a wholesale motor vehicle dealer. In
93 such cases it shall be prima facie presumed that a bona fide
94 employer-employee relationship exists. A wholesale motor vehicle
95 dealer shall be exempt from the display provisions of this
96 section but shall maintain an office wherein records are kept in
97 order that those records may be inspected.

98 4. "Motor vehicle auction" means any person offering motor



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99 vehicles or recreational vehicles for sale to the highest bidder
100 where buyers are licensed motor vehicle dealers. Such person
101 shall not sell a vehicle to anyone other than a licensed motor
102 vehicle dealer.

103 5. "Salvage motor vehicle dealer" means any person who
104 engages in the business of acquiring salvaged or wrecked motor
105 vehicles for the purpose of reselling them and their parts.
106

107 Notwithstanding anything in this subsection to the contrary, the
108 term "motor vehicle dealer" does not include persons not engaged
109 in the purchase, ~~or~~ sale, or lease of motor vehicles as a
110 business who are disposing of vehicles acquired for their own
111 use or for use in their business or acquired by foreclosure or
112 by operation of law, provided such vehicles are acquired and
113 sold in good faith and not for the purpose of avoiding the
114 provisions of this law; persons engaged in the business of
115 manufacturing, selling, or offering or displaying for sale or
116 lease at wholesale or retail no more than 25 trailers in a 12-
117 month period; public officers while performing their official
118 duties; receivers; trustees, administrators, executors,
119 guardians, or other persons appointed by, or acting under the
120 judgment or order of, any court; banks, finance companies, or
121 other loan agencies that acquire motor vehicles as an incident
122 to their regular business; persons whose sole dealing in motor
123 vehicles is owning a publication in which, or hosting a website
124 on which, licensed motor vehicle dealers display vehicles for
125 sale or lease; persons primarily engaged in the business of the
126 short-term rental of motor vehicles, which rental term may not
127 exceed 12 months, who are not involved in the retail sale or



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128 lease of motor vehicles; ~~motor vehicle brokers;~~ and motor
129 vehicle rental and leasing companies that sell motor vehicles
130 only to motor vehicle dealers licensed under this section.
131 Vehicles owned under circumstances described in this paragraph
132 may be disposed of at retail, wholesale, or auction, unless
133 otherwise restricted. A manufacturer of fire trucks, ambulances,
134 or school buses may sell such vehicles directly to governmental
135 agencies or to persons who contract to perform or provide
136 firefighting, ambulance, or school transportation services
137 exclusively to governmental agencies without processing such
138 sales through dealers if such fire trucks, ambulances, school
139 buses, or similar vehicles are not presently available through
140 motor vehicle dealers licensed by the department.

141 ~~(d) "Motor vehicle broker" means any person engaged in the~~
142 ~~business of offering to procure or procuring motor vehicles for~~
143 ~~the general public, or who holds himself or herself out through~~
144 ~~solicitation, advertisement, or otherwise as one who offers to~~
145 ~~procure or procures motor vehicles for the general public, and~~
146 ~~who does not store, display, or take ownership of any vehicles~~
147 ~~for the purpose of selling such vehicles.~~

148 (2) LICENSE REQUIRED.—No person shall engage in business
149 as, serve in the capacity of, or act as a motor vehicle dealer
150 in this state without first obtaining a license therefor in the
151 appropriate classification as provided in this section. With the
152 exception of transactions with motor vehicle auctions, no person
153 other than a licensed motor vehicle dealer may advertise for
154 sale or lease any motor vehicle belonging to another party
155 unless as a direct result of a bona fide legal proceeding, court
156 order, settlement of an estate, ~~or~~ by operation of law, or if



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157 done by a person whose sole dealing in motor vehicles is owning
158 a publication in which, or hosting a website on which, licensed
159 motor vehicle dealers display vehicles for sale or lease.
160 However, owners of motor vehicles titled in their names may
161 advertise and offer motor vehicles for sale on their own behalf,
162 provided such vehicles are acquired and sold in good faith and
163 not for the purpose of avoiding the requirements of this
164 section. It shall be unlawful for a licensed motor vehicle
165 dealer to allow any person other than its a bona fide employee
166 to use the motor vehicle dealer license for the purpose of
167 acting in the capacity of or conducting motor vehicle sales or
168 lease transactions as a motor vehicle dealer. Any person acting
169 ~~selling or offering a motor vehicle for sale~~ in violation of the
170 licensing requirements of this subsection, or who misrepresents
171 to any person his or her ~~its~~ relationship with any manufacturer,
172 importer, ~~or~~ distributor, or motor vehicle dealer, in addition
173 to the penalties provided herein, shall be deemed to have
174 committed guilty of an unfair and deceptive trade practice ~~as~~
175 ~~defined~~ in violation of part II of chapter 501 and shall be
176 subject to the provisions of subsections (8) and (9).

177 (4) LICENSE CERTIFICATE.—

178 (a) A license certificate shall be issued by the department
179 in accordance with such application when the application is
180 regular in form and in compliance with the provisions of this
181 section. The license certificate may be in the form of a
182 document or a computerized card as determined by the department.
183 The actual cost of each original, additional, or replacement
184 computerized card shall be borne by the licensee and is in
185 addition to the fee for licensure. Such license, when so issued,



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186 entitles the licensee to carry on and conduct the business of a
187 motor vehicle dealer. Each license issued to a franchise motor
188 vehicle dealer expires on December 31 of the year of its
189 expiration unless revoked or suspended before ~~prior to~~ that
190 date. Each license issued to an independent or wholesale dealer
191 or auction expires on April 30 of the year of its expiration
192 unless revoked or suspended prior to that date. At least 60 days
193 before the license expiration date, the department shall deliver
194 or mail to each licensee the necessary renewal forms along with
195 a statement that the licensee is required to complete any
196 applicable continuing education or industry certification
197 requirements. ~~Each independent dealer shall certify that the~~
198 ~~dealer (owner, partner, officer, or director of the licensee, or~~
199 ~~a full-time employee of the licensee that holds a responsible~~
200 ~~management-level position) has completed 8 hours of continuing~~
201 ~~education prior to filing the renewal forms with the department.~~
202 ~~Such certification shall be filed once every 2 years. The~~
203 ~~continuing education shall include at least 2 hours of legal or~~
204 ~~legislative issues, 1 hour of department issues, and 5 hours of~~
205 ~~relevant motor vehicle industry topics. Continuing education~~
206 ~~shall be provided by dealer schools licensed under paragraph (b)~~
207 ~~either in a classroom setting or by correspondence. Such schools~~
208 ~~shall provide certificates of completion to the department and~~
209 ~~the customer which shall be filed with the license renewal form,~~
210 ~~and such schools may charge a fee for providing continuing~~
211 ~~education.~~ Any licensee who does not file his or her application
212 and fees and any other requisite documents, as required by law,
213 ~~with the department at least 30 days prior to the license~~
214 expiration date shall cease to engage in business as a motor



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215 vehicle dealer on the license expiration date. A renewal filed
216 with the department within 45 days after the expiration date
217 shall be accompanied by a delinquent fee of \$100. Thereafter, a
218 new application is required, accompanied by the initial license
219 fee. A license certificate duly issued by the department may be
220 modified by endorsement to show a change in the name of the
221 licensee, provided, as shown by affidavit of the licensee, the
222 majority ownership interest of the licensee has not changed or
223 the name of the person appearing as franchisee on the sales and
224 service agreement has not changed. Modification of a license
225 certificate to show any name change as herein provided shall not
226 require initial licensure or reissuance of dealer tags; however,
227 any dealer obtaining a name change shall transact all business
228 in and be properly identified by that name. All documents
229 relative to licensure shall reflect the new name. In the case of
230 a franchise dealer, the name change shall be approved by the
231 manufacturer, distributor, or importer. A licensee applying for
232 a name change endorsement shall pay a fee of \$25 which fee shall
233 apply to the change in the name of a main location and all
234 additional locations licensed under the provisions of subsection
235 (5). Each initial license application received by the department
236 shall be accompanied by verification that, within the preceding
237 6 months, the applicant, or one or more of his or her designated
238 employees, has attended a training and information seminar
239 conducted by a licensed motor vehicle dealer training school.
240 Any applicant for a new franchised motor vehicle dealer license
241 who has held a valid franchised motor vehicle dealer license
242 continuously for the past 2 years and who remains in good
243 standing with the department is exempt from the prelicensing



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244 training requirement. Such seminar shall include, but is not
245 limited to, statutory dealer requirements, which requirements
246 include required bookkeeping and recordkeeping procedures,
247 requirements for the collection of sales and use taxes, and such
248 other information that in the opinion of the department will
249 promote good business practices. No seminar may exceed 8 hours
250 in length.

251 (b) Each initial license application received by the
252 department for licensure under subparagraph (1)(c)2. shall be
253 accompanied by verification that, within the preceding 6 months,
254 the applicant (owner, partner, officer, or director of the
255 applicant, or a full-time employee of the applicant that holds a
256 responsible management-level position) has successfully
257 completed training conducted by a licensed motor vehicle dealer
258 training school. Such training must include training in titling
259 and registration of motor vehicles, laws relating to unfair and
260 deceptive trade practices, laws relating to financing with
261 regard to buy-here, pay-here operations, and such other
262 information that in the opinion of the department will promote
263 good business practices. Successful completion of this training
264 shall be determined by examination administered at the end of
265 the course and attendance of no less than 90 percent of the
266 total hours required by such school. Any applicant who had held
267 a valid motor vehicle dealer's license continuously within the
268 past 2 years and who remains in good standing with the
269 department is exempt from the prelicensing requirements of this
270 section. The department shall have the authority to adopt any
271 rule necessary for establishing the training curriculum; length
272 of training, which shall not exceed 8 hours for required



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273 department topics and shall not exceed an additional 24 hours
274 for topics related to other regulatory agencies' instructor
275 qualifications; and any other requirements under this section.
276 The curriculum for other subjects shall be approved by any and
277 all other regulatory agencies having jurisdiction over specific
278 subject matters; however, the overall administration of the
279 licensing of these dealer schools and their instructors shall
280 remain with the department. Such schools are authorized to
281 charge a fee.

282 (c) Each application received by the department for renewal
283 of a license under subparagraph (1)(c)2. must certify that the
284 dealer (owner, partner, officer, or director of the licensee, or
285 a full-time employee of the licensee that holds a responsible
286 management-level position) has completed 8 hours of continuing
287 education prior to filing the renewal forms with the department.
288 Such certification must be filed once every 2 years. The
289 continuing education must include at least 2 hours of legal or
290 legislative issues, 1 hour of department issues, and 5 hours of
291 relevant motor vehicle industry topics. Continuing education
292 shall be provided by dealer schools licensed under paragraph (b)
293 either in a classroom setting or by correspondence. Such schools
294 shall provide certificates of completion to the department and
295 the customer which shall be filed with the license renewal form,
296 and such schools may charge a fee for providing continuing
297 education.

298 (d) Each application received by the department for renewal
299 of a license under subparagraph (1)(c)1. must certify that the
300 dealer (dealer operator, owner, partner, officer, director, or
301 general manager of the licensee) has completed 4 hours of



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302 industry certification on legal and legislative issues each year
303 prior to filing the renewal forms with the department. Industry
304 certification shall be provided by a Florida-based, nonprofit,
305 dealer-owned, statewide industry association of franchised motor
306 vehicle dealers with state and federal compliance credentials
307 approved by the department, and shall be in a classroom setting
308 in convenient locations within the state. Such association shall
309 provide certificates of completion to the department and the
310 customer which shall be filed with the license renewal form. An
311 application for renewal of a license previously issued for 1
312 year must be accompanied by a certificate establishing
313 completion of 4 hours of industry certification during the prior
314 year. An application for renewal of a license previously issued
315 for 2 years must be accompanied by certificates establishing
316 completion of 8 hours of industry certification, except that
317 renewal of a 2-year license that expires on December 31, 2019,
318 must be accompanied by a certificate establishing completion of
319 4 hours of industry certification. An association may charge a
320 fee not to exceed \$500 per 4 hours for providing the industry
321 certification. In 2020 and for each subsequent year, the maximum
322 fee of \$500 per 4 hours shall be increased by a percentage equal
323 to the annual Consumer Price Index for All Urban Consumers
324 calculated for the previous year by the Bureau of Labor
325 Statistics of the United States Department of Labor. In the case
326 of licensees belonging to a dealership group, the required
327 industry certification may be satisfied for all licensees in the
328 dealership group through completion of the industry
329 certification by a single designated owner, officer, director,
330 or manager of the dealership group. For purposes of this



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331 section, the term "dealership group" means two or more licensed
332 franchised motor vehicle dealers with at least one common
333 officer or with common owners having legal or equitable title of
334 at least 50 percent of each dealer in the group. A licensee who
335 seeks to satisfy the required industry certification through a
336 dealership group must provide the department with evidence of
337 the required common ownership at the time of filing the
338 certificate of completion.

339 Section 2. This act shall take effect January 1, 2019.

340

341 ===== T I T L E A M E N D M E N T =====

342 And the title is amended as follows:

343 Delete everything before the enacting clause
344 and insert:

345 A bill to be entitled
346 An act relating to motor vehicle dealers; amending s.
347 320.27, F.S.; revising the definitions of the terms
348 "motor vehicle dealer," "franchised motor vehicle
349 dealer," "independent motor vehicle dealer," and
350 "wholesale motor vehicle dealer"; deleting the
351 definition of "motor vehicle broker"; adding an
352 exception to the prohibition against persons other
353 than licensed motor vehicle dealers from advertising
354 for sale or lease any motor vehicle belonging to
355 another party; authorizing owners of motor vehicles
356 titled in their names to advertise and offer motor
357 vehicles for sale on their own behalf, provided such
358 vehicles are acquired and sold in good faith and not
359 for the purpose of avoiding specified requirements;



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360 prohibiting a licensed motor vehicle dealer from
361 allowing any person other than its bona fide employee
362 to use its motor vehicle dealer license for the
363 purpose of acting in the capacity of or conducting
364 motor vehicle lease transactions as a motor vehicle
365 dealer; providing that any person acting in violation
366 of specified licensing requirements or misrepresenting
367 to any person his or her relationship with any motor
368 vehicle dealer is deemed to have committed an unfair
369 and deceptive trade practice in violation of specified
370 provisions; requiring, within a specified timeframe,
371 the Department of Highway Safety and Motor Vehicles to
372 deliver or mail to each licensee the necessary renewal
373 forms along with a statement that the licensee is
374 required to complete any applicable continuing
375 education or industry certification requirements;
376 deleting certain continuing education and
377 certification requirements; requiring any licensee who
378 does not file his or her application and fees and any
379 other requisite documents, as required by law, before
380 the license expiration date to cease engaging in
381 business as a motor vehicle dealer on the license
382 expiration date; requiring applications received by
383 the department for renewal of independent motor
384 vehicle dealer licenses to certify that the dealer has
385 completed continuing education before filing the
386 renewal forms with the department, subject to certain
387 requirements; providing requirements for continuing
388 education and dealer schools; authorizing such schools



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389 to charge a fee for providing continuing education;
390 requiring applications received by the department for
391 renewal of franchised motor vehicle dealer licenses to
392 certify that the dealer has completed certain industry
393 certification before filing the renewal forms with the
394 department, subject to certain requirements; providing
395 requirements for industry certification and certain
396 statewide industry associations of franchised motor
397 vehicle dealers; authorizing an association to charge
398 up to a specified fee for providing the industry
399 certification; providing for annual adjustments to the
400 maximum fee, beginning on a specified date;
401 authorizing industry certification for licensees
402 belonging to a dealership group to be accomplished by
403 a certain designated person; defining the term
404 "dealership group"; requiring a licensee who seeks to
405 satisfy the certification through a dealership group
406 to provide the department with certain evidence at the
407 time of filing the certificate of completion;
408 providing an effective date.